IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.1199 OF 2016

DISTRICT : THANE

Shri Sanjeev B. Kokil.)
Ex-Senior Police Inspector, Armed Force)
[LA-Vakola], Mumbai and R.o. Sumer)
Castle, F-904, Uthalsar, L.B.S. Marg,)
Thane (W).)**...Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)

2. The Director General and Inspector)
General of Police, Mumbai having)
Office at Old Council Hall,)
Shahid Bhagatsingh Marg,)
Mumbai – 400 039.)**...Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent.

CORAM : P.N. DIXIT, VICE CHAIRMAN
A.P. KURHEKAR, MEMBER-J

DATE : 27.08.2019

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has challenged the impugned order passed by Respondent No.1 in appeal dated 08.06.2016 thereby confirming the sentence imposed by Respondent No.2 removing him from service invoking jurisdiction of the Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. In nutshell, the facts giving rise to this application are as under:-

While the Applicant was serving as Senior Police Inspector, MRA Police Station, Mumbai, he was subjected to departmental enquiry (D.E.) as per the provisions of Maharashtra Police (Punishment & Appeal) Rules, 1956 (hereinafter referred to as 'Rules of 1956' for brevity) on the allegation of serious misconduct. The Deputy Commissioner of Police, Zone XI, Mumbai was appointed as Enquiry Officer who on completion of enquiry held the Applicant guilty. In consequence to it, the Respondent No.2 (Director General and Inspector General of Police Mumbai) by order dated 25.02.2013 imposed the punishment of removal of service invoking the powers under Section 25(2)(a) of Maharashtra Police Act, 1951 (hereinafter referred to as 'Act of 1951' for brevity). Being aggrieved by it, the Applicant has filed appeal before the Respondent No.1. After filing appeal, the Applicant was served with the notice dated 25.07.2014 to remain present for hearing before the then Hon'ble Minister of State (Home). Accordingly, the Applicant appeared before the then Hon'ble Minister (Shri Satej Patil) who heard the Applicant and closed the appeal for decision stating that the decision will be communicated to him. However, nothing was communicated to him for a long period. Thereafter, he came to know that the then Hon'ble Minister who heard appeal had already passed order in his appeal thereby setting aside the order of punishment of removal from service. However, it was not communicated to him through Respondent No.1, as the State

Assembly Elections were announced. In the meantime, the Elections were held and new Government was formed. After the formation of new Government, the Applicant again made representation on 19.01.2016 before the Hon'ble Minister (Shri Ranjit Patil) stating that his appeal has been already heard and decided by the then Hon'ble Minister thereby setting aside the order of removal from service and substituting the same with the punishment of reduction of pension of Rs.1000/- p.m. for one year, but in vein. Despite this position, he had received the message from Dr. Duryodhan Sahu (from the Office of Hon'ble Minister) to attend the hearing of appeal on 08.03.2016. Accordingly, he appeared before the Hon'ble Minister (Shri Ranjit Patil) and brought to his notice that his appeal is already decided by the then Hon'ble Minister. To his surprise, he received the order dated 08.06.2016 issued by Respondent No.1 stating that his appeal is dismissed by order dated 08.03.2016 and the sentence of removal of service is confirmed. The Applicant, therefore, filed an application invoking the provisions of Right to Information Act 2005 and demanded copies of the order passed by the then Hon'ble Minister (Shri Satej Patil) who heard the matter. He was supplied with the copy of order passed by the Hon'ble Minister wherein the order of removal from service was set aside and having regard to the fact that the Applicant had already superannuated w.e.f.30.10.2013, the punishment of reduction of Rs.1000/- p.m. from the pension of the Applicant for one year was imposed. Besides, the period from the date of removal of service till retirement was treated as service period for all purposes.

