

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NOS.310 & 311 OF 2017**

**DISTRICT : PUNE**

\*\*\*\*\*

**ORIGINAL APPLICATION NO.310 OF 2017**

Shri Namdeo Dattatraya Holkar. )  
Age : 54 Yrs, Working as Head Constable, )  
Residing at Room No.186, Old Police Line, )  
Shivajinagar, Pune – 411 005. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Chief Secretary, )  
Mantralaya, Mumbai - 400 032. )  
2. The Additional Chief Secretary. )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )  
3. The Commissioner of Police. )  
Pune Police Commissioner Office, )  
Camp, Pune – 411 001. )...**Respondents**

**WITH**

**ORIGINAL APPLICATION NO.311 OF 2017**

Shri Subhash V. Pawar. )  
Age : 46 Yrs, Working as Head Constable, )  
Residing at Sai Chhaya Apartment, )  
Room No.1, Near Jaideep Mangal Karyalay,)

Sonwari Road, A/p. Saswad, )  
Tal.: Purandar, Pune – 411 005. )...**Applicant**

**Versus**

1. The State of Maharashtra & 2 Ors. )...**Respondents**

**Mrs. Punam Mahajan, Advocate for Applicants.**

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

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

**DATE : 09.12.2019**

**JUDGMENT**

1. The Applicants have challenged the punishment of imposition of two increments with cumulative effect imposed by Disciplinary Authority by order dated 13.06.2014 and confirmed by Appellate Authority on 11.11.2016 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. Since both these O.As are arising from common facts and common orders, they are being decided by the common Judgment.

2. Shortly stated facts giving rise to these O.As are as under :-

The Applicants in both the O.As were serving as Police Constables. The incident giving rise to the departmental proceedings occurred on 10.08.2013. That time, the Applicants were posted at Hadapsar Police Station and both were on Marshal Duty of patrolling in the jurisdiction of Hadapsar Police Station. On 12.08.2013, news of corruption by Police Constables at Solapur Road Check Post was flashed on TV9 News Channel. According to the said news and video clips, the Police Constables were shown taking bribe from Truck

Drivers during checking of vehicles transporting sand at Solapur Road Check Post, which falls within the jurisdiction of Hadapsar Police Station. In view of the said news of corruption, the preliminary enquiry was conducted and statement of Truck Drivers, etc. was recorded. Accordingly, the Applicants along with 3 other Police Constables viz. S.R. Pille, M.J. Dhope and A.C. Nangude, who were deputed at Solapur Road Check Post at the relevant time were charge-sheeted for accepting bribe from Truck Drivers for misconduct in terms of Rule 449 of Police Manual. Accordingly, the Enquiry Officer was appointed. The Applicants and other co-delinquents pleaded not guilty.

3. The Enquiry Officer on completion of enquiry submitted report to the Disciplinary Authority with the finding that the charge of acceptance of bribe from the Truck Drivers is not established. However, he held that Head Constables S.R. Pille, Dhope and Nangude (co-delinquent) disobeyed the orders of seniors and halted all Trucks without making verifying it and caused obstruction to traffic and thereby committed misconduct. As regard present Applicants viz. Police Constables Holkar and Pawar, the Enquiry Officer held that though they were deputed on Marshal Duty, they were found present at Solapur Check Post halting Trucks carrying sand, and therefore, guilty of dereliction of duty. As such, the Enquiry Officer though recorded specific finding that charge of accepting bribe is not proved, he held the Applicants guilty and forwarded Enquiry Report to the Disciplinary Authority. In turn, the Disciplinary Authority after giving Show Cause Notice to the Applicants passed order on 13.06.2014 imposing punishment of withholding of two increments with cumulative effect. The Applicants unsuccessfully challenged the order of Disciplinary Authority in appeal. The Appellate Authority by order dated 11.11.2016 confirmed the order of punishment. Being aggrieved by it, the Applicants have filed the present O.As.

