IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.1196 OF 2010

DISTRICT : KOLHAPUR

Shri Anil Vishnu Gujar.)
Aged : Adult, Occu.: Govt. Service as)
Police Inspector, Police Training Centre,)
Turch (Tasgaon), Dist : Sangi.)
Address for Service of Notice :)
Gopal Plaza, Ramanmala, Kolhapur.)...**Applicant**

Versus

1. The Dist. Superintendent of Police.)
   Kolhapur having office at Kolhapur.)

2. The Special Inspector General of)
   Kolhapur Range having office at)
   Kolhapur.)

3. The Director General & Inspector)
   General of Police, M.S, Mumbai)
   Having Office at Shahid Bhagatsingh)
   Marg, Colaba, Mumbai 400 039.)...**Respondents**

Shri B.A. Bandiwadekar, Advocate for Applicant.

Shri N.K. Rajpurohit, Presenting Officer for Respondents.

P.C. : **R.B. MALIK (MEMBER-JUDICIAL)**

DATE : **11.01.2016**

JUDGMENT

1. This Original Application (OA) arises out of punishment meted out to the Applicant who was Assistant Police Inspector (API) at the relevant time, whereby the Applicant was ultimately ordered to be kept on the same basic pay for a period of one year in appeal modifying the order of the disciplinary authority, keeping him on the same pay for two years. The Applicant was co-delinquent with a few others and he was held guilty mainly of slack supervision on account of an incident wherein an accused who came to be accused of an offence of theft committed suicide in Police Custody.

2. I have perused the record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

3. It is not disputed that at the relevant time, the Applicant was posted as API to Police Station, Kurundwad in District Kolhapur. An accused came to be remanded to

Police custody. On 20.1.2006, the said accused committed suicide by hanging himself in the Police Station by means of a piece of cloth. The Applicant was apparently made to face the proceedings as In-charge Police Officer. The Investigating Officer (IO) Mr. R.B. Aware, PSI and Station Officer Mr. M.N. Tipugude, ASI and two Police Constables S/S D.B. Gaikwad and S.M. Mhaswekar were the other delinquents. The additional Superintendent of Police, Kolhapur came to be appointed as Enquiry Officer. He examined six witnesses and held the Applicant guilty of slack supervision and dereliction of duty in the matter of ensuring that the said accused was sent to the lock-up in a particular Police Station because the lock-up facility at least for the time being was not available in the concerned Police Station. Another aspect of the matter was that in a post fact defence move, he tried to tamper with the Station Diary. He was held guilty by the Enquiring Officer. On 22.2.2008, the disciplinary authority being the Superintendent of Police, Kolhapur, the 1st Respondent herein accepted the report of the EO and issued a show cause notice to the Applicant proposing the punishment whereagainst the Applicant showed cause.

4. By an order dated 12.5.2008, the 1st Respondent imposed the penalty of keeping the Applicant on the same

pay for two years. In the said order, he has referred to the facts and made the order just referred to.

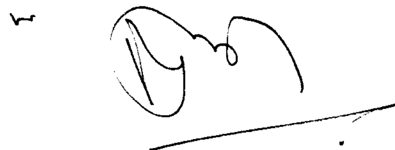
5. Pertinently, this order of the 1st Respondent is not specifically challenged in this OA.

6. The Applicant preferred an appeal against the above referred order and the Respondent No.2 – Special IGP, Kolhapur Range. By an order dated 20th February, 2009 by a sufficiently detailed appellate order and after considering the facts, the said authority partly allowed the appeal and so modified the punishment as to keep the Applicant on the same pay scale for one year thereby granting relief to the Applicant. It is, therefore, clear that the appellate order discussed the facts such as they were before the authority below him and the due application of mind is quite clearly exemplified by the fact that by reduction of the period of punishment, substantial relief was granted to the Applicant.

7. The Applicant further challenged that order as well in Revision before the Additional Director General of Police (Estt.), but the appellate order was maintained after a detailed discussion by the said authority.

8. The challenge to the competence of the Respondent No.1 to cause the issuance of the order against the Applicant, in my opinion, would not sustain in view of the provisions of Section 25(2)(a) of the Maharashtra Police Act, substituting the name for Bombay Police Act, 1951. The said provision reads as under :

> "2(a) The Director General and Inspector General including Additional Director General, Special Inspector General, Commissioner including Joint Commissioner, Additional Commissioner and Deputy Inspector-General shall have authority to punish an Inspector or any member of the subordinate rank under sub-section (1) or (1A). A Superintendent shall have the like authority in respect of any police officer subordinate to him below the grade of Inspector and shall have powers to suspend an Inspector who is subordinate to him pending enquiry into a complaint against such Inspector and until an order of Director-General and Inspector-General or Additional Director-General and Inspector-General and including the Director of Police Wireless and Deputy Inspector-General of Police can be obtained."



9. The Applicant at the relevant point in time was an API, and therefore, there is no substance in the contention that the Superintendent of Police was not an authority competent to do what he did in this case. That argument is therefore rejected.

