IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.607 OF 2018

DISTRICT : SOLAPUR
Sub.:- Punishment

Shri Vinodsing Vijaysing Chavan.)
Age : 32 Yrs, Occu.: Police Constable,)
R/at : Plot No.15, Nikhil Thobade Nagar,)
Vasant Vihar, Solapur.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai.)

2. The Commissioner of Police.)
Solapur City, Gandhi Nagar,)
Solapur.)

3. The Deputy Commissioner of Police)
(HQ), Solapur City, Solapur.)

4. The Director General of Police.)
Shahid Bhagat Singh Marg,)
Colaba, Mumbai.)**...Respondents**

Shri K.R. Jagdale, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 14.06.2023

JUDGMENT

1. The Applicant has challenged the order dated 20.08.2014 issued by Respondent No.1 thereby modifying the order of dismissal from service into punishment of stoppage of increment for five years with cumulative effect and also challenged the order dated 06.07.2017 whereby he was granted 50% pay and allowances for out of service period restricting to preceding three years, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was appointed on the post of Police Constable by order dated 04.05.2019 and as per practice, he was deputy for training at Police Training Centre, Marol, Mumbai. The incident giving rise to the misconduct occurred during the period of training. On 30.08.2010 in the morning, the Applicant allegedly abused his batch-mate Police Constable Sachin Gaikwad in very filthy and provocative language. Police Constable Sachin Gaikwad got provoked and pick wooden log lying nearby and threw it upon the Applicant causing fracture to his left hand. The Applicant, however, did not inform about the incident with an intention to avoid disciplinary action. On the contrary, he misrepresented the Department that while running, he slipped and suffered injury to the left hand. The Department conducted preliminary enquiry by recording the statements of inmates of Training School in whose presence, incident occurred. In preliminary enquiry, it was transpired that Applicant abused Police Constable Sachin Gaikwad in very filthy and abusive language amounting to serious misconduct in training period. Therefore, Commissioner of Police, Solapur/disciplinary authority issued charge-sheet dated 16.10.2010 under Rule 3 of Maharashtra Police (Punishment and Appeal) Rules, 1956 (hereinafter referred to as 'Punishment & Appeal Rules of 1956' for brevity). In DE, full and fair opportunity to defend himself was given to the Applicant.

The Enquiry Officer in his report recorded positive finding holding the Applicant guilty for misconduct. The disciplinary authority issued show cause notice as to why he should not be dismissed from service to which Applicant submitted his reply. After considering reply submitted by the Applicant, the disciplinary authority by order dated 27.12.2010 dismissed the Applicant from service. Being aggrieved by it, the Applicant has preferred an appeal before Respondent No.4 – Director General of Police which was dismissed by order dated 15.07.2011. The Applicant filed Revision Application before Respondent No.1 – Government. In Revision, the Government by order dated 28.08.2014 observed that the punishment of dismissal is disproportionate and set aside the order of dismissal by modifying the punishment into withholding of increment for five years with cumulative effect. The Applicant accordingly came to be reinstated in service. In view of modification of punishment, the Government by order dated 06.07.2017 granted 50% pay and allowances for out of service period (27.12.2010 to 18.10.2014) restricting it to the three years in terms of Rule 70(4)(5) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity).

3. It is on the above background, the Applicant has challenged the order passed by Respondent No.1 – Government in Revision dated 28.08.2014 and also challenged the order dated 06.07.2017.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the legality of orders dated 28.08.2014 and 06.07.2017 mainly on the ground that in DE, Police Constable Sachin Gaikwad though star witness was not examined by the Department and his non-examination is fatal. He further pointed out that in regular enquiry, Enquiry Officer has not recorded the statements of witnesses afresh and used the statements of six witnesses already recorded in preliminary enquiry. He emphasized that the procedure adopted by the Enquiry Officer is totally