4. Smt. Punam Mahajan, learned Advocate for the Applicants seriously assailed the impugned orders contending that there was only one charge of acceptance of bribe which Enquiry Officer as well as Disciplinary Authority held not proved but surprisingly they were punished for totally different alleged misconduct of obstructing the Trucks and causing inconvenience to the Traffic, which was not at all subject matter of the charge. She, therefore, submits that the impugned order of Disciplinary Authority confirmed by Appellate Authority holding the Applicants guilty and imposing punishment for altogether different alleged misconduct without there being any specific charge is totally unsustainable in law. In this behalf, the learned Advocate for the Applicant referred to the decision of Hon'ble Supreme Court in **(2006) 5 SCC 88 (M.V. Bijlani Vs. Union of India & Ors.)**.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer made feeble attempt to justify the order of punishment but fairly concede that there was no specific charge for which the Applicants were held guilty.

6. At this juncture, it would be apposite to see the charge framed against the Applicants in Disciplinary Enquiry, which are reproduced as under :-

**“दोषारोप**

पोहवा/४६९ एस.आर.पिल्ले २.पोशि/७६६ एम.जे.ढोपे ३. पोना/४५५७ एन.डी.हीळकर ४. पोशि/५६८८ एस.व्ही.पवार सर्व नेमणुक हडपसर पो.स्टे ५. पोशि/८७७८ अ.सी.नानगुडे नेमणुक मुख्यालय पुणे शहर यांनी खाली नमूद केले प्रमाणे पोलीस दलाचे शिस्तीचे उल्लंघन करणारे व कर्तव्य बजावण्याच्या बाबतीत बेशिस्त, बेपर्वा, बेजबाबदार असे गैरवर्तन केले आहे.

तुम्ही १.पोहवा/४६९ एस.आर.पिल्ले २.पोशि/७६६ एम.जे.ढोपे ३. पोना/४५५७ एन.डी.हीळकर ४.पोशि/५६८८ एस.व्ही.पवार सर्व नेमणुक हडपसर पो.स्टे ५. पोशि/८७७८ अ.सी.नानगुडे नेमणुक पुणे शहर दिनांक १०/८/२०१३ रोजी हडपसर पो.स्टे हद्दीत सोलापूर रोड चेकपोस्ट पंधरानंबर येथे वाहन चेकिंग नाकाबंदी कर्तवयावर असताना वाळुचे ट्रक चालक यांचेकडून खुलेआम हप्ते वसुली करीत असल्याची बातमी टी.व्ही-९ चॅनल यांनी प्रसारीत केली आहे. सदर चित्रीकरणाचे फूटेज प्राप्त करून त्यामधील पोलीस कर्मचारी हे (नमूद सर्व) आपणाच असल्याचे स्पष्ट झाले आहे.

सदरचे तुमचे वर्तन हे पोलीस दलास अशोभनिय, बेजबाबदार व शिस्तभंग करणारे आहे. म्हणुन तुम्ही पोलीस अधिनियम १९५१ च्या नियम २५(१) प्रमाणे व पोलीस मॅन्युअल भाग-१ च्या नियम ४४९ प्रमाणे कारवाईस पात्र आहात.”

7. It is thus explicit that there was only one charge of accepting bribe from the Truck Drivers and there was no other charge of checking vehicles unauthorizely and thereby caused obstruction to Traffic for which they were held guilty and subjected to punishment.

8. The perusal of Enquiry Officer's report reveals that 7 witnesses were examined including Truck Drivers and Truck Owners, but none of them deposed about demand or payment of bribe to the Applicants. The Enquiry Officer, therefore, recorded the finding that the charge of acceptance of demand or acceptance of bribe is not proved. However, he held the Applicants guilty with finding that though they were appointed on Marshal Duty, they were found present at Solapur Check Post and halting Trucks unauthorisedly and thereby committed misconduct. The Disciplinary Authority accepted the report after giving Show Cause Notice to the Applicants. Here, it would be apposite to reproduce conclusion of Enquiry Officer, which is as under :-

**“निष्कर्ष :- सदर चित्रीकरणाचे फुटेज पाहिले असता** यातील अपचारी पो हवा पिल्ले हे नमूद नाकाबंदी साईटवर कोणत्याही प्रकारचे वाहने अडविताना दिसत नाहीत ते एका बाजूला उभे असलेचे दिसत आहेत. यावरून त्यांनी वरिष्ठांचे (वपोनि./पोनि-गुन्हे) आदेशाचे उल्लंघन केले आहे. तसेच यातील उर्वरीत अपचारी पोना होळकर, पवार, ढोपे, नानगुडे हे ट्रक चालकांचे हातात हात मिळवताना दिसत असून कोठेही पैसे घेतल्याचे दिसून येत नाही तसेच साक्षीदार यांचे जबाबामध्ये कर्मचारी यांनी पैसे मागीतलेबाबत किंवा पैसे दिलेबाबत उल्लेख नाही. त्याबाबतचा पुरावा चौकशी दरम्यान मिळून आलेला नाही. यातील अपचारी पो. हवा.४५५७/होळकर व पोशि/५६८८ पवार यांना मार्शल ड्युटी करीता नेमलेले असतना सुध्दा ते सदरचे नाकाबंदी पॉईंटवर जावून वाळूचे ट्रक अडविताना दिसत आहेत.

