IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.773 OF 2012

DISTRICT : SOLAPUR

Chanbasayya Sangayya Sangamath,)
Aged adult, Occ.Nil [Ex-Police Constable],)
Buckle No.78, R/O. 1/2, Sadar Bazar,)
Opposite Police Line, Solapur.)
Address for Service of Notice :)
Shri B.A. Bandiwadekar, Advocate, having)
Office at 9, "Ramkripa", Dilip Gupte Marg,)
Mahim (West), Mumbai 400 016.)**...Applicants**

Versus

1. The Commissioner of Police,)
   Solapur City having office)
   at Solapur.)

2. The State of Maharashtra,)
   Through Additional Chief)
   Secretary, Home Department,)
   Having Office at Mantralaya,)
   Mumbai – 400 032.) **...Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicants.

Shri K.B. Bhise, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)

R.B. MALIK (MEMBER-JUDICIAL)

DATE : 06.01.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is made by a dismissed Constable calling into question the order made by the disciplinary authority being the Commissioner of Police, Solapur on 7/8.9.2011 which pending OA came to be confirmed in appeal by the State of Maharashtra in Home Department on 11.8.2015.

2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer (PO) for the Respondents.

3. The Applicant was attached to Police Headquarter, Solapur City during 3rd May, 2010 and 4th May, 2010 when the alleged incident that ultimately was to snow ball into this matter took place. Doctor Swamy, who it would appear is a Medical Doctor was allegedly called up by the Applicant in an inebriated condition pretending to be P.I. Jarag. It was allegedly mentioned by the Applicant that in as much as the said Doctor (complainant hereinafter) was not rendering medical treatment to

Shiwanand Swamy, his clinic would be forcibly closed. Ultimately, it would appear that the Applicant was sent for medical examination and he was found to have consumed liquor. In fact, on those two days, he had not reported for duty. The said complainant reported the matter to the concerned authorities. In due course of time, charge-sheet came to be issued to the Applicant and the charge in fact needs to be fully reproduced in Marathi.

''तुम्ही पोशि/७८ चनबसय्या संगय्या संगमठ ने. पोलीस मुख्यालय सोलापूर शहर येथे कर्तव्यावर असताना खालीलप्रमाणे कसुरी केल्याचे सकृतदर्शनी दिसून येते.

तुम्ही दि.०३/०५/१० व दि.०४/०५/१० रोजी कर्तव्यावर अनाधिकृतपणे गैरहजर होता. तुम्ही दिनांक ०४/०५/१० रोजी कर्तव्यावर अनाधिकृतपणे गैरहजर असताना, आपण पोलीस आहोत या संज्ञेचा फायदा घेऊन डॉ. स्वामी यांना मोबाईल फोदव्दारे दारू पिऊन पोनि जरग यांचे नांव वापरून शिवानंद स्वामी यास एचआयव्हीची ट्रिटमेंट का देत नाही, तुझा दवाखाना बंद पाडतो अशी धमकी दिली. सदरबाबत डॉ. स्वामी यांनी वपोनि विजापूर नाका पो. ठाणे यांना दिलेल्या तक्रारी अर्जाच्या चौकशीसाठी तुम्हाला विजापूर नाका पो. ठाणे येथे बोलाविले असता, तुम्ही मद्यार्काचे सेवन करून आला होता. सदरचे वर्तन हे अत्यंत गंभीर स्वरूपाचे आहे. तुमच्या सदरील कृत्यामुळे पोलीस खात्याच्या शिस्तीत बाधा पोहचली असून जनमानसांमध्ये पोलीस खात्याची प्रतिमा मलिन झाली आहे.

तुम्ही धारण करीत असलेल्या जबाबदार पदाचे अनुषंगाने तुमचे वर्तन हे बेशिस्त व बेजबाबदारपणाचे असून त्यामुळे तुम्ही मुंबई पोलीस (शिक्षा व अपिले) नियम १९५६ मधील नियम ३ अन्वये शिक्षेस पात्र ठरणार आहात.''

