

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.318 OF 2020

Shri Dnyaneshwar P. Kharmate)
Age : 34 Yrs., Promoted as Police Sub)
Inspector, attached to Byculla Police)
Station, Mumbai (under suspension),)
residing at 401, H-wing, Police Colony,)
Gulistan Compound, Ghatkopar (W),)
Mumbai.)...**Applicant**

Versus

The Additional Commissioner of Police,)
Central Region, Bawla Compound,)
Byculla (E), Mumbai 27.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 12.10.2021

JUDGMENT

1. The Applicant who is serving in the cadre of Police Inspector challenged the suspension order dated 26.06.2019 mainly on the ground of competency of Additional Commissioner of Police who has passed the order of suspension invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. The Applicant was serving as PSI at Byculla Police Station. On 26.06.2019, offence under Section 4(a) and 5 of Maharashtra Prevention of Gambling Act, 1887 and offence under Section 25(c) of Indian Telegraph Act, 1885 was registered against him. Consequent to it, the

Respondent –Additional Commissioner of Police suspended the Applicant invoking Section 25(2) of Maharashtra Police Act read with Rule 3 of Maharashtra Police (Punishment & Appeal) Rules 1956. Later, the Applicant was reinstated by order dated 20.07.2020 subject to final decision of preliminary inquiry conducted against him.

3. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the legality of impugned suspension order *inter-alia* contending that the Additional Commissioner of Police is not competent to suspend the Applicant since the competent authority of the Applicant is Director General of Police. He further submits that even if the Applicant is reinstated in service, the issue of competency and jurisdiction of Additional Commissioner of Police goes to the root of the matter and impugned suspension order being *ex-facie* illegal, it is liable to be quashed and set aside.

4. Per contra, learned P.O. sought to justify the suspension order *inter-alia* contending that Section 25(2)(a) of Maharashtra Police Act empowers the Additional Commissioner of Police to pass the order of suspension, and therefore, impugned order cannot be faulted with.

5. In view of the submission advanced at a bar, the question posed for consideration is whether the impugned suspension order, as it stands, is legally sustainable in law.

6. At this juncture, it would be apposite to take note of Section 25(1), 25(2)(a) of Maharashtra Police Act as well as Rule 3(1-A) of Maharashtra Police (Punishment & Appeal) Rules 1956 to consider the issue involved in the present matter.

7. Section 25(1) reads 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 authorised 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 authorised 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)."

8. Section 25(2) (a) reads as under :-

“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, Commission 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.”

9. Whereas, Rule 3(1-A) of Maharashtra Police (Punishment & Appeal) Rules, 1956 is as under:-

“3(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).”

10. Material to note that in the impugned suspension order dated 26.06.2019, the Respondent – Additional Commissioner of Police had also invoked Notification dated 12.01.2011 along with Section 25(2) and Rule 3 Maharashtra Civil Service (Discipline & Appeal) Rules 1956.

11. Para No.4 of suspension order in this behalf is material which is as under:-

“४. यास्तव शासन अधिसूचना गृहविभाग क.एमआयएक/१९१०/प्र.क.१८५/पोल-६अ, दिनांक १२.०१.२०११ व महाराष्ट्र पोलीस अधिनियम १९५१ मधील २५(२) अन्वये प्रदान करण्यात आलेल्या अधिकाराचा वापर करून मुंबई पोलीस (शिक्षा व अपिल) नियम १९५६ च्या नियम ३ मधील तरतुदीस अनुसरून त्यांना त्यांच्या विरुद्ध घेण्यात येणा-या प्राथमिक/विभागीय चौकशीच्या तसेच त्यांच्या विरुद्ध दाखल गुन्ह्याच्या अधिन राहून पोलीस उप निरीक्षक ज्ञानेश्वर प्रभाकर खरमाटे नेमणुक भागखळा पोलीस ठाणे, मुंबई यांना आदेश स्विकारल्याच्या दिनांकापासून “सेवेतून निलंबित” करण्यात येत आहे”.

It is thus explicit from Para No.4 of impugned order that the Applicant is suspended in contemplation of D.E.

