

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.602 OF 2020

DISTRICT : KOLHAPUR

Shri Suhas Balasaheb Shinde.)
Age : 38 Yrs., Occu.: Police Constable,)
SRPF Group 16, Kolhapur and residing at)
219 K/1/2, Puikhadi Kalikat Nagar,)
4-Pirwadi, Tal.: Karvir Pirwadi,)
District : Kolhapur – 416 032.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commandant.)
SRPF, Group 7, Daund, Addl. Charge)
Indian Reserve 3, Kolhapur.)
3. Deputy Inspector General of Police,)
SRPF, Pune.)...**Respondents**

Mr. M.B. Kadam, Advocate for Applicant.

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

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

DATE : 01.12.2021

JUDGMENT

1. The Applicant has challenged the order dated 04.09.2018 whereby punishment of withholding one increment for two years without cumulative effect was imposed and also challenged the order of Appellate Authority dated 30th July, 2020 whereby punishment was modified by withholding one increment for one year without cumulative effect invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is serving in the cadre of Hawaldar with State Reserve Police Force (SRPF) i.e. on the establishment of Respondent No.2 – Commandant, SRPF, Group 7, Kolhapur. On 31.07.2015, Company Nayak Mr. Panjesh was Incharge of allotment of duty. The Applicant was seeking change in his duty and was asking for duty of Quarter Master. The Applicant, therefore, requested Mr. Panjesh to effect change in his duty. That time, Mr. Panjesh allegedly demanded bribe to the Applicant for change of duty and also misbehaved with him. The Applicant, therefore, lodged complaint with Commandant on 04.08.2015. The Assistant Commandant, SRPF, Aurangabad conducted enquiry into the allegations made by the Applicant and recorded negative finding in his report dated 30.07.2016. In Enquiry Report, he observed that the Applicant could not produce evidence to substantiate his complaint of demand of money. He further observed that from deposition of witnesses, it transpired that the talk of money had taken place jokingly (हसी-मजाक). It is on this background, the Respondent No.2 – Commandant, SRPF issued Show Cause Notice dated 20.01.2017 to the Applicant stating that he had made serious allegations without evidence and acted in indiscipline manner only to cause mental torture to the seniors and such conduct amount so misconduct. The Applicant was, therefore, directed to submit explanation as to why punishment of withholding of

increment for two years without cumulative effect should not be imposed against him in terms of Maharashtra Police (Discipline & Appeal) Rules, 1956. The Applicant submitted his reply denying that he has committed any kind of misconduct. However, Respondent No.2 by order dated 08.09.2018 imposed punishment of withholding increment for two years without cumulative effect. Being aggrieved by it, the Applicant has filed appeal before Respondent No.3 – Deputy Inspector General of Police, SRPF, Pune which came to be decided by order dated 30.07.2020 thereby confirming the charges leveled against the Applicant, but modified the sentence by imposing punishment of withholding of increment for one year without cumulative effect instead of two years, which is under challenge in the present O.A.

3. Shri M.B. Kadam, learned Advocate for the Applicant sought to assail the impugned order *inter-alia* contending that the complainant is made scapegoat instead of taking action against the delinquent and in effect, the complainant is subjected to punishment only because raising grievances against Shri Panjesh, who demanded bribe for change of duty. He has further pointed out that the Applicant has produced evidence whatever possible to him and only because disciplinary authority did not accept the evidence, that ipso-facto cannot be construed as a false complaint. According to him, only because disciplinary authority was not convinced with the evidence, the Applicant cannot be branded as a liar. In peculiar facts and circumstances of the matter, it was not at all a case of misconduct, and therefore, the punishment is liable to be quashed.