(हिम्मतराव देशभ्रतार)
पोलीस आयुक्त सोलापूर शहर.''

4. Pertinently, read in any manner that even the Respondents would have it read, all that, the charge mentioned was that the Applicant called up the complainant in an inebriated state in the name of P.I. Jarag and threatened him that he was not treating one Shiwanand Swamy of HIV. He was called to the Police Station and he was found to be under the influence of liquor. That was a conduct unbecoming of the disciplinary uniformed service and it had lowered the image of the Police establishment.

5. Very pertinently and quite significantly, there was not even a remote mention of the fact of Applicant's past record of 36 infractions and punishments, etc. Had that been there, then obviously, the Applicant would have got an opportunity to explain his side of the picture. In that sense, that would have been a crucial incriminating factor and no finding adverse to the Applicant could have been based on those aspects of the matter, which were not the subject matter of the charge. We must repeat that this is a significant aspect of the matter and truism of this observation shall become clearer and more explicit as the discussion progresses.

6. The Senior Police Inspector, Solapur was appointed as Enquiring Officer (E.O). His report was submitted which held the Applicant guilty of the charge leveled against the Applicant. The EO analyzed the charge into three broad aspects. The first was the unauthorized absence which let it be mentioned here itself was mentioned only as a statement of fact and not as an accusation in the charge-sheet. The second was about the telephone call made to the Applicant in an inebriated condition and the third one that when the Applicant was called, he was under the influence of drink. Eight witnesses were examined. In fact, it would appear that a few of them did not appear to have given the statements. Whatever is traditionally in procedural law is called examination in chief was already recorded and only the cross examination was allowed before the EO. In Para 8 of the report of the EO in Clause Marathi (क), it was apparently held relying on the medical evidence that although alcohol was found in the blood of the Applicant, its quantity was negligible, and therefore, he was not under the influence of liquor. The conclusions (शिफारस) of the EO needs to be reproduced in Marathi.

" **शिफारस:-** कसूरदार हे दि.०३/०५/२०१० आणि दि.०४/०५/२०१० या दोन्ही दिवशी कर्तव्यावर अनाधिकृतपणे गैरहजर होते व त्या काळात त्यांनी दि. ०४/०५/२०१० रोजी त्यांचा मोबाईल क्रमांक ९७६५६४५६०६ यावरून डॉ. श्री

स्वामी यांचा मो.क्रमांक ९८२२४३३८८५ यावर दुरध्वनी केल्याचे मोबाईल कंपनीकडील रेकॉर्डवरुन शाबीत झाले आहे. परंतु अर्जदार यांनी अर्जात नमुद केलेली भाषा अगर धमकी दिली होती अगर नाही याबाबत मोबाईल कंपीनकडे रेकॉर्डींग केलेले नसल्याने ते समजु शकले नाही, परंतु डॉ. स्वामी यांना कसुरदार यांनी वपोनि जरग यांचे नांव घेवून धमकी दिली असल्याची आमची खात्री पटलेली आहे. कसुरदार यांनी मदयार्क प्राशन केलेला होता या बाबी शाबीत झाल्या असल्याने कसुरदार पोशि/७८ संगमठ यांना योग्य ते शासन करण्यात यावे अशी आम्ही शिफारस करीत आहोत.''

7. It is very clear that the report of the EO was that it was not established that the conversation that the Applicant had with the complainant was threatening in nature because of the absence of evidence from mobile company, but the EO was convinced that the Applicant called up the complainant in the name of P.I. Jarag and that he was under the influence of drink and was therefore liable to be punished.

8. The disciplinary authority issued a show cause notice on 4.7.2011 asking the Applicant to show cause as to why he should not be dismissed from service (Exh. 'E', Page 46 of the paper book). Now, in unnumbered Para 5 in Marathi, the said notice mentioned *inter-alia* that the said authority had closely examined the documents and was convinced that the charge was proved indisputably and that he was in agreement with the conclusions of the EO

and so saying the proposed punishment was set out. Quite pertinently, there is not even a word with regard to the evaluation of the material which led the disciplinary authority to concur with the EO. If he agreed with the EO in its entirety, then it was significant that the EO had held the Applicant not guilty on certain aspects of the charge which has already been discussed earlier.