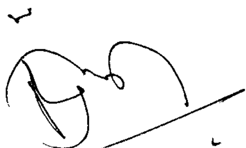
10. Now, as far as the main challenge is concerned, I find that I have to be quite conscious of the jurisdictional limitations of a judicial forum exercising the power of judicial review of administrative action. This is obviously not an appellate jurisdiction. The mere existence of any other point of view on the basis of the same material by itself will not be sufficient justification for interference with the administrative orders. I shall be more concerned with the process of reaching the conclusion rather than the conclusion itself and that process must be fully in accordance with the principles of natural justice and fair-play. The strict procedural Rules enshrined in the codified law for the trial of a criminal case or even a civil suit are in terms not applicable to the DEs. However, even then, the procedure must be just and in keeping with the principles of natural justice. A fair opportunity to defend has to be afforded to the delinquent. He should be given full opportunity to cross examine the witnesses of the Establishment and to examine the witnesses for himself

were he so disposed to do. The degree of proof will be preponderance of probability and not proof beyond reasonable doubt. Once there is some incriminating evidence to come true to the test of a reasonable person, then the judicial authority would not just for the asking either intervene or interfere.

11. Now, remaining within the above legal parameter, I find that the disciplinary authority and then the appellate and revisional authorities have, by and large, performed their functions to the full satisfaction of the process of judicial scrutiny of the impugned actions of the disciplinary authorities. Although one does not always expect a Court like sophistication in the pronouncements made by the authorities below, but here, all the three orders are closely proximate to a level where one feels satisfied that no injustice has been caused to the Applicant. The record of evidence by the EO who himself was a Senior Police Officer was again quite satisfactory. All opportunities were given to the delinquents to test the evidence against them in the cross-examination. In fact barring the ritualistic grievance someone faintly made by the Applicant with regard to the documents, etc., there is not even a particle of material to show that he suffered any handicap much less injustice at the hands of the EO.

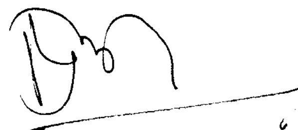
Therefore, the disciplinary authority was fully justified in recording his concurrence in the conclusions of the EO. Now, as far as the issue of the statements of the six witnesses is concerned, I have carefully perused the same. It is not really necessary for me to set them out in details over here. Because once I find that those statements fall within the category of incriminating evidence, then the sufficiency or otherwise thereof would be such as to be within the domain of the EO and then the disciplinary authority.

12. Now, having mentioned all that, I find that although I am not basing myself entirely on that aspect of the matter, but then there is surely a defect in the frame of the OA in as much as there is no specific challenge to the order of the disciplinary authority. The said order was based on evidence and appreciation thereof. Although the appellate authority recorded his assent thereto, and therefore, by the doctrine of merger may be, it would be some kind of a technical defect, but I refuse to dismiss it just like that. Because after-all, if before any judicial authority, there is an attempt to question the orders based on the evaluation of evidence, then it has to be the first order in line which must be specifically assailed. The elementary principles of the law of appeals duly moulded



for the purpose of this particular class of litigation, in my view, should have it that the first authority is the authority of natural jurisdiction while the appellate authority is an authority of statutory jurisdiction. That being the state of affairs, although I am not basing my conclusions entirely on that aspect of the matter, I must clearly record that this issue raised on behalf of the Respondents by the learned C.P.O. is not something that can just be glossed over.

13. It was contended on behalf of the Applicant that the finding of guilt may have been contrived because of the parallel proceeding that ran in the form of a Public Interest Litigation. To briefly set out those facts, it appears that the widow of the deceased moved the Hon'ble High Court against the State of Maharashtra and ultimately compensation came to be awarded which the State Government has also paid to her. According to the Applicant, financial liability will be apportioned and it is only for this purpose that he has been hauled up. Now, as to this aspect of the matter, I find that once it is clearly established that a finding of guilt on the basis of the record such as it was, was fully warranted, then any other parallel fact situation seeking to attribute motives to the Respondents would be a futile attempt. In this OA, I am not concerned with whatever stand one would take in



those proceedings, even if they were to arise. In my opinion, therefore, there is no substance in this case of the Applicant.

14. The learned C.P.O. relied upon **B.C. Chaturvedi Vs. Union of India, AIR 1996, 484**. I have already followed the principles laid down by the Hon'ble Supreme Court in that matter. Mr. Bandiwadekar, the learned Advocate for the Applicant referred me to a judgment in **OA 1/2014 (Shri Bapu B. Shinde Vs. Special I.G.P. and one another, 13th July, 2015)** rendered by the learned Member (A) of this Tribunal. In the first place, the facts there were somewhat different and even otherwise the matter was remanded for fresh DE. Therefore, the Applicant cannot take any advantage thereof.

15. The instance of, "third degree treatment" in the lock-up and may be on account thereof, an accused seeking easy escape-route by escaping from the world itself is not something that can lightly be ignored. It is even otherwise a burning human rights issue. It is no doubt true that one human being cannot be used as an exhibit in the name of deterrence to others, but at the same time, slack supervision and post facto attempt to redeem by tampering with the Station Diary, etc. is not something

that can be easily ignored. I find absolutely no substance in this OA, and therefore, the same is hereby dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
11.01.2016

Mumbai
Date : 11.01.2016
Dictation taken by :
S.K. Wamanse.
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