impermissible and thereby serious prejudice is caused to the Applicant. On this line of submission, he submits that impugned order of punishment of withholding increments for five years as well as restricting pay and allowances to 50% for five years is totally bad in law and Applicant is entitled to full pay and allowances for out of service period.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submits that non-examination of Police Constable Sachin Gaikwad is of no consequence, since the finding recorded by Enquiry Officer is supported by the statements of six witnesses who were present at the time of incident. The learned P.O. concedes that in regular departmental enquiry, the deposition of those six witnesses were not recorded afresh, but statement recorded in preliminary enquiry were used in enquiry and after giving opportunity of cross-examination to the Applicant. In this behalf, she has pointed out that all those six witnesses were called in regular DE, they admit their statement recorded in preliminary enquiry and opportunity of cross-examination was given to the Applicant, but he declined the cross-examination. She, therefore, submits that the question of prejudice did not survive.

6. Learned P.O. further submits that the scope of interference in judicial review by the Tribunal in enquiry matters is very limited. The Tribunal has to examine as to whether enquiry was conducted by competent authority and whether Rules of injustice are complied with. The Tribunal cannot act as an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. It is only a case where finding is perverse or it is a case of no evidence, in that event only, the Tribunal can interfere.

7. The charge framed against the Applicant in D.E. is as under :-

> "तुम्ही, नप्रपोशि/विनोदसिंग विजयसिंग चव्हाण ने.पोलीस मुख्यालय सोलापूर शहर पोलीस प्रशिक्षण विद्यालय, मरोळ, मुंबई येथे मूलभूत पोलीस प्रशिक्षण घेत असताना खालील प्रमाणे कसुरी केल्याचे सकृत दर्शनी दिसून येते.

दिनांक ३०/०८/२०१० रोजी सकाळी ९.२० ते ९.३५ वा. चे सुमारास तुम्ही तुमचे सहप्रशिक्षणार्थी नप्रपोशि/७२८ सचिन एकनाथ गायकवाड - भरती जिल्हा जळगाव यांचेशी प्रशिक्षण वर्गामध्ये हजर असणा-या सर्व प्रशिक्षणार्थींच्या समक्ष आपआपसात एकमेकांना शिवीगाळ केलीत. तुम्ही नप्रपोशि/७२८ सचिन एकनाथ गायकवाड यास ''xxxxxxxxx'' अशा अर्वाच्य व अश्लील शिव्या दिल्या. परिणामी नप्रपोशि/७२८ सचिन एकनाथ गायकवाड याने तुम्हास प्रशिक्षण वर्गामध्ये पडलेल्या लाकडी ठोकळा फेकून मारल्याने तुमच्या डाव्या हातात भार लागून डाव्या हाताचे हाड मोडले. सदर घटनेबाबत तुम्ही वरिष्ठांना कोणत्याही प्रकारे कल्पना न देता आपल्या विरुद्ध कारवाई होऊ नये या उद्देशाने वर्गात पळत येत असताना पाय घसरून पडल्यामुळे मार लागला असा जबाब दिलेला आहे. यावरून तुमचा बेशिस्त व जबाबदारपणा दिसून येतो.

तुमच्या या विशिष्ट व बेजबाबदार वर्तनामुळे तुम्ही, मुंबई पोलीस (शिक्षा व अपिले) नियम १९५६ मधील नियम ३ अन्वये कोणत्याही शिक्षेस पात्र ठरणार आहात."

8. Before adverting to the facts of the case, it will be apposite to highlight well settled judicial principles to be borne in mind while dealing with the punishment imposed post DE and the scope of interference by the Tribunal. In view of decision of Hon'ble Supreme Court in ***(2015) 2 SCC 610 [Union of India Vs. P. Gunasekaran], Civil Appeal No.5848/2021 [Union of India & Ors. Vs. Dalbir Singh]***, following principles are culled out and Tribunal in judicial review shall not :

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

9. Thus, the burden of proof in departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial, but probabilities of the misconduct. Therefore, strict standard of proof or applicability of the provisions of Evidence Act stands excluded. Suffice to say, the penalty in DE can be imposed on findings recorded on the basis of preponderance of probability. All that Tribunal needs to see as to whether full and fair opportunity has been given to the delinquent

observing the principles of natural justice and finding is based on some evidence.