9. The Applicant responded to the show cause notice by a closely typed reply in English running into 14 pages.

10. The disciplinary authority then made the first of the 2 impugned orders (Exh. 'A', Page 25 of the P.B.). Some initial Paragraphs referred to the facts which have already been referred above. There is again no discussion with regard to the evidence in this particular DE and then 2 Paragraphs in fact sum-up the conclusions and the set of mind that resulted into those conclusions. They (in Marathi) need to be reproduced.

> ''कसूरदार पोशि/७८ संगमठ, यांनी त्यांना प्राप्त झालेल्या कारणे दाखा नोटीसीला दिनांक १६/०८/२०११ रोजी अभिवेदन सादर केले आहे, त्यांनी सादर केलेल्या अभिवेदनाचे सखोल व काळजीपूर्वक तपासणी केली. सदरचे अभिवेदन पूर्णपणे समाधानकारक नाही. अंतिम आदेश निर्गमित करण्यापूर्वी त्यांना पुन्हा संधी देण्याचे दृष्टीकोनातून समक्ष मुलाखतीस दिनांक ०३/०९/२०११ रोजी बोलविण्यात आले.

प्रत्यक्ष मुलाखतीच्या वेळेस त्यांनी माफ करण्याची विनंती केली आहे. कसूरदार यांचा सेवाभिलेख अत्यंत निकृष्ठ आहे. त्यात गैरहजर राहणे, दंड, वार्षिक वेतनवाढी रद्द होणे, एक वर्षासाठी मूळ वेतनावर ठेवणे इत्यादी शिक्षा अनेकदा झाल्या आहेत. अत्यंत खराब सेवाभिलेख असून त्यांची वृत्ती अत्यंत बेशिस्त वागण्यची व जणू काही शासकीय नोकरीशी आपले काही देणे घेणे नाही असे दर्शविणारी आहे.

सन २००७ मध्ये देखील मद्यप्राशन करून गोंधळ घातल्याने दोषारोप सिध्द झाल्याने तीन वर्षाकरीता मूळ वेतनावर ठेवले होते. एवढे असूनही त्यांचे कृतित मुळीच फरक पडलेला नाही. कसूरदार यांना एकंदरीत ३६ शिक्षा आहेत तरी फरक नाही म्हणजे सदरचा इसम सुधारण्याच्या पलिकडेचा आहे. कसूरदाराने कसूरी केल्याचे सिध्द झाले आहे. वैद्यकीय अधिका-याना धमकी देणे ही बाब गंभीर स्वरूपाची आहे. तसचे अनाधिकृत गैरहजर राहून दिलेली आहे. कसूरदार हे अनाधिकृत गैरहजर राहण्याच्या सवयीचे आहेत. वैद्यकीय प्रमाणपत्रामध्ये कसूरदार यांनी मद्यार्काचे सेवन केले होते असा उल्लेख आहे. कसूरदार यांनी विभागीय चौकशीमध्ये सर्व सवलती मिळाल्याचे शेवटच्या जबाबात लिहिले आहे त्यामुळे या स्तरावर कोणतेही मुद्दे उपस्थित करणे निरर्थक आहे. कसूरदार हा खोडसाळ दिसतो. कमी शिकलेला असल्याचा तर्क देतात. त्याना दिलेली नोटीस मराठीत होती तर त्यांनी सादर केलेले उत्तर पूर्णत: इंग्रजीत आहे. म्हणजे निरर्थक बहाणा ते याबाबतीत करतात. त्यांचा सेवाभिलेख निकृष्ठ असून त्यांना खात्यात ठेवणे योग्य नाही. कसूरदार यांनी केलेले वर्तन हे खात्यास काळीमा लावणारे असलेने त्यांना कारणे दाखवा नोटीसमध्ये प्रस्तावित केलेली शिक्षा कायम करण्याचा मी निर्णय घेतलेला आहे व तसा आदेश जारी करीत आहे.''