4. The contents of Show Cause Notice are material, which are as under :-

तुम्ही, सपोहवा/४७८ एस.बी. शिंदे, नेग.बी कंपनी, भारा-३ कोल्हापूर, आपण राज्य राखीव पोलीस बल गट क्र.१४ औरंगाबाद येथे कार्यरत असताना पोनि पंजेश यांनी क्वार्टर मास्टर पदासाठी पैशाची मागणी केल्याचे व मा. सहाय्यक समादेशक यांना चेंबरमध्ये मारतो असे म्हटल्याचे तसेच ते बोलण्याचे रेकॉर्डिंग असल्याची तक्रार केली होती. सदर तक्रार अर्जाची सहा. समादेशक, रारापोबल, गट क्र.१४ यांनी चौकशी केली असता, पोनि/ पंजेश यांनी हसीमजाक मध्ये पैशाची मागणी केल्याचे दिसून येते. तसेच समादेशक व सहा. समादेशक यांना चेंबरमध्ये मारतो

असे म्हटल्याचे व बोलल्याचे कोणत्याही साक्षीदारांचे चौकशीवरून दिसून येत नाही. तसेच सदर संदर्भात आपण कोणताही पुरावा सादर केलेला नाही. त्यामुळे पुराव्याअभावी सदरचा आरोप सिद्ध होत नसलेबाबत कळवले आहे.

आपण दिलेल्या तक्रार अर्जाच्या अनुषंगाने रेकॉर्डिंग असल्याचे अर्जात नमूद केले होते परंतु चौकशीदरम्यान काही एक पुरावा सादर केला नाही. यावरून आपण पदाचा व कर्तव्याचा तसेच शिस्तीचे मान न ठेवता बेजबाबदारपणे वागून वरिष्ठांना मानसिक त्रास व्हावा या हेतूने तक्रार अर्ज केल्याचे दिसून येते. आपले सदरील वर्तन अत्यंत बेशिस्त व बेजबाबदारपणाचे आहे.

तुमचे वर्तन अत्यंत निष्काळजी, बेपर्वा, बेफिकीर व इतर पोलिस कर्मचा-यांची शिस्त बिघडवण्यास कारणीभूत ठरणारे अशा प्रकारचे आहे. एकंदरीत तुम्ही आपल्या कर्तव्यात केलेली कसुरी गंभीर स्वरूपाची आपल्या कर्तव्यात अक्षम्य व गंभीर स्वरूपाच्या कसुरीबाबत पोलिस मुंबई पोलिस शिक्षा व अपील नियम १९६४ मधील तरतुदीनुसार खालील प्रमाणे कारणे दाखवा नोटीस देण्यात येत आहे.”

5. In so far as finding of Enquiry Officer is concerned, all that, he summarized on Page No.28 of report, which is as under :-

“सर्व संबंधिताचे जाब-जबाब व अभिलेखावरून असे दिसून येते, की सपोह/९७ एस.बी. शिंदे यांनी केलेल्या तक्रार अर्जाच्या अनुषंगाने क्वार्टर मास्तर पदासाठी पैशाची मागणी केल्याचे व मा. सहाय्यक समादेशक व समादेशक यांना चेंबर मध्ये मारतो असे पोनि/पंजेशा यांनी म्हटल्याचे व ते बोलल्याची सपोह/९७ शिंदे यांचे कडे रेकॉर्डिंग असल्याची तक्रार अर्जात नमूद केलेले आहे. त्यांनी आपल्या दि. ११.०६.२०१६ रोजीच्या जबाबात नमूद केलेले साक्षीदार यांचे जबाब नोंदवले असता ते वरील प्रमाणे त्यांच्या जबाबात नमूद करतात की, ज्यावेळी कंपनी नायक व सपोह/९७ शिंदे यांचे भाषण सुरु होते. त्यावेळी तेथे गेले असता क्वार्टर मास्तर पदाचा चार्ज देणे संदर्भात चर्चा सुरु होती. त्यावेळी पोनि/एम.एस. पंजेशा हे सपोह/९७ एस.बी. शिंदे यांना हसी-मजाक मध्ये म्हटले की, दुसरा ५०,०००/- देण्यास तयार आहे तू किती ४०,०००/- देतो का ? असे म्हटले असल्याचे साक्षीदार यांच्या जबाबावरून दिसून येते. परंतु मा. सहाय्यक समादेशक व समादेशक यांना चेंबरमध्ये मारतो असे पोनि/पंजेशा यांनी म्हटल्याचे व ते बोलल्या ते कोणीही सांगितले नाही. तसेच सदर रेकॉर्डिंग संदर्भात कुठलाही पुरावा सपोह/ ९७ एस.बी. शिंदे यांनी केलेला नाही. त्यामुळे पुराव्याअभावी सदरचा आरोप सिद्ध होत नाही. तसेच पैशा संदर्भात ते हसी-मजाक मध्ये बोलले असल्याचे साक्षीदार यांच्या जबाबावरून दिसून येते.”