10. Now turning to the facts of the case, the main contention raised by learned Advocate for the Applicant is of non-examination of Police Constable Sachin Gaikwad and use of statements of six witnesses recorded in preliminary enquiry without recording their statements afresh. In this behalf, notably, incident occurred on 30.08.2010 and preliminary enquiry was conducted wherein on next day i.e. on 31.08.2010. Preliminary Enquiry Officer recorded statements of six Police Constables viz. Anil M. Rathod, Ravindra Uike, Prashant J. Yadav, Navnath Khodke, Sandip Jambhale and Sharad J. Bawadekar who have witnessed the incident. The statements of these witnesses are at Page Nos.124 to 139 of Paper Book. These witnesses were also cited in charge-sheet issued to the Applicant. The perusal of these statements reveals that there was altercation in between Applicant and Police Constable Sachin Gaikwad wherein Applicant abused Sachin Gaikwad in a very filthy provocative and offensive language which provoked Sachin Gaikwad. He threw wooden log towards the Applicant causing fracture to his hand. The copies of the statements of these witnesses recorded in preliminary enquiry were admittedly supplied to the Applicant in DE. That apart, all those witnesses were called for recording their statements in regular DE. In regular DE, their statements recorded in preliminary enquiry were read over to them and they admit that those were recorded as per their version and admitted the contents to be true and correct. Notably, the opportunity of cross-examination was given to the Applicant, but pertinent to note, the Applicant declined to cross-examine any of the witness. Indeed, Applicant earlier tendered letter dated 08.11.2010 (Page No.89 of P.B.) to the Enquiry Officer which shows that he was called upon to remain present in enquiry on 12.11.2010. In letter, he stated that he do not want to cross-examine any of the witnesses and further stated that he has no objection even if their examination in chief is recorded in his absence. All that he stated that after examination is

over, he will examine one defence witness. Thereafter on 12.11.2010, all those six witnesses were called for recording their deposition and admits whatever they stated in their statements recorded in preliminary enquiry is correct and they have nothing to add more. The Applicant was called upon to cross-examination the witnesses, but he declined to cross-examine any of the witnesses. Page Nos.83 to 88 of P.B. are the proceedings to that effect. Thus, Applicant did not challenge the correctness of the statements made by the witnesses and declined to cross-examine them. As such, this is not a case where statements were used without giving opportunity to the Applicant to cross-examine the witnesses and to demonstrate that whatsoever they deposed is incorrect. Indeed, their statement remain unchallenged.

11. True, ideally in regular enquiry, the statement of witnesses need to be recorded afresh in terms of strict rules of Evidence Act. However, as stated above, strict rules of Evidence Act are not applicable to domestic enquiry. That apart, the witnesses were called during regular enquiry and they admit correctness of the statements made by them and opportunity of cross-examination has been also given to the Applicant.

12. In such situation, now Applicant cannot raise any such grievance of non-recording the statements of witnesses afresh in regular enquiry. Indeed, by application dated 08.11.2010, he allowed Enquiry Officer to record the statements of witnesses even in his absence stating that he does not want to cross-examine the witnesses. In such situation, the submission advanced by learned Advocate for the Applicant that non-recording of statements of witnesses afresh has caused prejudice to the Applicant is totally fallacious. The record clearly demonstrates that no prejudice has been caused to the Applicant by non-recording the statements of witnesses afresh in DE. In law, all that requirement is that no statement of witnesses could be used in DE unless opportunity of cross-examination is given to the delinquent. In the present case, opportunity of cross-examination has been given to the Applicant, but he

declined to cross-examination the witness and resultantly whatever witnesses stated has gone unchallenged.

