

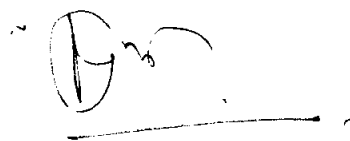
**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.746 OF 2016**

DISTRICT : MUMBAI

Shri Dhananjay Bhaskar Bagayatkar,)
Retired Senior Police Inspector,)
R/at A-601, Nirlep House, G.D. Ambekar Marg,)
Parel, Mumbai 400012)..Applicant

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai)
2. The Director General of Police,)
State of Maharashtra, Old Council Hall,)
Maharashtra State Police Headquarters,)
Shahid Bhagat Singh Marg, Colaba, Mumbai-1)
3. The Commissioner of Police,)
Crawford Market, Mumbai)
4. Shri Deven Bharti,)
Joint Commissioner of Police (Law & Order),)
Crawford Market, Mumbai)
5. Joint Commissioner of Police (Law & Order),)
Crawford Market, Mumbai)..Respondents



Shri R.G. Panchal – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Shri R.B. Malik, Vice-Chairman

DATE : 6th September, 2017

J U D G M E N T

1. This OA was brought by a retired Senior Police Inspector (Sr. PI) basically claiming three fold reliefs. He was placed under suspension for the period from 11.4.2013 to 17.6.2014 and the first relief sought was to treat this period as duty period and directions to the respondents to pay the difference in the matter of arrears of pay with interest. The second head of relief was for directions to the respondents to release retirement benefits including gratuity to the applicant along with penal interest. The third and the last relief was for payment of compensation for having caused loss to applicant's professional career for which reliance is placed on a few judgments of the Hon'ble Supreme Court. The first respondent is State of Maharashtra in Home Department, second respondent is the Director General of Police, third respondent is the Commissioner of Police, Mumbai, fourth respondent Shri Deven Bharti is the Joint Commissioner of Police (Law & Order), who has been impleaded by name and the 5th respondent is Joint Commissioner of Police (Law & Order).

2. I have perused the record and proceedings and heard Shri R.G. Panchal, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

3. Be it noted right at the outset that pending OA the first two reliefs came to be extended to the applicant and this OA now survives only in so



far as the claim for compensation is concerned. I shall keep myself restricted therefore to only that aspect of the matter. The record would show that the applicant came to be placed under suspension for the duration of time abovementioned by the order dated 1.7.2015. A very detailed statement of facts in that behalf is now not necessary. It would suffice to mention that some subordinates of the applicant were found indulging in corrupt activities. They were caught on camera. No such allegation was made against the applicant himself. He was however hauled up for not having been able to exercise control on them.

4. The applicant challenged the order of suspension by way of OA No.871 of 2013 and ultimately he came to be reinstated by an order of 17.6.2014 by the then Commissioner of Police. Meanwhile a Departmental Enquiry (DE) commenced against the applicant and the penalty of recovery of payment of amount equivalent to the amount on account of stoppage of increment came to be imposed. That order was made on 1.7.2015. That order came to be challenged by way of OA No.1025 of 2015 (Dhananjay Bhaskar Bagayatkar Vs. The State of Maharashtra & 4 Others). The second Division Bench of this Tribunal, speaking through me, by the order dated 31.3.2016 quashed and set aside that order for the reasons therein detailed making it clear that no further action was required to be taken against the applicant and the OA was allowed in those terms.

5. When it came to compliance with the above order it was substantially complied with only pending this OA. For that the documents are there dated 20.12.2016, another document is from the office of the Principal Accountant General. There is also a gratuity payment order and the office order of 13.10.2016. Therefore, as far as that aspect of the matter is concerned as already mentioned at the outset



the OA has worked itself out. It now survives only in so far as the issue of compensation is concerned.

6. Shri R.G. Panchal, learned Advocate for the Applicant bitterly assailed the respondent no.4 for having caused hardship to the applicant for which according to him the applicant is entitled to be compensated by award of exemplary amount to be paid by the said respondent personally. In support of this contention Shri R.G. Panchal, Ld. Advocate relied upon **Common Cause A Registered Society Vs. Union of India & Others, AIR 1997 SC 1886** and also on the judgment of the Hon'ble Supreme Court in **Dr. Ram Lakhan Singh Versus State Government of Uttar Pradesh, Writ Petition (Civil) No.933 of 2014 dated 17.11.2015**. He also relied upon judgment of the Armed Forces Tribunal, Regional Bench, Lucknow in **2nd Lt. Shatrughan Singh Chauhan Vs. Union of India & Anr. in Transferred Application No.31 of 2012 dated 19.1.2017**.