11. It is very clear that the disciplinary authority has drawn very heavily on the past conduct of the Applicant, 36 punishments, etc. and a "habit" of the Applicant to remain absent. Somewhat curiously exception is apparently taken to the show cause notice in Marathi being

responded in English, which according to the disciplinary authority was a pointless excuse.

12. As already mentioned above, when this OA was brought, the appeal was pending and it came to be decided when this OA was in fact Part Heard and it was decided against the Applicant. The OA was amended to incorporate the ground on which the appellate order was also assailed. It needs to be noted here that the Applicant adopted a defence which is almost always adopted by an accused of an offence in prohibition matter in the Courts that the detection of alcohol in the blood could also be on account of consumption of certain medicine like Benadryl in excess quantity. This fact has been also set out in the appellate order. In drawing the conclusions, it mentions something which is not clearly mentioned either by the EO or by the disciplinary authority and that was the so called fact of calls having been proved. It was specifically recorded that the EO held that the absence of call recording would go to sow that the nature of the conversation in the context of threat, etc. was not proved, but the calls *per-se* had been proved and then a reference was made to the order of the disciplinary authority about the past conduct of the Applicant.

13. It would be very clear from the above discussion that the disciplinary authority based himself in good measure on the subject matter which was not there in the charge at all. We are at a loss to appreciate as to what was so necessary for the disciplinary authority to get piqued or irritated by the language issue. We do not wish to mention anything more, but then this much must be said that such an approach from an extremely senior and respected Police authority leaves not a particularly good taste in the judicial mouth and at the same time, it gives a kind of index to the mind that accompanied the formulation of opinion of the disciplinary authority.

14. Now, at this stage, we may also mention that we are exercising jurisdiction of judicial review of administrative action and there are jurisdictional limitations. We do not exercise the appellate jurisdiction in which case, the appellate authority is clothed with all the powers that the authority below is invested with and there the appellate authority can do and undo whatever the authority below could do. Here, we have to remain concerned more with the process of reaching conclusion rather than the conclusion itself. If the conclusion is based on at least some incriminating evidence, then the judicial forum exercising the power of judicial review would

not just for the asking intervene much less interfere with the impugned orders. Just because another view on the same material is possible, the judicial forum will not substitute its own conclusions for the conclusions in the impugned order. The strict procedure as prescribed statutorily for the criminal trial or even the trial of Civil Suit will not apply, but again the procedure adopted by the authorities below should not be arbitrary and unjust. It is a matter of Central importance that the delinquent must receive a treatment wholly consistent with the principles of natural justice. The procedure should also be informed thereby. The standard of proof in a DE is not a proof beyond reasonable doubt, but it is preponderance of probability. Now, having said all that, it still must be found that the process reaching up to the conclusion against the delinquent was there and the impugned orders manifest the mind-set which is informed by justice and fully in consonance with the standard of a reasonable person. Therefore, it will not be sufficient for the Respondents to claim all by themselves that there was incriminating evidence. The Tribunal must find that it was incriminating and thereafter the sufficiency thereof is something that the Tribunal would not lightly interfere with when the authorities below have adopted a view which is reasonable on evidence such as it is. Therefore, it is

equally true that the orders impugned must answer these basic requirements. If, however, it appears that the findings on which the ultimate administrative punishment is handed out were such for which there was no charge at all and it took the delinquent by surprise and it would always take by surprise any objective minded third party or umpire like this Tribunal, then of course such an order could claim no immunity from intervention and even interference.

15. This OA, in our opinion, for the reasons already mentioned above, is one such instance where the impugned orders suffer from all the vices that they should not have been suffering from. It has already been observed above that the basis of the order of the disciplinary and appellate authorities ultimately turned out to be the past allegedly tainted record. The Applicant was never made aware that his past would haunt him without anything in black and white being handed over to him for him to respond. There cannot be any other illustration of an absolutely unsustainable order than this one.

