

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.341 of 2018

District : PUNE

Shri Jaysing Sambhaji Jadhav,)
Age 46 years, Occ : Police Naik in the office of,)
Belownamed Respondent No.1,)
R/at Flat No.803, B-II, Grand Bay Housing Soc.)
Manjri (Bk), Tal. Haveli, Dist. Pune.)...**Applicant**

Versus

1. The Superintendent of Police, Thane (R),)
Having office at Thane.)
2. The Special Inspector General of Police,)
Konkan Range, O/at Konkan Bhawan,)
C.B.D. Belapur, Navi Mumbai.)
3. The Director General and Inspector)
General of Police, (M.S.), Mumbai, O/at)
Old Council Hall, Shahid Bhagatsingh)
Marg, Mumbai 400 039.)
4. The State of Maharashtra, through)
Principal Secretary, Home Department,)
Mantralaya, Mumbai 400 032.)...**Respondent**

Shri Bhushan Bandiwadekar, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 22.01.2021.

J U D G M E N T

The Applicant has challenged the order dated 16.11.2015 passed by the Respondent No.2 in appeal thereby modifying sentence of removal

from service to reduction in original pay scale of Police Naik for one year confirmed in revision by order dated 23.05.2017 invoking jurisdiction under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to the Original Application are as under:-

In 2012, the Applicant was working as Police Naik and attached to Shahapur Highway Traffic Police Aid Centre under the jurisdiction of Highway Police, Mumbai. The Respondents alleged that on 30.05.2012, at about 01.00 pm, the Applicant was accompanied by Shri Rahate, ASI, Shri Waghmare, Police Naik, Shri P. M. Bedekar, Police Head Constable, Shri R. G. Thakur, Police Constable and Shri Gore, Police Naik intercepted one ODC (Over Dimensional Cargo) Vehicle No.MH-04-DS-1818. Since the said vehicle had no ODC permission, they allegedly demanded bribe of Rs.5,000/- to Shri Nimesh Bhatt, Supervisor of Darshan Road Lines, Mumbai who was travelling in the ODC vehicle. Shri Nimesh Bhatt allegedly paid bribe of Rs.5,000/- to them and thereafter only, ODC vehicle was released. Shri Nimesh Bhatt informed about the said incident to his master Shri Pritesh Gadhi (owner of Darshan Road Lines, Mumbai). In turn, Shri Pritesh Gandhi immediately contacted Highway Control Room on helpline and lodged complaint that the Applicant and another police personnel had taken bribe of Rs.5,000/- from his supervisor. In the evening, the Applicant and another police personnel who were accompanied to him allegedly returned bribe amount of Rs.5,000/- to Shri Pritesh Gandhi. Preliminary inquiry about the incident was conducted by Shri Baliram Kadam, DYSP, Highway Police, Thane. During the course of preliminary inquiry, he recorded statements of Shri Nimesh Bhatt, Pritesh Gandhi and Shri Natwarlal Patel who was along with driver in ODC vehicle. In preliminary inquiry it was revealed that the Applicant and other co-delinquents had taken bribe of Rs.5,000/- for releasing ODC vehicle and thereby committed misconduct. On receipt of preliminary inquiry report, the Respondent No.1 –Superintendent of Police, Thane (R) initiated

regular DE against the Applicant and others. The Enquiry Officer was accordingly appointed. Before Enquiry Officer, the Applicant pleaded not guilty and denied the charges in regular DE. Material witnesses namely Shri Nimesh Bhatt, Pritesh Gandhi and Natwaral Patel whose statements were recorded in preliminary inquiry were called but they did not appear. However, Enquiry Officer on the basis of statements record in preliminary inquiry held the Applicant and others guilty for misconduct for accepting bribe and submitted enquiry report to Respondent No.1 – Superintendent of Police who in turn issued show cause notice to the Applicant as to why they should not be dismissed from service. The Applicant submitted reply denying charges and pointed out there was no evidence against him in regular DE and charges are not proved. However, the respondent No.1 by order dated 09.07.2015 passed punishment of removal from service.

3. Being aggrieved by it, punishment of removal from service, the Applicant had filed the Appeal before the Respondent No.2 – Special Inspector General of Police, Kokan Range, Navi Mumai. In Appeal, he noticed material illegality crept up in inquiry for not examining the witnesses and allowed the Appeal partly by modifying sentence of removal from service to reduction to the lower pay scale for one year by order dated 16.11.2015. The Applicant filed revision against the said order before the Respondent No.3 – Director General and Inspector General of Police which came to be dismissed by order dated 23.05.2017 which is under challenge in the present O.A.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant had assailed the legality of the order of punishment mainly on the ground that admittedly no opportunity for the cross examination of the witnesses were given to the Applicant in DE, and therefore, evidence which were recorded in preliminary inquiry behind the back of the Applicant cannot made foundation to sustain the charges. He, therefore, submits that there is breach of principles of natural justice and sentence is not at all sustainable in law.

5. Per contra, Smt. Kranti Gaikwad, learned presenting Officer for the Respondents fairly concedes that witnesses examined in preliminary inquiry did not remain present in regular DE, and therefore, the Applicant could not cross examined them. She, therefore, submits that instead of allowing the O.A., the matter be remitted back to the Enquiry Officer for cross examination of the witnesses and then to pass appropriate order.