3. The Applicant on the above background filed the present O.A. contending that once his appeal is heard and decided by the then Hon'ble Minister thereby setting aside the order of removal from service and imposing sentence of reduction in pension to the extent of Rs.1000/- p.m. for one year, it ought to have been implemented by Respondent No.1 but instead next incumbent Hon'ble Minister passed

a fresh order thereby dismissing the appeal confirming the sentence of removal from service. He, therefore, contends that such course of action is totally illegal and prayed to set aside the order dated 08.06.2016 and to implement the order passed by the then Hon'ble Minister.

4. The Respondent No.1 resisted the application by filing Affidavit-in-reply (Page Nos.59 to 63 of Paper Book) inter-alia denying the entitlement of the Applicant to the relief claimed. It is not in dispute that earlier the appeal was heard by the then Hon'ble Hon'ble Minister (Shri Satej Patil) allowing the appeal partly thereby setting aside the sentence of removal from service and by imposing the sentence of deduction of pension of Rs.1000/- p.m. for one year. However, the Respondent contends that the said order was not communicated to the Applicant because of model code of conduct of Assembly Elections of 2014 and in absence of communication of the order to the Applicant, it cannot be termed as an order passed by or in the name of Hon'ble Governor as contemplated under Article 166 of Constitution of India. After the Elections were over, a new Government came into power and thereafter, the Hon'ble Minister of State (Home) with the opinion of Law and Judiciary Department decided to hear the appeal afresh by exercising powers of review and after hearing, passed order on 08.06.2016 thereby dismissing the appeal having regard to the serious charges levelled against the Applicant. With this pleading, the Respondent sought to contend that the order dated 08.06.2016 is legal and valid and prayed to dismiss the O.A.

5. The facts unfolded above exhibits very piquant situation, as there are two orders passed by the Competent Authority which is contrary to each other as a result of which, the Applicant has knocked the doors of this Tribunal for direction to the Respondents to implement its first order passed by the then Government.

6. The following are uncontroverted facts :

(i) Respondent No.2 by its order dated 25.02.2013 removed the Applicant from service exercising powers under Section 25(2)(a) of Maharashtra Police Act, 1951 holding the Applicant guilty for serious misconduct.

(ii) The Applicant had filed appeal before Respondent No.1 by Appeal Memo dated 29.04.2013.

(iii) Respondent No.1 issued notice of hearing of appeal dated 25.07.2014 to the Applicant directing him to remain present for hearing before the then Hon'ble Minister on 31.07.2014.

(iv) Applicant attended the hearing before the then Hon'ble Minister for State (Shri Satej Patil) on 31.07.2014.

(v) Thereafter, the then Hon'ble Minister passed order (date of the order is not mentioned in the order) thereby setting aside the order of removal from service and substituted it by imposing punishment of deduction of pension Rs.1000/- p.m. for the period of one year.

(vi) The Applicant made an application on 15.01.2016 to Shri Bakshi, Additional Chief Secretary (Home) pointing out that his appeal has been already partly allowed by the then Hon'ble Minister and requested for its implementation and for consequential retiral benefits.

(vii) Applicant again made an application on 19.01.2016 addressed to then Hon'ble Minister for State (Home) Shri Ranjit Patil) stating that his appeal is already decided by the Government, but he is deprived of getting retiral benefits and requested to implement the order passed by the earlier Government.

(viii) Applicant made an application on 08.08.2016 under Right to Information Act and sought the information

about the action taken by the Government on his appeal and its implementation.

(ix) Public Information Officer supplied the copy of the order passed by the then Hon'ble Minister (Shri Satej Patil) whereby the sentence of removal from service was set aside and in its place, the punishment of deduction of pension Rs.1000/- p.m. for one year was passed.

(x) Applicant was again called for hearing of the appeal by telephonic message and was directed to remain present for hearing before the Hon'ble Minister (Shri Ranjit Patil) on 08.03.2016.

(xi) On 08.03.2016, the Applicant attended the hearing before the Hon'ble Minister.

(xii) Hon'ble Minister for State (Home) passed order on 08.06.2016 thereby dismissing the appeal and the said order was communicated to the Applicant on 02.08.2016.