7. I have carefully perused all the judgments above referred to. I find that the contexts in which those judgments were referred were entirely different. In both the judgments of the Common Cause and another one being **AIR 1996 SC 3538** the issue arose on account of the allotment of petrol pump and in that context the liability of the then Minister Shri Satish Sharma arose for consideration. The AFT matter was in the context of Armed Forces Personnel. Dr. Ram Lakhan Singh was cited for the proposition with regard to the manner in which the public servants should conduct themselves. **Dahyabhai Jerambhai Bhagat Vs. State of Gujarat & Anr, Special Civil Application No.18216 of 2003 dated 9.9.2016**, Gujarat High Court laid down inter alia that public servant cannot avoid his responsibility by turning around and mentioning that the order may be set aside but he should not be personally held responsible. I can proceed on the basis therefore that the facts permitting the public servant cannot escape from personal liability. But the fact is that the



facts must permit such a finding. In this background therefore I may now turn to the affidavit in reply filed by the 4th respondent Shri Deven Bharti. There can be no doubt that once the facts were found by this Tribunal there was no real scope for respondent no.4 to again try and assert that the earlier action which was set aside by this Tribunal was still justified. In para 7 of the reply this is what he has pleaded:

“7. I say and submit that the Hon’ble Tribunal vide its order dated 31.3.2016 has interfered my choice of punishment and that does not mean that the Applicant is innocent and fully exonerated from all the charges leveled against him.”

(quoted from page 45 of the OA)

8. Further it is his case that apparently not satisfied with the determination of the facts at issue by this Tribunal he left no stone unturned to challenge that order but it is equally well established that the advisers were not so disposed as to challenge that order. Regardless of the ultimate outcome of this OA, I must record my disapproval about the tone and tenor of the affidavit of respondent no.4. The only way a judicial order can be challenged is too very well known to merit emphasis and it was not proper at all for him to go on harping on the truism of the earlier stand which was struck down by the Tribunal.

9. The fact however remains that the order in effect was complied with though may not be with the kind of dispatch that was expected of a senior officer like the Joint Commissioner of Police. Smt. K.S. Gaikwad, Ld. PO who tried her very best in the circumstances to salvage the case of the respondents and more particularly the respondent no.4 told me that the concerned party always has a right to challenge a particular order in accordance with law and that by itself can be no ground to assail him. Now as to this submission of the Ld. PO I find that there is no question



that there is a right residing in a party to challenge the order which he perceives to be not to his liking. However, one cannot run away from the fact that here the only way he could have done it was by way of the approval of the concerned authorities which was not forthcoming. There is an element of a plea in his affidavit that he did not bear any personal ill will or grudge against the applicant. If it was so and if the concerned authorities had advised against the said order of the Tribunal being challenge then to my way of thinking that was the end of the road as far as the 4th respondent was concerned. Further justifying it in the affidavit is not something that he should have done.

10. In view of the foregoing therefore I am of the opinion that some action is called for. However, a very heavy amount by way of compensation would also be counterproductive. After all the official work much as one would like does not move with the kind of speed that one would like it to be. The authorities are saddled with the responsibility to take hard decisions as well. This is not a matter of just one officer and one set of facts. Such orders can be cited as precedents and, therefore, I am not so disposed as to award by way of compensation a very heavy amount because that would be as I said counterproductive. In my opinion, the award of cost which even if amounts to a slap on the wrist, would be sufficient. The authorities cited by Shri R.G. Panchal, Id. Advocate, as already mentioned above, were in the set of entirely different circumstances.

11. It is recorded that the respondents have complied with the requirement of prayer clause (a) and (b) and this Tribunal has taken note of the same. That would not be disturbed. This OA is now finally disposed off with the direction to respondent no.4 to deposit in the office of this Tribunal an amount of Rs.5,000/- (Rupees five thousand only) by



way of cost within a period of four weeks from today. Upon compliance the said amount be paid over to the applicant within a period of further four weeks from that date on a proper identification. No further order as to costs.

Sd/-

(R.B. Malik)
Vice-Chairman
6.9.2017

6.9.17

Dictation taken by: S.G. Jawalkar.

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