

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.342 OF 2022

DISTRICT : Mumbai

SUB : Compulsory Retirement

Shri Somnath Sadashiv Chinchkar)
Age 44 years, R/at Gouri, B-19,)
Shanti Sagar Co.op.Hsg. Soc.)
Ramabai Colony, Ghatkopar (E),)
Mumbai 400 075.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary, Home Dept.)
Mantralaya, Mumbai 400 032.)
2. The Commissioner of Police Railway)
Mumbai, Wadi Bandar, 4th Floor,)
Area Manager Building, P.D. Mello)
Road, Sandhurst Road, near Central)
Railway Godown, Mazgaon, Mumbai)
Maharashtra 400 010.)
3. Hon. Minister for State, Govt. of)
Maharashtra, Home Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri C. T. Chandratre, Advocate for Applicants.

Smt. Archana B. K., Presenting Officer for Respondents.

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

DATE : 26.06.2023.

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

JUDGMENT

1. The Applicant has challenged punishment order dated 31.10.2019 passed by the Respondent No.2 - C.P. Railway Police, Mumbai thereby dismissing him from service exercising the powers under Section 25 of

Maharashtra Police Act, 1951 and also challenge the order dated 10.02.2022 issued by the Respondent No.2 in appeal thereby modifying the punishment of dismissal into punishment of compulsory retirement invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. While Applicant was serving as Police Naik at Kurla, Railway Police Station, the Respondent No.2, C.P. Railway Police, Mumbai issued charge sheet under Rule 3 of Maharashtra Police (Punishment & Appeal) Rule, 1956 for following charges :-

‘‘दोषारोप पत्र

तुम्ही पोना/३३२६ सोमनाथ सदाशिव चिंचकर, कुर्ला रे.पो. ठाणे येथे नेमणुकीस असताना खालीलप्रमाणे तुमचे वर्तन हे बेजबाबदारपणाचे तथा शिस्तप्रिय पोलीस खात्याच्या शिस्तीची पायमल्ली करणारे तसेच पोलीसांची जनमानसातील उज्ज्वल प्रतिमा मलीन करणारे असल्याचे दिसून येत आहे.

- १) तुम्ही, पोना/३३२६ सोमनाथ सदाशिव चिंचकर, कुर्ला रे.पो. ठाणे येथे नेमणुकीस असताना दि. ०३/०६/२०१७ रोजी दिवसपाळीचे कर्तव्य संपवून घरी आल्यावर, तुमची आई आजारी असल्यामुळे त्याच रात्री २१.३० वा. चे सुमारास तुमची पत्नी व मुलांना सोबत घेवून तुमच्या मुळगावी परस्पर निघून गेल्याने, तुम्ही दि.०४/०६/२०१७ रोजी नेमण्यात आलेल्या ठिकाणी गैरहजर राहिलात.
- २) तुम्ही दि.०४/०६/२०१७ ते ११/०६/२०१७ रोजी पावेतो नेमणुकीचे ठिकाणी लेखी/तोंडी काहीएक न कळविता कर्तव्यावर गैरहजर राहिले आहात.
- ३) तुम्ही विनापरवानगीने मुख्यालय सोडल्याने सदरचे तुमचे वर्तन हे गैरशिस्तीचे दिसून येत आहे.
- ४) तुम्ही मदयप्राशन करून वाहन चालवित होते. सदरचे वर्तन हे बेजबाबदारपणाचे दिसून येत आहे.
- ५) तुम्ही मदयप्राशन करून बेजबाबदारपणे वाहन चालविण्याने अनिल नंदकुमार डॅंगळे यांचे मरणास सर्वस्वी जबाबदार ठरले आहात.
- ६) तुम्हांस शासकीय नियम ज्ञात असताना देखील शिस्तभंग वर्तन केल्याचे दिसून येत आहे. सबब तुमच्यावर ठेवलेले वरील दोषारोप सिध्द झाल्यास, तुम्ही मुंबई पोलीस (शिक्षण व अपिल) १९५६ नियम क.३ अंतर्गत कोणत्याही शिक्षेस पात्र ठरता.’’

3. The Respondents alleged that on 04.06.2017, he remained absent without any intimation and proceeded to his village along with Anil Dengale in his Wagon R Car No.MH-03-BS-6030. On the way at Dhaba, he along with his friends consumed liquor. Thereafter, drove the car under intoxication in rash and negligent manner and lost control over the car and rammed into roadside tree thereby causing death of Anil

Dengale who was travelling along with him in the car. Consequent to it, Daund Police registered crime no.300/2017 for offence under Section 304-A, 279, 337, 338, 427 of IPC and Section 184 of Motor Vehicle Act.