6. Whereas, the observation made by disciplinary authority while imposing punishment by order dated 04.09.2018 is as under :-

“तुम्ही, सपोहवा/६७० एस.बी. शिंदे, नेम. ई कंपनी, भाराव-३ कोल्हापूर, आपण राज्य राखीव पोलीस बल गट क्र. १४ औरंगाबाद येथे कार्यरत असताना तेथील निवडणुकीचे पोनि/पंजेशा यांनी क्वार्टर मास्तर पदासाठी पैशाची मागणी केल्याचे व मा. समादेशक व सहाय्यक समादेशक यांना चेंबरमध्ये मारतो असे म्हटल्याचे तसेच ते बोलल्याचे रेकॉर्डिंग असल्याची तक्रार केली होती. सदर तक्रार अर्जाची सहा. समादेशक, रारापोबल गट क्र.१४ यांनी चौकशी केली असता पोनि/पंजेशा यांनी हसी मजाक मध्ये पैशाची मागणी केल्याचे दिसून येते. तसेच समादेशक व सहा. समादेशक यांना चेंबरमध्ये मारतो असे म्हटल्याचे व बोलल्याचे कोणत्याही साक्षीदाराचे चौकशीवरून दिसून येत नाही. सदर बाबत आपण रेकॉर्डिंग अथवा इतर सबळ पुरावा सादर केलेला नाही. सबळ पुराव्याअभावी सदरचा आरोप सिद्ध होत नसले बाबत कळवले आहे.

तुम्ही, सपोहवा/६७० एस.बी. शिंदे, नेम.ई कंपनी वर नमूद कसुरीबाबत, तुम्हास मुंबई पोलीस (शिक्षा व अपील) नियम १९६४ मधील नियम ०३ मधील तरतुदीनुसार तुमची पुढील देव वार्षिक वेतनवाढ पुढील वेतन वाढीवर परिणामकारक न राहता दोन वर्ष कालावधीसाठी तहकूब करण्यात येत आहे.”

7. Interestingly, the observation made by Appellate Authority which are relevant are as under :-

“निष्कर्ष

एकंदरीत अपिलार्थी आज्ञांकित कक्षात कथन केलेल्या मुद्यांचे व सदर प्रकरणातील शासकीय अभिलेखाचे अवलोकन केले असता, सदर पेनड्राइवमधील रेकॉर्डिंग मध्ये काही लोकांच संभाषण केल्याचे आढळून येत आहे. सदर भाषणामध्ये अश्लील बोलणे, वरिष्ठ अधिकारी यांना उद्धट बोलणे व इतर बाबींचा समावेश आहे. परंतु सदर संभाषणातील आवाज हा पोलीस निरीक्षक एम.एस. पंजेशा व अपिलार्थी एस.बी. शिंदे यांचाच आहे हे खात्रीशीरपणे सांगता येणार नाही. तसेच अपिलार्थी यांनी भाराव-३, कोल्हापूर येथे बदलून येण्यापुर्वी भाराव-१, औरंगाबाद येथे नेमणुकीस असताना सह कर्मचारी व पदोन्नतीबाबत वारंवार व कंपनीच्या नक्षल बंदोबस्ताबाबत वारंवार वरिष्ठांना तक्रार केल्याचे दिसून आले आहे. तसेच त्यांना वारंवार तक्रार करण्याची सवय असल्याचे आढळून आले आहे तरी देखील त्यांच्या आजवरच्या निष्कलंक सेवेचा व सेवाभिलेखाचा विचार करता त्यांना भविष्यात सुधारण्याची एक संधी देणे योग्य वाटते या निष्कर्षाप्रती मी आलेलो आहे. त्यामुळे सदर प्रकरणी पुढील प्रमाणे आदेश देत आहे.”

