

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.78 OF 2023

DISTRICT : THANE
Sub.:- Cancellation of
Appointment/Dismissal of
Police Patil

Shri Bhau Lahu Shelar.)
Age : 42 Yrs, Occu.: Nil,)
Ex-Police Patil. R/o. A/P Pise,)
Tal.: Bhiwandi, District : Thane.)...**Applicant**

Versus

The Sub-Divisional Officer-cum-Sub)
Divisional Magistrate, Bhiwandi Division,)
District : Thane.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 25.04.2023

JUDGMENT

1. The Applicant has challenged the order dated 12.12.2022 issued by Respondent – Sub-Divisional Officer (SDO), Bhiwandi, District Thane whereby he dismissed the Applicant from the post of Police Patil, 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 as Police Patil of Village Pise by order dated 02.07.2008 initially for five years and his term was extended from time to time. One Vijay G. Patil lodged complaint with SDO stating that Applicant participated in election and thereby committed misconduct and breach of Rules to continue on the post of Police Patil. In turn, SDO directed Tahasildar, Bhiwandi to conduct enquiry and submit the report. Tahasildar, Bhiwandi accordingly submitted report on 30.09.2022 with the opinion that Applicant participated in election and requested SDO to take further appropriate action in accordance to law. On receipt of it, the SDO directly passed the impugned order dated 12.12.2022 thereby dismissing the Applicant from the post of Police Patil, which is challenged in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant made two-fold submissions to assail the impugned order. Firstly, Applicant did not participate in election process of Gram Panchayat and all that, he allegedly raised objection about the correctness of Voter List by his letter dated 03.12.2020 and it cannot be termed as participation in election process. Secondly, SDO was required to follow the procedure laid down in Maharashtra Police Act, 1967 read with Maharashtra Village Police Patil (Recruitment, Pay, Allowances and Other Conditions of Service, Order 1968 (hereinafter referred to as 'Order of 1968' for brevity) which *inter-alia* provides for such punishment, the SDO was in obligation to conduct regular departmental enquiry (DE) on the line of Rules 8 and 9 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity) and in absence of any such required procedure in law, the order of dismissal from the post of Police Patil on the basis of report of Tahasildar is totally bad in law and liable to be quashed.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer made feeble attempt to contend that in view of report of Tahasildar, Bhiwandi, the SDO passed order dismissing the Applicant. However, he fairly

concedes that no such regular enquiry, as contemplated under 'Order of 1968' has been followed.

5. In view of submissions, the issue posed for consideration is whether order of dismissal from service from the post of Police Patil is in consonance with law and the answer is in emphatic negative.

6. The appointment, duties as well as procedure for imposing penalties to Police Patil is governed by Maharashtra Police Act, 1967. Section 9 of Maharashtra Police Act, 1967 provides for the penalties for misconduct committed by Police Patil which is as under :-

"9. Any Police-patil or member of a village establishment liable to be called on or for the performance of Police duties, who shall be careless, or negligent in the discharge of his duties or guilty of any misconduct shall be liable to the following penalties, namely :—

(a) censure ;

(b) recovery from his remuneration of the whole or part of any pecuniary loss caused to Government ;

(c) fine, not exceeding his remuneration for a month ;

(d) suspension, for a period not exceeding one year ;

(e) removal from service, which shall not disqualify from future employment under Government ;

(f) dismissal from service which shall ordinarily disqualify from future employment under Government.

Any of the penalties, mentioned in clauses (a) to (d) may be imposed by any Executive Magistrate not below the rank of Taluka Magistrate, and the penalties mentioned in clauses (e) and (f) may be imposed by any Executive Magistrate not below the rank of Sub-Divisional Magistrate who is competent to make the appointment of the Police-patil."

7. Whereas Rule 9A of 'Order of 1968' provides for procedure to be observed for imposing penalties which is as under:-

"9A - Procedure to be observed for imposing penalties:

(1) No penalty shall be imposed on a Police Patil under clause (a) or (f) of Section 9 of the Act, unless the procedure prescribed in rule 55 or

the Civil Services (Classification, Control and Appeal) Rules is followed.

- (2) No penalty shall be imposed on a Police Patil under any other clause of the said Section 9, unless the procedure prescribed in rule 55A of the said rules is followed.”*

8. Notably, ‘Order of 1968’ has been later amended by Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions Services) (Amendment) Order, 1985 and in Clause 9A of ‘Order of 1968’ following amendments are done :-

“1. This order may be called the Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) (Amendment) Order, 1985.

2. In clause 9A of the Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968 :

(a) In sub-clause (1), for the words, figures and brackets “rule 55 of the Civil Services (Classification, Control ad Appeal) Rules”, the words, figures and brackets “rules 8 and 9 of the Maharashtra Civil Services (Discipline & Appeal) Rules 1979 shall be substituted.

(b) In sub-clause (2), for the words, figures and letter “rule 55A of the said rules”, the words, figures and brackets “rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 shall be substituted.”

9. Thus in effect for imposing penalties, the procedure contemplated in Rule 8 and 9 of ‘D & A Rules of 1979’ is required to be observed scrupulously. Rule 8 and 9 of ‘D & A Rules of 1979’ provides for issuance of detailed charge-sheet with articles of charges, appointment of Enquiry Officer and recording of evidence of witnesses with opportunity of cross examination and to examine defence witnesses etc. Suffice to say, for imposing penalty, regular DE as contemplated under ‘D & A Rules of 1979’ is mandated.

10. However, in the present case, the SDO instead of conducting DE as contemplated in law directed Tahasildar to make enquiry and submitted report, which is not in accordance to law. The SDO was required to adopt and follow the procedure as mandatory in law in terms of ‘Order of

1968'. He was required to issue charge-sheet and then to take further steps in terms of Rules 8 and 9 of 'D & A Rules of 1979' in which there is in-built provision for filing written statement, record of evidence, cross-examination, examination of defence witness, so that delinquent is given full opportunity to defend him. However, all these provisions are trampled upon by the SDO. The procedure adopted by him cannot be equated with the procedure contemplated under Rules 8 and 9 of 'D & A Rules of 1979'.

11. Indeed, raising of objection by Applicant on the Voter List itself cannot be treated as a participation in election. All that, Applicant by his objection dated 03.12.2020 seems to have lodged objection on the Voter List published for the Gram Panchayat Election. It is difficult to accept that raising of objection on the Voter List amounts to participation in election process and breach of duties in terms of conditions of service for the post of Police Patil. Even assuming for the sake of argument that raising of objection by letter dated 03.12.2020 amounts to breach of service conditions and thereby Applicant has committed mistake, in that event also, the impugned order of dismissal from service is totally bad in law, since the procedure as required under law i.e. 'Order of 1968' is not complied with.

12. The totality of aforesaid discussion leads me to sum-up that the impugned order dated 12.12.2022 is totally bad in law and liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned order dated 12.12.2022 is quashed and set aside.

- (C) Applicant be reinstated in the post of Police Patil within a month with liberty to Respondents to take appropriate steps for initiation of DE in accordance to law.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 25.04.2023

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2023\April, 2023\O.A.78.23.w.4.2023.Cancellation of Appointment.doc

Uploaded on