4. Before initiation of regular D.E., preliminary enquiry was conducted and statement of delinquent as well as witnesses were recorded to verify the delinquency. The Respondent No.1 while issuing charge sheet dated 27.6.2019 itself appointed Sr. Police Inspector, Vashi, Railway Police Station as Enquiry Officer. In charge sheet, four witnesses were cited. During regular D.E. statements of these witnesses recorded in preliminary enquiry were used and opportunity of cross examination was given to the Applicant. The Applicant was also examined as one defence witness. He also submitted final defence statement before the Enquiry Officer. The Enquiry Officer submitted his report on 20.09.2019 holding the Applicant guilty for the charges. On receipt of it, the Disciplinary Authority issued show cause notice to Applicant as to why he should not be dismissed from service to which he submitted his reply and reply was not found satisfactory. Ultimately, Respondent No.1 being Disciplinary Authority accepted the findings recorded by Enquiry Officer and dismissed the Applicant from service by order dated 31.10.2019. Being aggrieved by it, the Applicant preferred an appeal and in appeal, the Government / Respondent No.1 by order dated 10.02.2022 modified the punishment of dismissal into compulsory retirement. The Applicant has, therefore, challenged the punishment order dated 31.10.2019 and 10.02.2022 in the present O.A.

5. Shri C. T. Chandratre, learned Counsel for the Applicant sought to assail the impugned orders on following grounds :-

(A) In D.E., the Enquiry Officer has used statements of witnesses which were already recorded in the preliminary enquiry instead of recording their statements afresh.

(B) In Criminal Case, the Applicant was charged for offences under Section 304 -A, 279, 337, 338, 427 of IPC read with 184 of Motor Vehicle

Act and there was no such charge of driving vehicle under the influence of liquor. Neither Applicant was medically examined to establish that he was driving vehicle under intoxication.

(C) In Criminal Case No.1005/2009 filed under Section 304-A, 279, 371, 337, 338, 427 of IPC read with 184 of Motor Vehicle Act, the Applicant was acquitted by learned JMFC, Daund, Dist. Pune by judgment dated 14.10.2021 but it's effect was not considered by the Appellate Authority while deciding Appeal by order dated 10.02.2022.

(D) In D.E. no independent Presenting Officer was appointed and Enquiry Officer himself has played the role of prosecutor which vitiates enquiry.

(E) The Enquiry Officer had taken re-examination of witnesses by putting leading questions pregnant with answers to establish prosecution case and it vitiates enquiry.

(F) The Enquiry Officer did not give opportunity of cross examination to the Applicant after he took re-examination of witnesses whereby through leading questions, he brought on record certain material and used to base his findings.

(G) Though, there is a charge of absence from 04.06.2017 to 11.06.2017 without intimation, the department had already granted earned leave for the said period and, therefore, charge of unauthorized absence said to be proved is totally unsustainable.

6. In this behalf, Shri C. T. Chandratre, learned Counsel for the Applicant place reliance upon the decision the Hon'ble Supreme Court in **(2018) 7 SCC 670 (Union of India & Others V/s Ram Lakhan Sharma)**. The Hon'ble Supreme Court summarized the principles as under :-

i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

7. Learned P.O. fairly concedes that in D.E. Presenting Officer was not appointed and Enquiry Officer himself put questions to the witnesses. She tried to contend that Enquiry Officer is empowered to put the questions to witnesses to arrive at the truth and on that count, enquiry cannot be said vitiated. As regard, use of statements of witnesses recorded in preliminary enquiry, she submits that though no fresh statements were recorded, the opportunity of cross examination was given to the Applicant and no prejudice is caused.

8. **As to ground Nos. (A), (B), (C) & (G) :**

Ideally Enquiry Officer is required to record statements of witnesses afresh instead of using statements recorded in preliminary enquiry. In present case, Enquiry Officer has called all those witnesses who were examined in preliminary enquiry and read over the statements given by them in preliminary enquiry and further proceeded with enquiry. The Applicant also cross examined the witnesses. In our considered opinion, since opportunity of cross examination has been given to the Applicant, non-recording of

statements of witnesses afresh cannot be said to have caused prejudice to the Applicant. All that, requirement of law is that no evidence or material could be used against a delinquent without affording opportunity of cross examination of witnesses and to rebut the material brought on record.

9. True, there was no charge of driving under intoxication in criminal case and Applicant is also acquitted for offence under Section 304-A, 279, 337, 338, 427 of IPC read with 184 of Motor Vehicle Act. He was acquitted during pendency of appeal. It appears that Applicant was arrested quite belatedly and, therefore, investigation officer could not find trace of intoxication, and did not send him for medical examination. Needless to mention, the standard of proof required to establish the charge in D.E. is totally different from the standard of proof required to prove a guilt in criminal trial. In criminal trial, there is requirement of higher standard of proof beyond reasonable doubt. Whereas in D.E., preponderance of probabilities is the rule. This being so, only because the Applicant is acquitted in criminal case, particularly when the charges are distinguishable in such situation, acquittal in criminal case, *ipso-facto* cannot be the ground to vitiate D.E. proceedings. Similarly, mere non appointing of Presenting Officer cannot be the ground to vitiate enquiry. Indeed, in present case, enquiry is governed by Police Departmental Manual in which there is no such specific provision for appointment of Presenting Officer. We, therefore, find no substance in the submission made by learned Counsel for the Applicant on this point.