अपचारी यांना वरिष्ठ पो.नि.व.पो.नि. (गुन्हे) यांनी कोणत्याही प्रकारचे अवैध्य मार्गाने वाहने अडवून त्यांचे चालका कडून पैशाची अगर कोणत्याही आर्थिक प्रकारची मागणी करू नये **फक्त संशयीत वाहने चे करावीत इतर वाहनांना विनाकरण थांबवुन ठेवुन वाहतुकीचा खोळंबा करू नये अशा प्रकारच्या सूचना दिल्या असताना देखील** वरील नमूद अपचारी हे वाळूचे ट्रक अडविताना दिसत आहेत. यावरून अपचारी यांनी जाणीव पूर्वक वरीष्ठांनी दिलेल्या आदेशाचे उल्लंघन करून वाळूचे ट्रक अडवून ट्रक चालक यांचेशी संवाद/हस्तांदोलन करून वाहतुकीस अडथळ निर्माण केला आहे. संबंधीत टीव्ही-९ चे वर्ताहर यांनी चेक पॉईंटची चित्रफित करून प्रसारित केली यामुळे जनमाणसामध्ये पोलीस दलाची प्रतिमा मलिन झाली आहे. अपचारी यांनी पैशाची मागणी केलेबाबत कोणताही पुरावा चौकशीमध्ये मिळून येत नाही. परंतु **नाकाबंदी पॉईंटचे कर्मचारी पोहवा/४६९ पिल्ले, यांनी वरिष्ठांचे आदेशाचे उल्लंघन करून वाहन चेकींग न करता एका बाजूला उभे राहिले आहेत. तसेच पोशि/७६६६ ढोपे नेम. हडपसर तसेच पोशि/८७७८ नांदगुडे नेम. मुख्यालय यांनी वरीष्ठांचे**

आदेशाचे उल्लंघन करून वाळू वाहतूक करणारे ट्रक अडवून कागदपत्र/वाहनाचे कोणतेही प्रकारे चेकिंग न करता वाहतूकीस अडथळा निर्माण करून त्याचे कर्तव्यात कसूरी केल्याचे चौकशीमध्ये निष्पन्न होत आहे.

यातील अपचारी पो. हवा.४५५७/होळकर व पोशि/५६८८ पवार नेमणुक हडपसर यांना मार्शल ड्युटी करीता नेमलेले असताना सुध्दा ते सदरचे नाकाबंदी पॉईंटवर जावून वाळूचे ट्रक अडविताना दिसत आहेत. अशा प्रकारे त्यांनी त्यांचे कर्तव्यात जाणीवपूर्वक दुर्लक्षित करून बेकायदेशीपणे सदर पॉईंटवर जावून ट्रक आडविले आहेत. अशा प्रकारे सदर अपचारी यांनी त्यांचे कर्तव्यामध्ये कसूरी केल्याचे चौकशी दरम्यान दिसून येत आहे. तरी सदर अपचारी यांना त्यांचे नमुद कसूरीबाबत आपणाकडून योग्य ती कारवाई होणेस विनंती आहे.’’

9. It is thus obvious that, though the charge, which was the subject matter of enquiry held not proved, the Applicants were held guilty for altogether different alleged misconduct, which was not subject matter of the charge in D.E. In so far as these Applicants are concerned, material to note that they were held guilty on the ground that they were on Marshal Duty but found present at Check Post halting the Trucks and caused inconvenience to traffic. This is the alleged misconduct attributed to them at the end of enquiry which was not subject matter of charge.