13. Reliance placed by learned Advocate for the Applicant on ***AIR 1958 SC 300 [Khem Chand Vs. Union of India & Ors.]*** is totally misplaced. In that case, dismissal from service was set aside on the ground that before dismissal, reasonable opportunity of hearing was not given to the delinquent. In Para No.24, Hon'ble Supreme Court summarized necessary requirements which are as under :-

> "***24.*** *To summarise: the reasonable opportunity envisaged by the provision under consideration includes-*
>
> *(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;*
>
> *(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally*
>
> *(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant."*

Whereas in the present case as stated above, an opportunity to cross-examine the witnesses is already given to the Applicant, but he declined to cross-examine the witnesses. Therefore, the question of non-opportunity or any kind of prejudice does not survive.

14. Similarly, reliance placed by learned Advocate for the Applicant on the decision of Hon'ble Supreme Court in ***(2009 2 SCC 570 [Roop Singh Negi Vs. Punjab National Bank]*** is also of no assistance to him, since the facts are totally distinguishable. In that case, the evidence collected by Police during investigate of crime in the form of FIR was treated as evidence and on that basis, employee was dismissed. It is in that context, Hon'ble Supreme Court held that evidence collected during

investigation by Investigating Officer in Criminal Case could not be treated to be evidence in disciplinary proceedings. As such, it was a case of no evidence before Enquiry Officer and no witness was examined. Therefore, in fact situation, the order of dismissal was set aside.

15. Insofar as grievance of non-examination of Police Constable Santosh Gaikwad in enquiry is concerned, ideally he being star witness ought to have been examined, but not examined. However, here material question is whether the evidence brought on record was sufficient to hold the Applicant guilty and if the material brought on record was enough to sustain the charge, in that event, non-examination of Police Constable Santosh Gaikwad is of hardly any significance much less fatal to the Respondents. All that, the evidence of Police Constable Santosh Gaikwad would have been in the nature of corroboration to the evidence on record. Therefore, in my considered opinion, non-examination of Police Constable Santosh Gaikwad *ipso-facto* does not render punishment illegal.

16. Material to note, Police Constable Santosh Gaikwad was also subjected to enquiry for the said incident and punishment of recovery of one month pay was imposed upon him by order dated 21.12.2012. Indeed, Police Constable Santosh Gaikwad was provocated by the Applicant by hurling filthy and dirty abuses which is unbecoming to the public servant. It should not be forgotten that the incident occurred while Applicant was in training i.e. in formative stage of service. The abuses hurled by him as quoted in charge-sheet is *per s*e unbecoming to an employee in disciplined Police Force and amounts to serious misconduct. He failed to maintain decorum and dignity.

17. Notably, the Applicant in his final statement of defence filed on 13.12.2010 (Page No.35 of P.B.) though initially denied the charge, ultimately apologized for the misconduct and prayed to give opportunity

of service. In this behalf, Para Nos.8 and 9 of his final defence statement is material which is as under :-