As to ground (D), (E) & (F) :-

10. Having gone through the record of enquiry, we have no hesitation to conclude that Enquiry Officer himself played the role of prosecutor. The manner of conducting enquiry and his attempt to bring on record some material by way of reexamination of witnesses clearly spells that Enquiry Officer was predetermined and bias.

11. In D.E., four witnesses were examined to establish the charges. PW-1- Head Constable Rajendra Choulkar has been examined to establish that Applicant was absent on duty from 05.06.2017 to 11.06.2017. However, admittedly, the said period was regularized by granting earned leave by order dated 23.06.2017. The defence is that after duty hours of 04.06.2017, he left police station for going to his native place with his family to see his ailing mother. Notably, in charge itself, it is stated that Applicant left police station after duty hours to go to his native place to see his ailing mother. That apart, once the department later granted earned leave, the said period cannot be termed as unauthorized absence much less misconduct, therefore, the charge of the Applicant that he unauthorizedly remain absent, is totally incomprehensible. It is only in a case where there is willful absence from duty, it can be termed unauthorized absence.

12. PW 2- Head Constable Sharad Jadhav, PW 3- Shri Gajanan Jadhav, PW 4- Rajendra Jagdale are remaining material witnesses from whose evidences, Enquiry Officer brought certain incriminating factor on record by way of reexamination and the said material extracted from their mouth is the foundation of enquiry report holding the Applicant guilty for driving vehicle under the influence of liquor and thereby caused death of Anil Dengale who was in the car driven by the Applicant. P.W.2-Head Constable Sharad Jadhav in his statement recorded in preliminary enquiry stated that he along with Applicant, Rajendra Jagdale, Nalage-Patil deceased Anil Dengale and Nitin Pawar met at Dhaba at about 8.00 p.m. watched cricket match and took drink. This witness was confronted by the Applicant through next friend by cross examining him and in answer to Question No.16, he clearly stated that he has not seen Applicant while consuming liquor. In answer to question no.17, he further stated that he has not seen while applicant was driving which made in accident. However, to nullify it, Presenting Officer himself again asked leading questions by way of reexamination and asked him as

to whether Applicant also consumed liquor with him to which he answered in affirmative. He was again asked leading question that in preliminary enquiry, he made a statement that Applicant was driving car to which he answered in affirmative. It is thus explicit that Enquiry Officer not only acted as a Prosecutor but he was predetermined and bias.

13. That apart, there is no endorsement at the end of deposition of PW 2- Sharad Jadhav that after reexamination chief whereby incriminating material produced on record by putting leading questions, further opportunity was given to the Applicant to cross examine the witness on material which was brought on record in reexamination chief to have fair and transparent enquiry. The opportunity to cross examination the witness after reexamination ought to have been given but not given.

14. PW 3- PSI Gajanan Jadhav was Investigating Officer of criminal case whose statement was also recorded in preliminary enquiry which is silent on the point of intoxication of the Applicant. This witness was crossed examined by next friend of the Applicant. In cross examination, he stated to have no knowledge as to whether Applicant consumed liquor at Dhaba. However, here again Enquiry Officer put two leading questions in reexamination suggestive of rash driving of the Applicant. That apart, he was again asked as to whether during investigation, it was transpired to him that Applicant was intoxicated. He answered that Nitin Pawar and Head Constable Sharad Jadhav in their statements stated that Applicant had consumed liquor. Thus, here again Enquiry Officer put leading questions pregnant with answers with an intention to bring on record material against the applicant which shows his predetermined mind. That apart, no further opportunity of cross examination after reexamination is given. There is no endorsement that opportunity of cross examination was given to the Applicant and he refused cross examined the witness.

15. Then it comes to statement of PW 4- Rajendra Jagdale whose statement in preliminary enquiry was recorded. Notably, his statement was recorded in preliminary enquiry was silent about consumption of drink at Dhaba by any one of them. This witness was cross examined by the next friend of the Applicant and he stated that Applicant was not drunk while driving vehicle. Here again to wipe out it, the enquiry officer took reexamination of the witnesses in an attempt to bring on record incriminating material. Question No.5 was asked in very articulate manner. Is it not correct that witness Head Constable Sharad Jadhav in his statement recorded in preliminary enquiry did state that at Dhaba they consumed liquor to which he answered in affirmative, in view of statement of Head Constable Sharad Jadhav recorded in preliminary enquiry. Question no.5 and 6 asked in reexamination chief are as under which clearly demonstrates that enquiry officer was predetermined.

