

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO 150 OF 2008

DISTRICT : CHANDRAPUR

Shri Ganpat Pandurang Nimsatkar,)
R/o: Gadchandur, Tal-Koparna,)
Dist-Chandrapur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
Department of Home,)
Mantralaya, Mumbai 400 032.)
2. Special Director General of)
Police, [Administration],)
Maharashtra State,)
Mumbai.)
3. Director General of Police,)
Nagpur Region, Nagpur.)
4. Superintendent of Police,)
Chandrapur Civil Lines,)
Chandrapur)...**Respondents**

Shri R.V Shiralkar, learned advocate for the Applicant.

Shri H.A Pande, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)

Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 05.07.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri R.V Shiralkar, learned advocate for the Applicant and Shri H.A Pande, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 16.7.2005, passed by the Respondent no. 4, dismissing him from service. The Applicant has also challenged order dated 20.6.2006, dismissing appeal against the order dated 16.7.2005 by the Respondent no. 3 and the order dated 27.6.2007 passed by the Respondent no. 2 in review.

3. Learned Counsel for the Applicant argued that the Applicant was working as Assistant Sub-Inspector when a Departmental Enquiry (D.E) was started against him by Memorandum dated 30.9.2004 by the Respondent no. 4 under Bombay Police (Punishment & Appeal) Rules, 1956.

The Memorandum dated 30.9.2004 was served on the Applicant on 4.10.2004 and without giving any opportunity to the Applicant to reply to the charges, the D.E was started on 5.10.2004, the very next day. Learned Counsel for the Applicant argued that this is a serious irregularity which has deeply prejudiced the case of the Applicant. Learned Counsel for the Applicant argued that charge no. 2 did not disclose any misconduct. The Respondent no. 4 ignored the evidence of the Applicant that the Applicant had, in fact given money to the complainant and she made a false allegation against the Applicant that he had extracted money from her, so as not to return the borrowed money to the Applicant. Learned Counsel for the Applicant stated that considering the nature of charges against the Applicant, the punishment of dismissal from service is shockingly disproportionate.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that Bombay Police (Punishment & Appeal) Rules, 1956 do not have provision for reply to the charge sheet. The Respondents have conducted D.E against the Applicant in full compliance of the rules and he was given full opportunity to defend himself. Learned Presenting Officer contended that the scope of judicial review in D.E cases is quite limited. The judicial forum is not expected to re-examine or re-appreciate the evidence as an appellate authority. In the present case, the Applicant was found guilty of moral turpitude in charge no. 1. He was found guilty of extracting money from a widow, which is a conduct unbecoming of a Police Personnel. As such, the punishment of dismissal from service is fully justified. The Respondent

nos 2 & 3 have also passed well reasoned orders and there is no ground to challenge those order.

5. The Applicant has raised the issue that he was not given an opportunity to give a reply to the charge sheet dated 30.9.2004. It is an admitted fact that the charge sheet dated 30.9.2004 was issued to the Applicant under the Bombay Police (Punishment & Appeal) Rules, 1956, which do not contain any specific provision that the delinquent employee has a right to file a reply to the charge sheet before D.E can be started against him. The Applicant admits that he replied to the charge sheet, after he was given documents asked for by him. The Applicant has not been able to point out any rule which has been violated. He was, undoubtedly given full opportunity to defend himself in the D.E. We are of the opinion t hat the D.E against the Applicant did not violate any procedural requirement.

6. Coming to the charge sheet, the claim of the Applicant is that the Enquiry Officer did not consider the evidence of the witnesses produced by him and he relied heavily on the evidence of the witnesses produced by the Respondents. It is a fact that scope of judicial review in such cases is rather limited. We find that the Enquiry Officer has considered the evidence produced by both the sides. In such cases, if there is some evidence in support of charges, this Tribunal cannot look into the adequacy of that evidence. In the present case, we find that there was evidence regarding both the charges against the Applicant. The Applicant took undue advantage of a widow and started living with her as

husband and wife and though his wife was alive and he has been held guilty of moral turpitude on that count. He has also been held guilty of extracting money from her, which he admitted to have borrowed from her. Considering the fact that both the charges were held to be proved against the Applicant, and considering the nature of charges against the Applicant, we do not find it a fit case for interference by this Tribunal.

7. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

(J.D Kulkarni)
Vice-Chairman (J)

(Rajiv Agarwal)
Vice-Chairman (A)

Place : Nagpur
Date : 05.07.2017
Dictation taken by : A.K. Nair.