7. Now question posed for consideration is whether order dated 08.08.2016 is sustainable in law. Before going ahead, it would be apposite to note that in Paras 6.13 and 6.14 of the application, the Applicant has categorically stated that at the time of hearing on 08.03.2016, he has specifically pointed out to the Hon'ble Minister that his appeal is already decided and partly allowed by the then Hon'ble Minister (Shri Satej Patil) and it being binding on the Government, the same be implemented. Here, it would be apposite to reproduce Para Nos.6.13 and 6.14, which are as follows :-

> "**6.13** That in the circumstances stated above, it was bounden obligation and statutory duty on the part of the Respondent No.1 to communicate the Petitioner the aforesaid decision. That, however, mala fide or otherwise, the said Appeal decision was not communicated to the Petitioner, though it had achieved finality and as such was never cancelled subsequently by the Competent Appellate Authority either on account of any valid reasons or otherwise and therefore, the said decision was binding on the

successor in office like the present Hon'ble Minister of State for Home – Dr. Ranjit Patil.

6.14 That in the circumstances stated above, it was not legally open to the said Hon'ble Minister to again take up the said decided Appeal of the Petitioner for hearing before him and accordingly it was equally wrong to call upon the Petitioner telephonically to attend the hearing of the Appeal on 8.3.2016. This is more so, when the Petitioner brought to the notice of the Respondent No.1 and of the Hon'ble Minister at the time of fresh hearing of the Appeal held on 8.3.2016, so also earlier thereto vide his representations dated 15.1.2016 and 19.1.2016, about his aforesaid Appeal already decided in his favour."

But in reply filed by Respondent No.1, there is no specific denial to the averments made by the Applicant in Para Nos.6.13 and 6.14. Reply is in the following words :-

"With reference to Paragraphs 6.13 to 6.21, I say and submit that comments on the Paragraph have been dealt with in detail in paragraph 8 herein before. Hence, I totally deny the contents of these paragraphs."

8. It would be useful to see what is stated in Para No.8, which is as follows :-

"With reference to Paragraphs 6.6 to 6.10, I say that I totally deny the contents. I say that then Competent Appellate Authority and Hon'ble State Minister (Home) has passed the order as an Appellate Authority under Section 27 of the Bombay Police Act, 1951. I also say that though the then Hon'ble Minister has pronounced the order under the Quasi-judicial Authority under Section 27 of the Bombay Police Act, 1951, the said order was not communicated to the concerned appellants because of coming into force of the Model Code of Conduct for the Assembly Elections in the year of 2014. After the Assembly Elections there being a change in the Government, the file was submitted before the new Hon'ble Minister of State (Home) for perusal and orders. But the new Hon'ble Minister of State (Home) has directed for seeking remarks of Law and Judiciary Department on the issue whether a review can be taken of the decision pronounced by the then Hon'ble Minister for State (Home) or not, after giving re-hearing to the concerned employee/officers. Therefore, I say and submit that it is crystal clear that until and unless the order is communicated to the person concerned, it will not be the order as contemplated under Article 166 of The Constitution of India. In this case, the earlier decisions of the then Minister of State (Home) has not been communicated to the respective appellant. In such

circumstances, the Law and Judiciary Department communicated that due to its inherent defect, the earlier uncommunicated order cannot be enforced or implemented and therefore the present Competent Appellate Authority and Hon'ble Minister of State can review such un-communicated order passed by the then Hon'ble Minister of State (Home). Therefore, I say and submit that the present Competent Appellate Authority and Hon'ble Minister of State (Home) gave an opportunity to Applicant of personal re-hearing on 08/03/2016. While deciding appeal on 29/4/2013, Applicant's appeal memo and other record have been considered by the Appellate Authority, Applicant was given an opportunity of personal re-hearing on 08/03/2016. The charges leveled against the Applicant were so serious in nature that the order of punishment of removal from service passed by Respondent No. 2 on 25/02/2013 was confirmed by the Respondent No.1. After considering all the facts and records, Appellate authority passed reasoned and speaking order dated 08/06/2016. Hence, the contentions of the applicant in these paragraphs are denied."