> "८) मी आपल्या निदर्शनास आणून देतो की, सचिन गायकवाड याने प्राथमिक चौकशी मधील जबाबामध्ये मी त्याचे बहिणीबद्दल जे अश्लील उद्‌गार काढले ते नमूद केले आहे, त्याबद्दल एकाही सरकारी साक्षीदाराने त्यास दुजोरा दिलेला नसतानाही सदरचे उद्‌गार हे जसेच्या तसे दोषारोपात नमूद करून माझ्या कसुरीचे गांभीर्य वाढविण्याचा त्यामागे उद्देश असावा असे मला वाटते.वास्तविक सदरचे अश्लीले शब्द मी उच्चारले नव्हते. मात्र आम्ही दोघांनी एकमेकांना जी शिबीगाळ केली त्यामध्ये सामान्य माणसांच्या तोंडी असलेल्या व नेहमी वापरत असलेल्या ज्यांचा विधीनिषेध कोणीही बाळगत नाही अशा शिव्यांचा वापर आम्हा दोघांकडून ही झालेला होता हे मला मान्य आहे परंतु नप्रपोषी सचिन गायकवाड यांनी मला केलेल्या गंभीर दुखापतीमुळे त्यांचे विरुद्ध कठोर कारवाई होऊ नये म्हणून त्यांनी मी त्यास त्याचे बहिणी वरून अर्वाच्य भाषेत शिवीगाळ केल्याचे खोटे सांगितल्याची शक्यता नाकारता येत नाही.
>
> ९) निवेदनाच्या शेवटी मी आपल्या निदर्शनास आणून देतो की, नप्रपोशी सचिन गायकवाड यानेच आक्रमक (aggressive) होऊन मला गंभीर स्वरुपाची जखम केल्याने त्यांस सेवेतून काढून टाकण्यात आले असताना मला मात्र मी दुखावलेली व्यक्ती (aggrieved) असूनही बडतर्फीची कठोर शिक्षा देण्याचे प्रस्तावित केल्याने व सदरची शिक्षा कायम केल्यास मला त्यानंतर शासकीय तसेच खाजगी नोकरीही मिळणार नसल्याने माझे यापुढील सर्व आयुष्य उध्वस्त होणार असून माझ्या वयोवृद्ध आई-वडिलांचा आधारही नाहीसा होणार असल्याने त्या मानसिक धक्क्यातून ते बाहेर पडू शकणार नाहीत. मला वडिलोपार्जित शेती वगैरे काही नसल्याने आणि मला नोकरी शिवाय पर्याय नसल्याने मला जगणे अशक्य होणार आहे. तरी कृपया आपण या सर्व बाबींचा दयाळू अंतकरणाने विचार करून माझी पोलीस शिपाई पदावर नियुक्त होण्यासाठी मी प्रयत्नाची पराकाष्टा करून यश मिळवले असल्याने आणि प्रशिक्षणाच्या सुरुवातीलाच माझ्याकडून झालेल्या कस्तुरीबद्दल मलाही पश्चाताप झाल्याने माझ्याविरुद्ध सौम्य कारवाई करून मला सुधारण्याची एक संधी द्यावी अशी कळकळीची विनंती मी आपणास या निवेदनाद्वारे करीत आहे.''

18. Initially, Applicant was dismissed from service. Appeal was also dismissed. But in revision, order of dismissal was set aside having found disproportionate and punishment of withholding the increments of 5 years with cumulative effect was imposed. This punishment imposed in revision cannot be said disproportionate to the proven misconduct.

19. Suffice to say, this is not a case where finding is perverse or based on no evidence so as to interfere in judicial review. There is no breach of principles of natural justice and full and fair opportunity was given to the Applicant at every stage of enquiry. Thus, having examined the matter on the touchstone of principles enunciated by Hon'ble Supreme Court in ***Gunasekaran's*** case and ***Dalbir Singh's*** case, I see no reason to interfere in the punishment. The order of punishment is totally indefeasible and challenge to the same is without any merit.

20. Insofar as order dated 06.07.2017 granting 50% pay and allowances for out of service period restricting to preceding 3 years is concerned, it is in consonance with Rule 70(4)(5) of 'Rules of 1981' which *inter-alia* empowers competent authority to determine quantum of pay

and allowances which has been restricted to three years preceding the date of reinstatement. In the present case, the Applicant was not fully exonerated in DE. Initially, he was dismissed from service, but in revision, punishment was modified imposing punishment of withholding of increment for five years with cumulative effect. As such, it being not a case of clear exoneration, he cannot claim full pay and allowances for out of service period. Even if dismissal is set aside, the finding holding him guilty was upheld in the revision. Suffice to say, the Applicant, therefore, cannot claim full pay and allowances. The competent authority rightly granted 50% pay and allowances for the out of service period restricting it to preceding three years as provided in Rules. Therefore, the challenge to the order dated 06.07.2017 holds no water. Hence, the following order.

O R D E R

The Original Application stands dismissed with no order as to costs.

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

Mumbai
Date : 14.06.2023
Dictation taken by :
S.K. Wamanse.
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