10. Needless to mention that when any disciplinary action is proposed against the delinquent servant, it is imperative that definite charge or charges should be framed based on definite allegations. If there is reliance on particular Rule or Regulation, it must be set out in charge. If a person is not aware as to what the allegations are on which the charges are framed against him are founded, he cannot possibly by projecting his own imagination discover all the facts and circumstances, which may be in contemplation of the authorities to be established against him. This is one of the basic requirement of charge, so that the delinquent is aware about the definite charge framed against him to ensure adequate opportunity of defending himself. It is also well settled that the charges should be precise and not vague. The material allegations on which such charges are based needs to be mentioned in the charge-sheet. The delinquent must be informed of the facts and circumstances, which would be sought to be established against him in support of the charge. Suffice to say, there

must be precise, definite and specific charge, so that the delinquent is in a position to meet the charge levelled against him by affording reasonable opportunity of defending himself.

11. Whereas, in the present case, there was only one charge of acceptance of bribe which held not proved. Except the charge of acceptance of bribe, no other charge was included in charge-sheet. This being the position, where the charge of acceptance of bribe held not proved, the question of holding the Applicant guilty for being present there unauthorizely and thereby causing obstruction to Traffic did not survive in absence of any such specific charge to that effect. Otherwise, this amount to holding the person guilty for the charge to which the delinquent was not at all aware and did not get opportunity to meet the said charge. The delinquent needs to defend the charge specifically framed against him and he is not expected to foresee the situation which might be perceived by the Enquiry Officer at the end of enquiry. As such, where there was no charge of alleged unauthorized presence and obstruction to Trucks holding the Applicants guilty for the same, it definitely caused serious prejudice to the Applicants as Applicants had no opportunity to meet such charge.

12. The Applicants were admittedly appointed on Marshal Duty in hadapsar Police Station and there is no denying that Solapur Check Post where the alleged incident occurred falls within the area of Marshal Duty. The Applicants have specifically explained this position while submitting reply to Show Cause Notice (Page No.30 of Paper Book). They admits their presence on the spot but clarified that the Check Post point being within their jurisdiction, they were present here as a part of their duty. The relevant portion of the explanation is as follows :-

**“मार्शल ड्युटीबाबत :-**

आम्हास पोलीस ठाण्याकडून मार्शल ड्युटीसाठी नेमण्यात आलेले आहे. हि गोष्ट सत्य आहे. मार्शल ड्युटीसाठी नेमलेले लोकांनी त्यांना नेमलेले सर्व भागात पेट्रोलिंग फिरणे तसेच नियंत्रण कक्षा कडून व

पोलीस ठाण्यावरून मिळणारे संदर्भाप्रमाणे ज्या ठिकाणे जाण्याचा आदेश होईल त्या ठिकाणी सर्व प्रथम पोहोचून त्या संदेशाची पुर्तता करणे हेच काम असते. त्या प्रमाणे आम्ही आमची ड्युटी करीतच सदर पॉईन्टवर जाऊन काही काळ थांबलो होतो. तो पॉईन्टही आम्हास नेमलेले हद्दीतीलच होता. व त्या ठिकाणी काही काळ थांबलो या मध्ये कोणताही अपाराध आम्ही केलेला नसून नेमलेल्या हद्दीबाहेरही आम्ही गेलेले नव्हते. अगर त्या दरम्यान आम्हास कोणताही आदेश नियंत्रण कक्षाकडून अगर पोलीस ठाण्याकडून आम्हास प्राप्त होऊनही आम्ही त्याकडे दुर्लक्ष केलेले होते. असेही कोठे अभिलेखावर आलेले नाही.

निव्वळ सदर पॉईन्ट हा हडपसर पोलीस ठाणे अंतर्गतच असल्याने आम्ही हद्दीत पेट्रोलिंग करीत करीतच त्या पॉईन्टवर जाऊन काही काळ थांबलो होतो. त्या ठिकाणी आम्ही कोणत्याही वाहण चालकाकडून पैसे घेतलेले नसून चित्रफिती मध्येही पैसे घेतल्याचे दिसत नसून कोणीही सरकारी साक्षीदारही आमचे विरुद्ध पैसे घेतल्याचे अगर मागणी केल्याचे सांगत नाही. तेव्हा त्याचा कृपया विचार होणतस विनंती आहे.

