

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.294 OF 2021**

**DISTRICT : MUMBAI**

Mr. Jalinder Kondiram Shinde. )  
Age : 57 Yrs., Occu.: Working as Head )  
Wireless Operator and residing at B-G-3, )  
Flat No.101, G.M. Link Road, Chembur, )  
Mumbai – 400 043. )...**Applicant**

**Versus**

1. The Commissioner of Police for )  
Greater Mumbai, Near CST, Fort, )  
Mumbai. )

2. Joint Commissioner of Police (Admn.) )  
Desk-5, Near CST, Fort, Mumbai. )

3. Additional Director General of Police )  
& Director, Wireless Department, )  
Bhabha Road, Chavan Nagar Road, )  
Chavan Nagar, Pashan, )  
Pune – 411 053. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

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

**DATE : 07.09.2021**

**JUDGMENT**

1. The Applicant has challenged the suspension order dated 30.04.2021 ordered by Respondent No.2 – Joint Commissioner of Police invoking Rule 3 of Maharashtra Police (Punishment and Appeal) Rules,

1956 (hereinafter referred to as “Rules of 1956” for brevity) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was appointed as Police Constable in 1984 in SRPF. In the year 1986, he appeared for examination in Wireless Department for the post of Wireless Operator and appointed by order of Respondent No.3 – Additional Director General of Police, Wireless, M.S, Pune. Later, in 2010, the Respondent No.3 promoted him as Assistant Sub-Inspector, Wireless and Head Wireless Operator. He was posted in the Office of Respondent No.2 – Joint Commissioner of Police, Mumbai for operating Wireless system. He, therefore, contends that his appointing authority is Respondent No.3 – Additional Director General of Police. However, Respondent No.2 - Joint Commissioner of Police (Administration) by order dated 30.04.2021 suspended the Applicant attributing certain misconduct of misbehaviour with his seniors invoking Rule 3 of ‘Rules of 1956’ in contemplation of D.E, which is challenged by the Applicant in the present O.A. *inter-alia* contending that his appointing authority is Respondent No.3 - Additional Director General of Police and Director, Wireless, M.S, Pune and he was the only competent authority to suspend him and therefore, the suspension order dated 30.04.2021 issued by Respondent No.2 – Joint Commissioner of Police is without jurisdiction and bad in law.

3. The Respondent Nos.1 and 2 filed Affidavit-in-reply *inter-alia* contending that in view of contemplation of D.E. attributing misconduct to the Applicant, he is rightly suspended by Joint Commissioner of Police. In this behalf, the Respondent Nos.1 and 2 placed reliance on Section 25(2)(a) of Maharashtra police Act.

4. Shri K.R. Jagdale, learned Advocate for the Applicant has placed on record the order dated 08.02.2010 whereby Respondent No.3 – Additional Director General of Police promoted the Applicant on the post

of Assistant Police Inspector and Head Wireless Operator. Adverting to this aspect, he submits that the appointing authority of the post of Head Wireless Operator of the Applicant being Respondent No.3 - Additional Director General of Police and Director, Wireless, he is the only competent authority to suspend the Applicant for any such misconduct. However, it is Respondent No.2 - Joint Commissioner of Police suspended the Applicant specifically invoking Rule 3 of 'Rules of 1956' which empowers appointing authority only, and therefore, the impugned suspension order is *ex-facis* bad in law.

5. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer with reference to Section 25(2)(a) sought to contend that Joint Commissioner of Police is also competent and empowered to suspend the Applicant.

6. In view of submissions advanced at the Bar, the question posed for consideration is whether Respondent No.2 - Joint Commissioner of Police is competent and has jurisdiction to suspend the Applicant and impugned order is legal and valid.