6. During the course of hearing, directions were given by the Tribunal to produce the record of preliminary inquiry and regular inquiry which was made available by learned P.O. Indisputably, the witnesses namely Shri Nimesh Bhatt, Shri Pritesh Gandhi and Shri Natwarlal Patel to whom the Applicant allegedly demanded the bribe did not remain present in regular D.E. so as to test their veracity by affording opportunity of cross examination to the delinquents. Their statements were recorded during the course of preliminary examination only behind the back of the delinquents. Perusal of record reveals that in regular D.E. notices were issued to these witnesses namely Shri Nimesh Bhatt and Shri Natwarlal Patel twice but returned back with endorsement that they are not living on the given addresses. In so far as complainant Shri Pritesh Gandhi is concerned, he was called twice for recording his statements and despite of service of notice, he did not remain present. (As seen from page 49 of PB). Thus, the position emerges that their statements which were recorded in preliminary inquiry were acted upon by the disciplinary authority holding the Applicant guilty which is totally unsustainable in law. It is well settled that the statements recorded in preliminary inquiry which were recorded in absence of delinquents cannot be acted upon without giving opportunity of cross examination to the delinquents in regular DE. These three witnesses were the only material witnesses cited in charge sheet but they did not turned up. This being the position, their statements recorded in preliminary inquiry could not have been acted upon by the Disciplinary Authority for holding the delinquents guilty.

7. True, the strict rules of evidence act is not applicable to domestic inquiry but there has to be some evidence to sustain the charges. In absence of opportunity of cross examination of the delinquents, the statements recorded in preliminary inquiry cannot be used against him for want of opportunity of cross examination and to establish its veracity. The statements recorded in preliminary inquiry could be used in D.E. provided they were made available for crossed examination so as to test the veracity of their statements. This is elementary and basic tenet of service jurisprudence which has not been complied with in regular DE. As such, denial of opportunity to the Applicant to cross examine the witnesses had resulted in serious prejudice and there is a breach of principles of natural justice.

8. Shri Bandiwadekar, learned Counsel rightly refer to **1998 SCC (L & S) 865 Ministry of Finance & Another v/s S. B. Ramesh** wherein the Hon'ble Supreme Court held that the witnesses whose statements are relied upon must be produced before the Enquiry Officer and if they are not made available their statements cannot be acted upon to sustain the charges.

9. Significant to note that at every stage during the course of D.E. as well as in appeal and revision the Applicant had raised important issue of denial of opportunity of cross examination the witnesses but it was not considered in appropriate perspective. Indeed, the appellate authority had acknowledged this aspect of serious illegality for the proceedings and considering it set aside the order of removal from service but imposed punishment of reduction to lower pay scale for one year. The appellate authority observed as under :-

“ विभागीय चौकशीच्या कागदपत्रांचे अवलोकन करता विभागीय चौकशीत तीनही सरकारी साक्षीदार उलटतपासणीस हजर राहिलेले नाहीत. विभागीय चौकशी नियम पुस्तिका १९९१ मधील नियम ६.१८(१) अनुसार अपीलार्थी यांना सरकारी साक्षीदारांची उलटतपासणीची व बचावाची पूर्ण संधी मिळालेली नाही. विभागीय चौकशी अधिकारी यांनी सरकारी साक्षीदारांची उलटतपासणी न घेता विभागीय चौकशीतील निष्कर्ष नोंदलेले आहेत. यास्तव अपीलार्थी यांनी अपीलात उपस्थित केलेले काही मुद्दे संयुक्तीक वाटत असल्याने त्यांचे अपील काही अंशी मान्य करण्यात येत आहे. वरील

मुददयांचा विचार करून अपीलार्थी यांना पोलीस अधीक्षक यांनी दिलेली शिक्षा कसुरीच्या मानाने कठोर वाटत असल्याने शिक्षेत सौम्यता आणल्यास न्यायोचित होईल.”

Thus, despite acknowledging serious illegalities in the proceeding, the appellate authority imposed punishment of reduction to lower pay scale for one year. If there was no evidence in the eye of law the question of imposing said punishment also did not arise being a case of no evidence in the eye of law.

10. As stated above that the degree of proof required in departmental proceeding, need not be of the same standard as a criminal case. However, the law is well settled that suspicion, however strong, cannot be substituted for proof even in a departmental disciplinary proceeding. As such, in legal sense there was no evidence to sustain the charge of misconduct. The Disciplinary Authority seems to have been swayed away in view of serious allegations of demanding bribe and based conclusion on the basis of statement recorded in preliminary inquiry only which totally unsustainable in law. Therefore, the findings holding the applicant guilty are not at all sustainable.

11. As regard submission for remand of the matter, the incident had taken place on 30.05.2012 and the period more than eight years is elapsed. Two witnesses were found not living on the address. Whereas, one witness though served did not appear before the inquiry officer. In such situation, no fruitful purpose could be served by remanding the matter.

12. The totality of the aforesaid discussion leads me to conclude that the impugned order dated 16.11.2015 and 23.05.2017 are not at all sustainable in law and liable to be quashed and set aside. Hence the following order :-

ORDER

(A) Original Application is allowed.

(B) Impugned orders dated 16.11.2015 and 23.05.2017 are quashed and set aside.

(C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Date : 22.01.2021
Place : Mumbai
Dictation taken by :
Vaishali Santosh Mane
Uploaded on :

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