16. Even in so far as the allegations against the Applicant are concerned, the EO has made it clear as to on what momentous aspects, he did not hold the Applicant

guilty. But yet the disciplinary authorities and the appellate authority have moved as if in a trance and did something which is untenable. No doubt, this Tribunal in the jurisdiction of judicial review of administrative action, does not scrutinize the evidence as does an appellate authority, but to err on the other extreme and take everything that is dished out and endorse it will surely amount to rank abdication of judicial duties. We need not closely read the statements of each and every witness examined by the EO, but as far as the complainant's statement is concerned, we may deal therewith within our jurisdiction above discussed. It appears quite clearly that he had even after the complaint made it clear on the same day that he had nothing to say against the Applicant (Question 3, Page 103). In answer to Question No.8, it was somewhat generally asked, if it appeared to him that the Applicant had consumed alcohol and his answer was in the affirmative. When he was asked as to what was the time when this happened, he mentioned that it was at 2.30 p.m. He admitted that if an excess quantity of a particular medicine was consumed alcohol could be detected in the blood of the person concerned. When he was questioned as to on what basis he said that the Applicant's behaviour was improper, his answer was that he was giving emphasis on words while talking. Now, the evidence also tends to

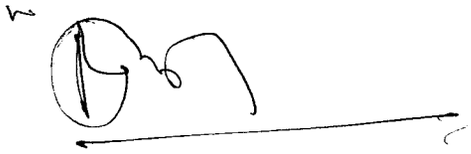
suggest that he was got medically examined after some delay. Therefore, taking a general view of the matter, we quite clearly find that even for the purpose of a DE, there was a better alternative conclusion possible of consumption of some medicine. But even if we were to presume that the Applicant had consumed alcohol, in the first place, we find that the charge will have to be understood in its proper perspective and context. We do not examine the matter regarding the language and import of the charge in the manner a Court of competent criminal jurisdiction does, but even then, again to err on the other extreme will be unacceptable. Therefore, the charge did not envelope within itself, the sole accusation of he having been found drunk while duty or while in Police Station because on those two days, he did not report for duty. Now, no doubt, it was mentioned that he was unauthorizedly absent on those days and may be for that he would be liable for a minor penalty, but then the charge was not simplicitor of consumption of alcohol. The charge will have to be read as a whole preferring substance to the form.

17. Now, in view of the foregoing, even within the confines of our jurisdiction, we are quite clearly of the view that the authorities below acted in the manner which was

highly unjust and not at all in keeping with the principles of natural justice, and therefore, their actions manifested by the orders impugned herein are totally susceptible to the interference of this Tribunal, howsoever circumscribed it might be.

18. Now, whatever may have been the state of the case of the Respondents, it is very clear that punishment handed out is totally disproportionate to whatever may have been there on record. In fact, we are very categorically of the view that at the most a slap on the wrist viz. censure, etc. would have been sufficient for the infraction of unauthorized absence and nothing more, but for some reasons which are obscure, the authorities ended up inflicting on the Applicant the maximum penalty on all count, therefore, the impugned orders are liable to be substantially modified. Shri Bandiwadekar, the learned Advocate referred us to our own judgment in **OA 1/2013 (Shri Saibaba Shivaji Jadhav Vs. The Commandant & 2 others, dated 20.4.2015)**.

19. Both the orders herein impugned are substantially modified. It is held that except for a very minor infraction as mentioned hereinabove, no accusation could be established against the Applicant. The order



imposing the punishment of dismissal from service is hereby quashed and set aside. The matter is remitted back to the disciplinary authority with a direction to consider the case of the Applicant only for a minor penalty like the one hereinabove indicated. The Applicant be reinstated in service with continuity of service and all service benefits, save and except, the back-wages till the period of reinstatement. The compliance be made within four weeks from today. The Original Application is accordingly substantially allowed with no order as to costs.

Sd/- Sd/-

(R.B. Malik) 06.01.16 **(Rajiv Agarwal)**
Member-J **Vice-Chairman**
06.01.2016 **06.01.2016**

Mumbai
Date : 06.01.2016
Dictation taken by :
S.K. Wamanse.
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