

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.273 OF 2019

DISTRICT : SATARA

Shri Sambhaji A. Patil.)
Residing at Plot No.34, Kalyan Sanmitra)
Hsg.Soc, Godoli,)
Tal. & District : Satara – 415 001.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
2nd Floor, Home Department,)
Mantralaya, Mumbai – 400 032.)
2. The Director General of Police.)
Shahid Bhagatsingh Marg, Colaba,)
Mumbai – 400 005.)
3. The Special Inspector General of)
Police, Kolhapur Range, Office of)
Special Inspector General of Police,)
Kolhapur – 416 001.)
4. The Superintendent of Police,)
Satara, 76, Malhar Peth,)
Satara – 415 001.)...**Respondents**

Applicant in person.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 29.01.2021

JUDGMENT

1. The Applicant has challenged the single page impugned order dated 16.05.2018 issued by Respondent No.1 whereby censured him for alleged faults/omissions in carrying out the investigation of Crime

No.19/2009 while he was Police Inspector at City Police Station, Karad, District Satara.

2. In 2009, the Applicant was Police Inspector at Karad City Police Station and he was Investigation Officer of Crime No.19/2009 registered for the offences under Section 302, 307, 120(b), 201, 212 read with 34 of Indian Penal Code. After completion of investigation, the Applicant filed Charge-sheet in Sessions Court, which was registered as Sessions Case No.180/2009 and 162/2011. The learned Additional Sessions Judge, Satara by Judgment dated 18.10.2014 convicted Accused Nos. 1 & 2 for the offence under Section 302 read with Section 25 (1-A) and 27 of Indian Arms Act and sentenced them to suffer life imprisonment. Whereas, Accused Nos. 3 to 9, 11 and 12 were acquitted from the charges.

3. It appears that the Respondent No.2 formed an opinion that the Applicant had deliberately left material lacunas/defects while conducting investigation of Crime No.19/2009. Therefore, Special Inspector General of Police (Establishment) by letter dated 05.01.2018 asked Respondent No.1 – Government to initiate regular departmental enquiry (DE) under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) immediately, as the Applicant was retiring on 31.05.2018. It is on the basis of letter date 05.11.2018, the Respondent No.1 instead of initiating regular DE as proposed in the letter, issued the impugned communication dated 16.05.2018 thereby censuring the Applicant and close the file. This order of censure dated 16.05.2018 is under challenge in the present O.A.

4. Heard Applicant in person and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

5. The Applicant submits that the impugned order of punishment has been issued without issuance of any show cause notice or following

procedure for imposing minor penalty as mandated under Rule 10 of 'Rules of 1979' which *inter-alia* provides procedure to be adopted for imposing minor penalties. He further submitted that indeed, in Sessions case, because of his good investigation, two Accused were convicted, and therefore, the question of leaving lacunas or omissions in investigation was out of question. He, therefore, submits that the impugned order is totally unsustainable in law and deserves to be quashed, being stigmatic and totally unwarranted.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer for the Respondents made feeble attempt to justify the impugned order stating that, as the Applicant was due to retire within four months, the Respondent No.1 thought it appropriate to close the matter by imposing minor punishment of censure.

7. The Applicant stands retired as Deputy Superintendent of Police and before 15 days of his retirement, he was slapped with the order of punishment which carries stigma to him.

8. Here important to note that the order of punishment has been issued by Respondent No.1 – State of Maharashtra through Additional Chief Secretary, Home, but he has not filed reply. The Respondent No.2 only filed reply, which also does not justify the legality of impugned order. Indeed, it was for Respondent No.1 to justify the order of penalty and not for Respondent Nos.2 to 4. Despite enough chances, the Respondent No.1 chooses not to file Affidavit-in-reply. This gives rise to the adverse inference against Respondent No.1. Apparently, the Respondent No.1 had no face to justify the impugned order and that is why he chooses not to file reply.

9. Be that as it may, the question is whether the impugned order of punishment is legal and valid in law and the answer is in emphatic negative.

10. As stated above, the Special Inspector General of Police by letter dated 05.01.2018 proposed for initiating regular DE under Rule 8 of 'Rules of 1979' but surprisingly, on the basis of said proposal, the Respondent No.1 adopted shortcut method by imposing minor punishment of censure and closed the file without following due process of law. In this behalf, the Respondent No.2 in his Affidavit-in-reply in Para No.8 stated as follows :-

“With reference to Paragraph no.6.12, I say and submit that the averments raised by the applicant are denied, being incorrect. As stated hereinabove, the preliminary inquiry was conducted and then a default report was received in this office and then after giving due consideration to the same by the office of the Respondent No.2, it was submitted to the Respondent No.1 to initiate a regular departmental enquiry under Rule 8 of the M.C.S. (Discipline and Appeal) Rules, 1979. Then, since the applicant was retiring on superannuation on 31.5.2018, the Respondent No.1 has taken decision to close the said proposal sent by this office by giving “reprimand” to the applicant vide its order dated 16.5.2018. This action is free of any mala fide, vindictiveness.”

11. Thus, it appears that only to give quietus to the matter, the order of censure was imposed, but it could not have been done without due process of law. Admittedly, prior to issuance of impugned order, not a single Memo or notice was issued giving opportunity to the Applicant to explain his side, which is in breach of principles of natural justice. Censure is one of the minor penalty as per Rule 5(1)(i) of 'Rules of 1979'. Whereas, Rule 10 of 'Rules of 1979' provides procedure to be adopted for imposing minor penalty including censure or withholding of promotion, withholding of increments, etc. Rule 10 mandates that the Government servant should be informed in writing of the proposal to take action against him and the imputation of misconduct or misbehavior, which is perhaps to be taken or giving him a reasonable opportunity of making such representation, as he may wish to make against the proposal. It is only after considering the representation of concerned Government servant and record of enquiry, if any, the competent authority is required to record finding on each imputation of misconduct or misbehavior. Suffice to say, issuance of show cause notice with imputation of misconduct and giving opportunity of making representation is condition

precedent for imposing minor penalty including censure. It is on the basis of representation, the competent authority is required to record its finding and then to impose minor penalty.

12. Whereas, in the present case, admittedly, no such procedure as contemplated under Rule 10 of 'Rules of 1979' has been followed. Shocking to note that, even not a single Memo has been issued to the Applicant before imposing the punishment by order dated 16.05.2018. The Respondent No.1 has completely bye-passed mandatory provisions of law. It rather shows ignorance of basic provisions of law or autocratic manner of functioning.

13. Suffice to say, the impugned order of punishment is totally arbitrary and *ex-facia* bad in law. It is totally indefensible and liable to be struck down. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 16.05.2018 is hereby quashed and set aside.
- (C) No order as to costs.

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

Mumbai
Date : 29.01.2021
Dictation taken by :
S.K. Wamanse.

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