9. Thus, what transpires from the reply that there is no dispute that the appeal was heard and decided by the then Hon'ble Minister Shri Satej Patil whereby the sentence of removal from service was set aside and in its place, the punishment of deduction of pension Rs.1000/- p.m. for the period of one year was imposed. However, it was not communicated officially to the Applicant, and therefore, the opinion of Law & Judiciary Department was sought which opined that the order can be reviewed by the incumbent Hon'ble Minister. Suffice to say that the incumbent Hon'ble Minister was aware that the appeal has been already decided in favour of Applicant, but he took hearing afresh and dismissed the appeal.

10. On the above background, the question posed whether only because of non-communication of the order officially, it looses its efficacy and legality and secondly, whether the order passed by incumbent Hon'ble Minister on 08.06.2016 dismissing the appeal is legal and valid in its form.

11. In so far as non-communication of the order under the signature through Secretary officially is concerned, Shri Bandiwadekar, learned Advocate for the Applicant referred to the

decision of Hon'ble Supreme Court in ***(2013) 3 SCC 559 (State of Bihar and Anr. Vs. Sunny Prakash & Ors.)*** wherein it has been held that merely because of change of elected Government and the decision of previous Government not expressed in the name of Governor in terms of Article 166 of the Constitution, the valid decision cannot be ignored and it is not open to the State to contend that those decisions do not bind them. Para No.19 of the Judgment is material which is as follows :-

> "**19**. *Mr. Venugopal, learned senior counsel for the contesting respondents heavily relied on the principles laid down in State of Bihar and Others vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, (2005) 9 SCC 129. The said decision also arose from a dispute concerning the absorption of about 4000 employees working in teaching and non-teaching posts in 40 colleges affiliated to various Universities which were taken over as Constituent Colleges in accordance with the provisions of the Bihar State Universities Act, 1976. It was contended on behalf of the State of Bihar that power to sanction additional posts and appointments against the same in the affiliated colleges is within the exclusive jurisdiction and power of the State under Section 35 of the Act. It was also contended that certain decisions of the Government that were taken after the change of elected Government had no prior approval of the Council of Ministers. The decision by the Cabinet, approval by the Chief Minister on behalf of the Cabinet is sine qua non for treating any resolution as a valid decision of the Government. It was also stated that in the absence of Cabinet approval, the order dated 01.02.1988 which was issued by the Deputy Secretary to the Government of Bihar has no legal efficacy. It was further argued by the State that any valid order of the Government has to be formally expressed in the name of the Governor in accordance with Article 166 of the Constitution. In para 64, this Court has held thus:*
>
> > *"64. So far as the order dated 18-12-1989 is concerned, the State being the author of that decision, merely because it is formally not expressed in the name of the Governor in terms of Article 166 of the Constitution, the State itself cannot be allowed to resile or go back on that decision. Mere change of the elected Government does not justify dishonouring the decisions of previous elected Government. If at all the two decisions contained in the orders dated 1-2-1988 and 18-12-1989 were not acceptable to the newly elected Government, it was open to it to withdraw or rescind the same formally. In the absence of such withdrawal or rescission of the two orders dated 1-2-1988 and 18-12-1989, it is not open to the State of Bihar and State of Jharkhand (which has been created after reorganisation of the State of Bihar) to contend that those decisions do not bind them."*

From the above conclusion, it is clear that merely because of change of elected Government and the decision of the previous government not expressed in the name of Governor in terms of Article 166 of the Constitution, valid decision cannot be ignored and it is not open to the State to contend that those decisions do not bind them."