12. Insofar as Section 25(1) and 25(2) are concerned, perusal of these provisions reveals that it deals with powers of punishment. As per Section 25(1)(b), the suspension is one of the punishment to be imposed for negligence in discharging duties and competent authority for this is the State Government or any officer authorized under Sub-Section 2 in that behalf. Whereas Section 25(2)(a) provides for punitive powers whereby Director General and Inspector General including Additional Director General, Special Inspector General, Commissioner including

Joint Commissioner, Additional Commissioner and Deputy Inspector of General are authorized to punish an Inspector or any member of the subordinate rank under sub-section 1 or 1-A. Thus, conjoint reading of Section 25(1) with 25(2)(a) makes it explicit that it pertains to punishment order, and suspension is also one of the punishment where it is imposed after inquiry.

13. True, as per Section 25(2)(a) – Additional Commissioner have authority to punish an Inspector or any member of the subordinate rank under sub-section 1 or 1-A meaning thereby Additional Commissioner can only exercise the powers of suspension where it is by way of punishment.

14. Whereas in suspensor order, it is stated that suspension is invoked in contemplation of D.E. in view of registration of crime. Therefore, specific quarry was raised to learned P.O. to make it clear as to whether the impugned order of suspension dated 26.06.2019 is by way of punishment so as to empower the Additional Commissioner to suspend the Applicant. He concedes that the order of suspension dated 26.06.2019 was in contemplation of D.E. and not by way of punishment. He further states that after suspension, the preliminary inquiry was conducted and after giving show cause notice, punishment of stoppage of increments for two years without cumulative effect has been imposed by the Additional Commissioner of Police by order dated 25.08.2020. It is thus manifest that at the time of suspension order dated 26.06.2019, there was no such inquiry and inquiry was conducted only after issuance of suspension order which makes it clear that suspension order dated 26.06.2019 was in contemplation of D.E. and not by way of punishment. This being the ultimate outcome, Section 25(2)(a) is not attracted.

15. Now, it comes to Notification dated 12.01.2011 as referred in impugned suspension order. The perusal of said notification reveals that the Government has conferred powers of suspension upon certain

authorities under Section 25 of Maharashtra Police Act as well as under Rule 3 of Maharashtra Police (Punishment & Appeal) Rules, 1956. Significantly as per this Notification, the Police Commissioner is only empowered to suspend the Police Inspector or Police Officer subordinate to Police Inspector as per Clause No.2 of Notification. It does not empower Additional Commissioner. Whereas in present case, the suspension order has been issued by the Additional Commissioner. This being the position, the Notification dated 12.01.2011 cannot be construed to have conferred the powers of suspension upon the Additional Commissioner of Police.

16. Now, it remains applicability of Rule 3(1) of Maharashtra Police (Punishment & Appeal) Rules 1956 *vis-à-vis* the competency of Additional Commissioner. Perusal of Rule 3(1-A) specifically provides that the power of suspension vest with the appointing authority or any other authority empowered by the State Government in this behalf. Admittedly, the Applicant being directly appointed as PSI, his appointing authority is Director General of Police. As such, it is the Director General of Police or any other authority empowered by the State Government in this behalf is empowered for suspension. Whereas in the present case, empowerment by virtue of Notification dated 12.01.2011 empowers Police Commissioner and not Additional Police Commissioner. Consequently, in absence of specific empowerment in the name of Additional Commissioner, he has no authority in law to suspend the Applicant.

17. Apart, as per proviso to Rule 3(1-A) 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 to circumstances in which the order of suspension is made. Meaning thereby, even if, there is empowerment in favour of the subordinate authority in that event also, it requires compliance of proviso which is completely missing.

18. As such, viewed from all these angles and examination of the provisions/notification invoked by the Respondents for suspending the Applicant, there is no escape from the conclusion that the Additional Commissioner is not competent to suspend the Applicant where it is in contemplation of D.E. There is material difference between punishment in contemplation of D.E. and punishment by way of suspension as contemplated under Section 25(2)(a) of Maharashtra Police Act which empowers the Additional Commissioner to pass the order of suspension where it is by way of punishment. In the present case, admittedly the suspension is not by way of punishment and it was only in contemplation of D.E. in future. This being the ultimate conclusion, the impugned suspension order will have to be held bad in law for want of jurisdiction to Additional Commissioner of Police. The suspension order is, therefore, liable to be quashed. Hence the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned suspension order dated 26.06.2019 is quashed and set aside being bad in law.
- (C) Since the Applicant is already reinstated in service, there is no question of reinstatement but he is entitled to consequential service benefits.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 12.10.2021
Dictation taken by : VSM