

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.728 OF 2019

DISTRICT : SATARA

Shri Sangram Atmaram Shewale.)
Age : 39 Yrs., Occu.: Service,)
R/at. Aakashwani Nagar, Malkapur,)
Karad, District : Satara – 415 539.)...**Applicant**

Versus

1. The Director General of Police.)
(M.S), Police Head Quarter, Shahid)
Bhagat Singh Marg, Colaba,)
Mumbai – 400 001.)
2. The Superintendent of Police.)
204, National Highway,)
Sangli-Miraj Road, Saraswati Nagar,)
Vishrambag, Dist.: Sangli – 416 416.)...**Respondents**

Mr. S.S. Dere, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 17.09.2019

JUDGMENT

1. In the present Original Application, the challenge is to the impugned suspension order dated 2nd July, 2019 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 follows:-

The Applicant was working as Police Inspector at Kothrud Police Station, Sangli. He was promoted in the cadre of Police Inspector by order dated 10.06.2019 issued by Respondent No.1 – Director General of Police. However, the Respondent No.2 – Superintendent of Police by order dated 02.07.2019 suspended the Applicant invoking Rule 3 of Maharashtra Police (Punishment and Appeal) Rules, 1956 (hereinafter referred to as ‘Rules of 1956’ for brevity) in contemplation of Departmental Enquiry (D.E.). The Applicant has challenged the suspension order contending that he is in the cadre of Police Inspector, the Respondent No.1 – Director General of Police being appointing authority is the only Competent Authority to suspend him and Respondent No.2 – Superintendent of Police has no jurisdiction or authority to suspend him. He further contends that there is no compliance of proviso to Rule 3 of ‘Rules of 1956’. With this pleading, the Applicant prayed to set aside the suspension order.

3. The Respondent No.2 resisted the application by filing Affidavit-in-reply *inter-alia* denying that he has no authority and jurisdiction to suspend the Applicant. The Respondent No.2 sought to contend that the preliminary enquiry was initiated by him by order dated 24.05.2019 and there were sufficient grounds to suspend him. The Respondents thus sought to justify the impugned suspension order.

4. Heard Shri S.S. Dere, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

5. Undisputedly, the Applicant was in the cadre of Police Inspector and his appointing authority is Respondent No.1 – Director General of Police. The perusal of suspension order dated 02.07.2019 further

makes it quite clear that the Respondent No.2 invoked Rule 3 of 'Rules of 1956'. There is specific reference that the Respondent No.2 passed the impugned order exercising power under Rule 3 of 'Rules of 1956' in suspension order itself. Therefore, It would be appropriate to reproduce Rule 3(1-A)(i) with proviso thereunder, which is as follows :

“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.”

6. It is thus quite clear that under Rule 3 of 'Rules of 1956', the appointing authority or any other authority to which it is subordinate or any other authority empowered by the State Government in this behalf can only pass the order of suspension. In the present matter, the Applicant being in the cadre of Police Inspector, his appointing authority is Respondent No.1 – Director General of Police and not Respondent No.2 – Superintendent of Police, who has passed the suspension order. The learned P.O. could not point out any Notification authorising Respondent No.2 to suspend the Police Personnel in the cadre of Police Inspector. Here, it would be material to note that the Home Department had issued Notification dated 12.01.2011 whereby powers are delegated to the authorities in the matter of suspension of Police Personnel. However, in this Notification, the Superintendent of Police (Wireless) is only empowered to exercise powers of suspension. The designation of Superintendent of Police at District level is conspicuous absent in this Notification. As

such, suffice to say that the said Notification dated 12.01.2011 does not empower Superintendent of Police to suspend the Applicant.

7. Apart, there is no compliance of proviso to Rule 3(1)(a) of 'Rules of 1956'. There is absolutely nothing on record to establish that any such report was forthwith submitted to the appointing authority explaining the circumstances in which the order of suspension was made. In reply, the Respondent No.2 all that stated that the proviso is complied. However, save and except bare word, no documentary evidence is produced to substantiate that any such report explaining the circumstances in which suspension order was passed is forwarded by the Respondent No.2 to the appointing authority i.e. Respondent No.1 – Director General of Police.