12. In the aforesaid Judgment, the implementation of the order was kept on hold due to change in elected Government. Whereas, in the present case, the newly Government passed another order on 08.06.2016 dismissing the appeal which is in total contrast of the decision taken earlier by the then Hon'ble Minister (Shri Satej Patil). As such, in view of the ratio of Judgment of Hon'ble Supreme Court in ***Sunny Prakash's*** case, the Government cannot be allowed to contend that merely because the earlier order was not communicated officially, it is not binding upon the newly elected Government. Apart, it may be noted that Article 166 of the Constitution of India pertains to executive action which are required to be issued in the name of Governor whereas in present matter, the order was passed as quasi-judicial Authority. Suffice to say, the decision once taken by the Hon'ble Minister being legally Competent Authority was required to be implemented.

13. The stand taken by the Respondent that after the decision passed in appeal by the then Hon'ble Minister Shri Satej Patil, the Assembly Elections were declared, and therefore, due to model code of conduct, the decision was not communicated to the Applicant is misplaced and misconceived. The then Hon'ble Minister has heard the appeal and passed the reasoned order as quasi-judicial authority under the provisions of Maharashtra Police Act, 1951 and this being the position, it ought to have been communicated to the Applicant immediately and implemented. The decision passed by the Government in quasi-judicial authority could not be put on hold because of enforcement of model code of conduct. I, therefore, see no substance in the contention raised in this behalf.

14. True, it seems that Law & Judiciary Department of State of Maharashtra, had opined that the Hon'ble Minister (present incumbent) can review the order as it was not communicated to the Applicant. Indeed, the powers of review are not restricted to the orders not communicated only and review is permissible in the circumstances contemplated under Section 27-B of Maharashtra Police Act, 1951. One can understand if the Government had reviewed the order rescinding the earlier order and in that situation position would have been different. However, surprisingly, the order passed by the Hon'ble Minister on 08.06.2016 is not in exercise of powers of review. The perusal of order reveals that the said order has been passed as if appeal was heard for the first time and as if no such earlier order passed by the then Hon'ble Minister was in existence. If, the Government intended to review the decision, then it was required to be communicated to the Applicant so specifically and then only, the earlier order could have been reviewed, in accordance to law stating the reasons for the same in the order. As stated earlier, there is no denying that at the time of hearing, the Applicant had specifically pointed out to the Hon'ble Minister that his appeal is already decided and partly allowed, still he has passed the order dated 08.06.2016, as if there was no such earlier order in the appeal. Thus, it seems that either there was no proper legal assistance to the Hon'ble Minister or there was lack of coordination between the Departments which resulted into such chaos. Be that as it may, the impugned order is clearly erroneous and unsustainable in law.

15. As stated above, the point in issue is squarely covered by the decision of Hon'ble Supreme Court in ***Sunny Prakash's*** case (cited supra). The decision once taken by the Hon'ble Minister being legally competent authority, was required to be implemented as it is, unless the same is reviewed by the Government by following due process of law as contemplated under Section 27-B of Maharashtra Police Act, 1951. The impugned order dated 816/2016 is not the order passed

exercising the powers of review, but the same is passed as if no such earlier order was in existence though Hon'ble Minister was fully aware of the earlier order. We have, therefore, no alternative except to quash and set aside the order dated 08.06.2016 being totally bad in law for the reasons stated above and are constrained to direct the Respondents to implement it's earlier order passed by the then Hon'ble Minister.

16. The totality of aforesaid discussion leads us to conclude that the Applicant is entitled to the relief claimed and O.A. deserves to be allowed. Hence, the following order.

O R D E R

(A) The Original Application is allowed.

(B) The impugned order dated 08.06.2016 passed by Respondent No.1 is quashed and set aside.

(C) The Respondent No.1 is further directed to implement the earlier decision passed by the then Hon'ble Minister in the appeal within a month from today.

(D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Sd/-
(P.N. DIXIT)
VICE-CHAIRMAN

Mumbai
Date : 27.08.2019
Dictation taken by :
S.K. Wamanse.
D:\SANJAY WAMANSE\JUDGMENTS\2019\8 August, 2019\O.A.1199.16.w.8.2019.Removal from Service.doc