7. At the very outset, let us see the impugned suspension order which itself makes it quite clear that Respondent No.2 has invoked Rule 3 of 'Rules of 1956' and not Section 25(2)(a) of Maharashtra Police Act. Para Nos.1 and 2 of the impugned suspension order in this behalf is relevant, which is as under :-

“सपोडनलक. ६४६७/जललंदर कौंडीरलम शलंदे यलंनी व.पो.नल. दलदर पोललस ठलणे, मुंबई यलंनल स्वतःचे मोबलईल फोनवरून फोन करून स्वतः श्री. गणेश शलंदे, पोललस उप आयुक्त, बंदर परलमंडळ असल्यलचे भलसतून/बतलवणी करून दलदर पोललस ठलणे, मुंबई येथे दखलपलत्र गु.र.क्र.१२८/ २०२१ कलम १८८, २६९ भलदवल सह ५१ (व) रल. आ.व्य.कल. २००५ सह कौवीड-१९ उपलयोजना कलम ११ मधील आरुपीवर गुन्हल दलखल न करता त्यलंनल सोडलवे असे आदेश दलले. वरलष्टलंन्यल नलवलचल व पदलचल सपोडनल ६४६७/शलंदे यलंनी गैरवलपर करून पोललस दललच्यल शलस्तीलल बलधल आणली.

२. सपोडनलक.६४६७/जललंदर कौंडीरलम शलंदे, मुख्य नलयंत्रण कक्ष, मुंबई यलंन्यल बेशलस्त व बेजबलबदलर वरतनलबदलल महलरलष्ट्र पोललस अधलनलयम १९५१ मधील नलयम क्र. २५(२) अन्वये प्रदलन करण्यलत आलेल्यल अधलकलरलचल वलपर करून व मुंबई पोललस (शलक्षल व अपील) नलयम १९५६ च्यल नलयम ३ मधील तरतुदीस अनुसरून त्यलंनल त्यलंन्यलवलरुद्ध प्रस्तलवलक प्रलथमलक/वलभलगीय वौकशीच्यल अधीन रलहून त्वरलत प्रभलवलने सेवेतून नललंबलत करण्यलत चेत आहे.”

8. At this juncture, it would be apposite to reproduce Rule 3 of 'Rules of 1956' which is as follows :-

“3. (1) Without prejudice to the provisions of any law for the time being in force, the following punishments may be imposed upon any Police Officer, namely:-

(a-1) [\* \* \*]

(a-2) suspension;

(i) reduction in rank, grade or pay or removal from any office of distinction or withdrawal of any special emoluments;

(i-a) compulsory retirement;

(ii) removal from service which does not disqualify from future employment in any Department other than the Police Department.

(iii) dismissal which disqualifies from future employment in Government Service.

(1-A) (i) The appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place, a Police Officer under suspension where –

(a) an inquiry into his conduct is contemplated or is pending,  
or

(b) a complaint against him of any criminal offence is under investigation or trial:

Provided that where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made.

Explanation.- The suspension of a Police Officer under this sub-rule shall not be deemed to be a punishment specified in clause (a-2) of sub-rule (1).”

9. It is thus explicit that under Rule 3 'Rules of 1956', it is the appointing authority or authority to which it is subordinate or any other authority empowered by the State Government in this behalf is only empowered to suspend the Police Personnel where suspension is in contemplation of D.E.

10. Whereas, Section 25 and 25(2)(a) of Maharashtra Police Act relied by the learned P.O. is as under :-

**“25.** Punishment of the members of the subordinate ranks of the Police Force departmentally for neglect of duty, etc.

(1) The State Government or any officer authorized under sub-section (2), in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who in the opinion of the State Government or such authorized officer, is cruel, perverse, remiss or negligent in, or unfit for, the discharge of his duties, any one or more of the following penalties, namely :-

(a) recovery from pay of the whole or part of any pecuniary loss caused to Government on account of the negligence or breach of orders on the part of such Inspector or any member of the subordinate rank of the Police Force;

(b) suspension;

(c) reduction in rank, grade or pay, or removal from any office of distinction or withdrawal of any special emoluments;

(d) compulsory retirement;

(e) removal from service which does not disqualify for future employment in any department other than the Police Department;

(f) dismissal which disqualifies for future employment in Government service :

Provided that, suspension of a police officer pending an inquiry into his conduct or investigation of a complaint against him of any criminal offence shall not be deemed to be a punishment under clause (b).