"प्रश्न क्र.५ : दि.१४/०६/२०१९ रोजीचे शरद बाबुराव जाधव यांचे जबाबात सुमारे २०.०० वा.आपण स्वतःतसेच चिंचकर व नलगे-पाटील तिघे जण शिवार ढाब्यावर आले. त्यावेळी तेथे इंडिया पाकिस्तानची मॅच पाहत असताना गप्पा व दारू पिली. इंडियाने मॅच जिंकल्यानंतर आम्ही तेथे डान्स केला. आमच्या सोबत असलेले नलगे-पाटील हे दारू पित असल्याने ते जेवण करून एकटेच निघून गेले. आम्ही गप्पामारत सुमारे २४.०० वा.पर्यंत जेवण केले. असे नमुद आहे. हे खरे आहे का?

उत्तर : होय, खरे आहे.

प्रश्न क्र.६ : वरील प्रश्न क्र.५ चे उत्तर खरे आहे. याचा अर्थ नलगे-पाटील हे एकटेच दारू पिले नव्हते व बाकी सर्वांनी दारू पिली होती. हे बरोबर आहे का?

उत्तर : मी व अपचारी चिंचकर दारू पिलो नव्हतो."

16. True, the Enquiry Officer is empowered to put certain questions to the witnesses with a view to arrive at the truth or to obtain certain clarification. However, where Enquiry Officer conducted regular examination chief by leading questions pregnant with answers to establish the charges, the Enquiry Officer will have to be held acted as a prosecutor. Whether Enquiry Officer acted as a Presenting Officer vitiating enquiry needs to be decided with reference to manner in which evidence was recorded in enquiry. It is the question of fact depending upon circumstances of each case. In present case, it is obvious from

manner of recording of evidence as discussed above, the enquiry officer has played the role of prosecutor and it vitiates enquiry.

17. The perusal of enquiry report further reveals that enquiry officer based his conclusion holding the Applicant guilty on the basis of material he extracted from the witnesses in his reexamination for which no further opportunity to cross examination those witnesses were given to the Applicant. The fundamental principal of the natural justice is that adjudicator /Enquiry Officer should be impartial and free from bias and should not be the Prosecutor. However, in present case, enquiry officer himself played the role of Prosecutor by putting leading questions to witnesses in his reexamination and no further opportunity to cross examined witnesses was given to Applicant. As such, where Enquiry Officer was acts as a Presenting Officer and played the Role of prosecutor, the enquiry gets vitiated. Thus, apparently, enquiry officer was presenting the case of department and made every effort to bring certain incriminating material on record by putting leading questions.

18. We have no hesitation to hold that Enquiry Officer was not open minded. On the contrary, he was bias and predetermined which vitiates enquiry and findings based upon such vitiated enquiry holding the Applicant guilty and punishment inflicted upon him is totally unsustainable in law. There is blatant violation of principle of natural justice since the Enquiry Officer himself acted as a Prosecutor and it caused serious prejudice to the Applicant. The enquiry proceeding cannot be conducted with a close mind. The enquiry officer has to be wholly unbiased the rules of natural justice are required to be observed to ensure not only that justice is done but manifestly seen to be done. In present case, the manner in which the enquiry officer conducted enquiry clearly exposed his bias state of mind and enquiry has been conducted against the principle of natural justice.

19. In this view of the matter, we hold that the enquiry is vitiated and impugned orders dated 31.10.2019 and 10.02.2022 are liable to be quashed. The matter is required to be remitted back to proceed with the enquiry afresh from the stage of recording of evidences of witnesses by appointing another Enquiry Officer. It is also desirable that department should appoint Presenting Officer for fair and transparent enquiry. The Applicant is, therefore, required to be reinstated in service. It shall be open to the Respondent No.2 to decide the issue of pay and allowances of intervening period (from the date of dismissal till reinstatement) afresh later on in accordance to law. Hence, the following order :-

ORDER

- (A) Original Application is allowed partly,
- (B) Impugned orders dated 31.10.2019 and 10.02.2022 are quashed and set aside.
- (C) The Applicant be reinstated in service within a month from today.
- (D) The Respondent No.2 is directed to proceed with the enquiry afresh from the stage of recording of evidence of witnesses by appointing another Enquiry Officer as well as by appointing Presenting Officer and enquiry should be completed within three months including final order therein in accordance to law from today.
- (E) The decision as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (F) No order as to costs.

Sd/-

(Debashish Chakrabarty)
Member (A)

Sd/-

(A.P. Kurhekar)
Member(J)