आमचे विरुद्ध कोणताही ठोस पुरावा हा उपलब्ध न झालेमुळेच शेवटी आम्ही मार्शल ड्युटी असताना सदर पॉईन्टवर थांबल्याबाबत व त्या चालकांना थांबवून रहदरीस अडथळा केल्याबाबत मा. चौकशी अधिकारी यांनी आपले समाकलन अहवालांमध्ये नमुद केले आहे. ते केवळ वरिष्ठांनी तडकाफडकी आम्हास निलंबण केल्यामुळेच काहीतरी कार्यवाही होणे जरूरीचे असल्यानेच आमचे. विरुद्ध ता दोषारोप लावला आहे. तोच मुळात चुकीचा ठरणारा आहे. कारण आम्ही त्या पॉईन्टला काही वेळ थांबलो हे सुध्दा हद्दीत पेट्रोलिंग करताना कर्तव्याचा भाग म्हणूनच मोडत आहे. याचाही कृपया विचार होणेस विनंती आहे.’’

13. As such, mere presence of the Applicants at Solapur Check Post cannot be said misconduct by any stretch of imagination. Therefore, the finding that the presence of the Applicants at Check Post was unauthorized or illegal is totally unsustainable. In absence of any specific charge that they unauthorizely halted Trucks and it caused inconvenience to the Traffic, mere presence on the spot cannot render the Applicant guilty for misconduct.

14. Smt. Punam Mahajan, learned Advocate rightly placed reliance on the decision of Hon'ble Supreme Court in **M.V. Bijlani's** case (cited supra). In Para Nos.15 and 25 of the Judgment, the Hon'ble Supreme Court held as under :-

**15.** *It will bear repetition to state that the charges which were framed related to only non-maintenance of ACE-8 Register and non-supervision of working of the line. In absence of any charge that he had in fact misappropriated copper wire for his own benefit out of the disposal thereof, the question as regard purported misconduct by way of misutilisation of 4000 kg. of copper wire could not have been gone into. Furthermore, it has not been shown that ACE-8 register was required to be maintained in an appropriate form or in a particular manner i.e. in bound form or in loose sheets.*

25. *It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although*



*the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”*

15. As such, the ratio of the above Judgment is that the Enquiry Officer cannot enquire into allegation, if there was no charge to that effect in charge-sheet.

16. In the present case, indeed, the charge framed against the Applicants i.e. for demand acceptance of bribe was held not proved but surprisingly, the Enquiry Officer as well as Disciplinary Authority held the Applicants guilty for totally different aspect, which was not subject matter of the charge. It is apparent that the Enquiry Officer as well as Disciplinary Authority at the end of enquiry though found Applicants not guilty for the charge levelled against them, they went on holding the Applicants guilty by stretching the limit to the extent of imposing punishment for the alleged act, which was not subject matter of the charge. This definitely has caused serious prejudice to the Applicants, as they had no opportunity to defend themselves for the alleged misconduct. Suffice to say, the Disciplinary Authority has travelled beyond the scope of D.E, and therefore, the punishment imposed is not at all sustainable in law and fact. None of the witness testifies that because of halting of the Trucks, there was inconvenience to the Traffic. It is the only inference drawn by the Enquiry Officer and Disciplinary Authority. True, in D.E. the charge needs to be established on preponderance of probability and strict rules of Evidence Act are not applicable. However, in the first place, there has to be specific charge and then evidence in support of it. Whereas in the present case, there was no charge at all for which the

Applicants held guilty and secondly, there was no such evidence of obstruction of Traffic, so as to turn it misconduct or dereliction in duty. No doubt, the scope of interference in judicial review is limited. However, it is well settled that where there is infringement of basic fundamental rules or principle of natural justice, the finding of Disciplinary Authority cannot be sustained. The present matter falls in this category.

17. The totality of aforesaid discussion leads me to sum-up that the Disciplinary Authority as well as Appellate Authority committed serious error in holding the Applicants guilty for the alleged misconduct, which was not subject matter of the charge and consequently, the impugned orders of punishment is totally unsustainable in law. Resultantly, the impugned orders deserve to be quashed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned orders dated 13.06.2014 and 11.11.2016 are quashed and set aside.
- (C) Resultantly, the Applicants are entitled to consequential service benefits and necessary orders to that effect be passed within a month from today.
- (D) No order as to costs.

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

Mumbai  
Date : 09.12.2019  
Dictation taken by :  
S.K. Wamanse.