(1A) The State Government or any officer authorized under sub-section (2) in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which, in the opinion of the State Government or of such authorized officer, is not of such nature as to call for imposition of any of the punishments referred to in sub-section (1), any one or more of the following punishments, namely :-

(a) warning;

(b) a reprimand (to be entered in his service book);

(c) extra drill;

(d) fine not exceeding one month's pay;

(e) stoppage of increments :

Provided that, the punishment specified, -

(i) in clause (c), shall not be imposed upon any personnel above the rank of Constable;

(ii) in clause (d), shall not be imposed upon an Inspector.

Punitive powers of [Director-General and Inspector General], Commissioner, Deputy Inspector-General [(including Director of Police Wireless)] and [Superintendent] [and Principal of Training Institution]

[(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 the 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.]”

11. Reading of Rule 3(1) of ‘Rules of 1956’ makes it clear that there could be suspension by way of punishment which is also evident from Section 25 of Maharashtra Police Act. Whereas, in the present case, the Applicant is suspended in contemplation of D.E. which clearly comes under Rule 3(1-A)(i) of ‘Rules of 1956’ which inter-alia provides for suspension in contemplation of D.E. by appointing authority or any other authority to which it is subordinate by any other authority empowered by the State Government in this behalf. It is thus *ex-facia* that provision invoked for suspension is Rule 3(1-A)(i) of ‘Rules of 1956’ and not Section 25 of Maharashtra Police Act which pertains to powers of punishment.

12. Now turning to Section 25(2)(a) of Maharashtra Police Act as relied by the learned P.O, pertinent to note that it also pertains to the punitive powers of Director General, Inspector General including Additional Director General, Special Inspector General, Commissioner including Joint Commissioner, etc. It also provides that these authorities shall have authority to punish an Inspector or any member of subordinate rank under Sub-section 1 or (1-A) of Maharashtra Police Act. As such, it is obvious that the powers to be invoked under Section 25(2)(a) by Joint Commissioner pertains to power of punishment. Whereas, in the present case, the Applicant is suspended in contemplation of D.E. as obvious

from the impugned order. This being the position, Section 25(2)(a) have no application to the present situation so as to render the suspension order legal one.

13. Apart, the appointing authority of the Applicant is admittedly Respondent No.3 – Additional Director General of Police and Director, Wireless as manifest from the order dated 08.02.2010 whereby the Applicant was promoted on the post of Head Wireless Operator. Therefore, in view of Rule 3(1)(a) of 'Rules of 1956', the Respondent No.3 was the only competent authority to suspend the Applicant in contemplation of D.E.

14. Only because Applicant was serving on the establishment of Joint Commissioner of Police to operate Wireless system, that will not cloth Respondent No.2 with the powers of disciplinary authority since it is for the appointing authority to take disciplinary action, if warranted in a given case.

15. Apart, there is nothing on record to substantiate the compliance of provision to Rule (1-A) which *inter-alia* provides that where suspension is ordered by an authority lower in the rank than that of appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made. Viewed from this angle also, the suspension order passed by Respondent No.2 – Joint Commissioner of Police cannot be held legal and valid.

16. The totality of aforesaid discussion leads me to conclude that the impugned suspension order being not passed by the competent authority, it is bad in law and liable to be quashed. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned suspension order dated 30.04.2021 is quashed and set aside.
- (C) Consequently, the service benefits as per his entitlement be released since there would be no question of reinstatement in service in view of retirement of the Applicant on 31.05.2021.
- (D) No order as to costs.

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

Mumbai

Date : 07.09.2021

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\September, 2021\O.A.294.21.w.9.2021.Suspension.doc

Uploaded on