8. The perusal of the aforesaid provision makes it quite clear that where suspension order is passed by any other authority empowered by State Government (other than appointing authority) then in that event, it is mandatory on the part of such authority to forward the report forthwith to the appointing authority the circumstances in which the order of suspension was made. It is mandatory requirement and not mere formality. Needless to mention, when law requires to do a particular thing in particular manner only then such requirement has to be followed in that manner, if the provision is mandatory. In the present case, the word is used "shall" and not "may". As such, it is mandatory and not directory. Therefore, the compliance of proviso is *sine-qua-non* for sustainability of the suspension order in the eye of law. In the present case, it being not done so, there is no escape from the conclusion that the suspension order on this count i.e. for non-compliance of proviso to Rule 3(1-A)(i) of 'Rules 1956' is not sustainable in law. I, therefore, find merits in the submission advanced by the learned Advocate for the Applicant.

9. Ms. N.G. Gohad, learned Presenting Officer made feeble attempt that the Superintendent of Police is empowered to suspend the Applicant by virtue of Section 25(2)(a) of Maharashtra Police Act, 1951 (hereinafter referred to as 'Act of 1951' for brevity), and therefore, the impugned order cannot be faulted with.

10. In the first place, material to note that in reply, there is no such pleadings / contention that the Respondent No.2 had invoked powers under 25(2)(a) of 'Act of 1951'. On the contrary, there is clear admission in reply that the impugned suspension order is passed invoking Rule 3 of 'Rules of 1956'. Besides, as stated earlier, there is absolutely no reference of exercise of powers under Section 25(2)(b) of 'Act Of 1951' in suspension order. This being the position, the submission advanced by the learned P.O. is misplaced.

11. Even assuming for a moment that the Respondent No.2 intended to exercise powers under Section 25(2)(a) of 'Act of 1951' on the ground that he had initiated preliminary enquiry against the Applicant by order dated 25.04.2019, in that event also, the impugned order is not sustainable, as it is punitive powers and the same can be exercised only for limited period or until the orders of Inspector General of Police is obtained.

12. Here, it would be appropriate to reproduce Section 25(2)(a) of 'Act of 1950', which is as follows :-

“25(2)(a) The Director General and Inspector General including Additional Director General, Special Inspector General, Commissioner 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.”

13. The suspension order has been passed on 02.07.2019 and till date, the period of near about ten weeks is over. However, there is nothing to show that any such order of suspension is obtained from the office of Director General of Police, as mandatorily required under Section 25(2)(a) of ‘Act of 1951’. The powers of Superintendent of Police regarding suspension of Police Officials upto the grade of Police Inspector is punitive power which can be exercised as a transitional measure for limited and temporary period and until an order of Director General of Police is obtained. However, in the present case, as stated above, indeed, there is absolutely nothing on record that any such record was even forwarded to the office of Director General of Police, let alone the order from the office of Director General of Police.

14. Ms. N.G. Gohad, learned P.O. sought to place reliance on the decision of Hon’ble Supreme Court in ***Civil Appeal No.10831/2010 and Civil Appeal No.10832/2010 in the matter of Special Inspector General of Police Vs. Ambadas H. Yadav*** decided on ***24th January, 2017*** in support of her contention. I have gone through the Judgment. In that case, two appeals were filed. In first appeal, the challenge was to the order of dismissal passed by Special Inspector General of Police and the second appeal was filed challenging the suspension order passed by Additional Commissioner of Police. As such, it was not a case arising from order of suspension passed by Superintendent of Police. The Hon’ble Supreme Court allowed the appeal in view of express provision of Section 25(2)(a) of ‘Act of 1951’ which empowers Special Inspector General of Police and Additional Commissioner of Police to impose punishment. However, in the present case, the issue pertains to the suspension order issued by Superintendent of Police. Besides, as stated above, it is quite clear from Section 25(2)(a) of ‘Act of 1951’ that the powers of

Superintendent of Police are of transitional nature and it has not attained the finality, as no orders from Director General of Police are obtained as per the mandatory provision in Section 25(2)(a) of 'Act of 1951'. Therefore, the submission advanced by the learned P.O. holds no water.

15. In view of above, I have no hesitation to sum-up that the impugned suspension order is not sustainable in law, as the same is passed by Respondent No.2 without jurisdiction or authority. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned suspension order dated 2nd July, 2019 is quashed and set aside.
- (C) The Respondents are directed to reinstate the Applicant in service on any suitable post having regard to fair trial of D.E. within two weeks from today with consequential service benefits, as permissible in law.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 17.09.2019
Dictation taken by :
S.K. Wamanse.