8. True, it is well settled legal position that the Tribunal should not act as an Appellate Authority so as to re-assess the evidence led in the domestic enquiry nor interference on the ground that another view is possible on the material on record. The question of adequacy of evidence or reliable nature of the evidence will not be the ground for interfering with the findings of departmental enquiries. As such, the Tribunal should not interfere with the findings of fact recorded in the DE except where such findings were based on no evidence or where they are perverse. Needless to mention, the test to find out perversity is to whether the Tribunal acting reasonably could have arrived at such conclusion on the material in domestic enquiry. Bearing in mind this settled legal position, let us see whether the conclusion recorded in domestic enquiry and punishment inflicted upon the Applicant needs interference.

9. As set out above, the charge of misconduct attributed to the Applicant was of acting irresponsibly while making complaint against his superior Mr. Panjasha. In domestic enquiry, the allegation of corruption levelled by the Applicant in his report/complaint found not substantiated by the evidence and this act of lodging complaint was found *per se* irresponsible behavior tantamount to misconduct. As such, this is a very peculiar and interesting case where only because the complaint lodged by the Applicant against his superior alleging bribe having found not

proved in domestic enquiry, the Applicant is slapped with disciplinary proceedings and punished. What is striking to note that, all that, an inquiring authority in his report mentioned that the Applicant could not prove the evidence to prove the allegation of bribe by Mr. Panjsha since witnesses examined by him stated that Mr. Panjsha demanded bribe jokingly (हसी-मजाक). The inquiring authority, therefore, concluded that since it was a case of demand of bribe jokingly (हसी-मजाक), the allegation of bribe are not proved. Interestingly, it is nowhere the finding of the Enquiry Officer that the complaint lodged by the Applicant was false. However, the disciplinary authority construed this situation as of misconduct of the Applicant alleging that he made allegation of bribe without any evidence, and therefore, committed misconduct, which is quite understandable. Only because in disciplinary enquiry, the charges levelled by the Applicant were not proved, how the Applicant could be subjected to punishment for the same which amount to punishing a person who raised grievances against his superior. Therefore, the very foundation of the charge of misconduct levelled against the Applicant is unfathomable much less to impose punishment upon him.

10. It is nowhere the case in departmental enquiry conducted against Shri Panjsha that there was absolutely no such demand or talk of bribe by Mr. Panjsha. All that, the witnesses stated in their evidence that Mr. Panjsha talked about the bribe jokingly. As such, there is no denying that there was some talk of bribe by Mr. Panjsha though inquiring authority found that demand was made jokingly (हसी-मजाक). Indeed, the Applicant seems to have recorded conversation in Pen drive before the disciplinary authority but the disciplinary authority found that the voice cannot be identified or recognized so as to ascertain that it was conversation of Mr. Panjsha. If this is the state of evidence before inquiring authority, it is very difficult to accept as to how lodging of such complaint can be construed misconduct. If such theory propounded by the disciplinary authority is accepted, it would amount to punish the

complainant who raised the grievance against his superiors. One can understand, if the complaint lodged by the Applicant found totally false or it was made willfully on concocted ground where such act can be construed as irresponsible and indiscipline behavior so as to initiate departmental enquiry against such complainant. However, in the present case, it is not so. Indeed, the disciplinary authority as well as Appellate Authority itself seems to have accepted the defence that the money was demanded jokingly. As such, suffice to say, no prudent person could have arrived at such conclusion of holding the Applicant guilty for misconduct. In other words, the findings recorded by disciplinary authority and confirmed by Appellate Authority is perverse and not sustainable in law and facts.

11. The totality of aforesaid discussion leads me to conclude that the impugned orders are based upon no evidence as well as perverse and liable to be quashed. Hence, the order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 04.09.2018 and 30.07.2020 are quashed and set aside.
- (C) No order as to costs.

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

Mumbai
Date : 01.12.2021
Dictation taken by :
S.K. Wamanse.

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