

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.785 OF 2019

DISTRICT : MUMBAI

Shri Gopichand K. Sanap.)
Age : 59 Yrs., Retired Assistant)
Sub-Inspector of Police, residing at)
Room No.27/11, Worli Police Camp,)
Sir Pochkhanwala Road, Worli,)
Mumbai – 400 030.)...**Applicant**

Versus

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

Mr. M.D. Lonkar, Advocate for Applicant.

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

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 06.07.2021

JUDGMENT

1. Being aggrieved by the order passed by Government dated 26th June, 2019 thereby rejecting the claim of the Applicant for pay and allowances for the period from the date of compulsory retirement till the

date of reinstatement in service without pay and allowances, the Applicant has filed the present O.A.

2. The Applicant was serving as Assistant Sub Inspector, Armed Police, Worli. He was serving with Charge-sheet for various charges, which are in vernacular as under :-

“दोषारोप

तुम्ही स.पो.उ.नि.क्र.९५५९/गोपीचंद काशिनाथ सानप, सशस्त्र पोलीस वरळी, मुंबई तुम्ही खालील प्रमाणे कसुरी केलीत.

१. तुम्ही दि.०७.१०.२०१८ रोजी दुपारी अचानकपणे वरिष्ठ पोलीस निरीक्षक, सशस्त्र पोलीस वरळी, मुंबई यांच्या दालनात ते महत्त्वाच्या कामात व्यस्त असताना त्यांची कोणत्याही प्रकारची पूर्वपरवानगी न घेता प्रवेश केला व अत्यंत आक्षेपाहर्ष बेशिस्त व उर्मटपणाचे वर्तन केले आहे.

२. तुम्ही दिनांक ०६.१०.२०१० रोजी कोणत्याही वरिष्ठांना न विचारता दिवसपाळी करिता राखीव ठेवण्यात आलेल्या २५ महिला पोलीस अंमलदारांपैकी ०४ महिला पोलीस अंमलदारांना तुम्ही कोणताही अधिकार नसताना कर्तव्यावरून घरी जाण्यास सोडून दिले. याबाबत स्पष्टीकरण सादर करण्यासाठी तुम्हाला ज्ञापन दिले असता त्याचे उत्तर तुम्ही अद्यापपर्यंत सादर केलेले नाही. यावरून तुम्ही, वरिष्ठांच्या कायदेशीर आदेशाचे उल्लंघन केले असून यामधून तुमचा वरिष्ठांबाबतचा अनादर दिसून येतो. तुमची आतापर्यंतची प्रदीर्घ सेवा विचारात घेता तुमचे सदरचे वर्तन हे अत्यंत आक्षेपाहर्ष असल्याचे स्पष्ट होते.

३. तुम्ही दिनांक ७.१०.२०१० रोजी सशस्त्र पोलीस वरळी, मुंबई येथील रात्रपाळी कायदा व सुव्यवस्था राखीव असलेल्या २२ महिला पोलीस अंमलदारांना साप्ताहिक सुट्टी मिळत नाही व त्याबाबत न्याय मिळवून देतो असे त्यांना भासवून त्यांच्याकडून तुम्ही स्वतः अर्ज लिहून घेतले व सदर २२ अर्ज तुम्ही स्वतः वपोनि श्री. गावीत यांच्या समक्ष आणून देऊन संबंधित महिला पोलीस अंमलदारांना न्याय देण्याबाबत मागणी केली. सदर वेळी तुम्ही अत्यंत आक्षेपाहर्ष व अयोग्य असे वर्तन केले तसेच २२ महिला अंमलदारांचे स्वयंघोषित पुढारी असल्याचे त्यांना भासवून तुम्ही त्यांना चुकीचे मार्गदर्शन केले. अशाप्रकारे सहकर्मचा-यांमध्ये वरिष्ठांबाबत असंतोषाचे वातावरण निर्माण करण्याचा व मुख्यालयाची शिस्त बिघडवण्याचा तुम्ही प्रयत्न केला असल्याचे स्पष्ट होते.

४. तुम्ही स्वतःच्या मर्जीने कायदेशीर कर्तव्य टाळण्याच्या एकमेव उद्देशाने दि.१२.१०.२०१० रोजी पासून विनापरवाना कर्तव्यावर हजर आहात. याबाबत विचारणा केली असता, तुम्ही अपंग असल्याचे नमूद करून शासन निर्णयानुसार तुम्हाला कार्यालयीन कामकाज दिल्यास तुम्ही कर्तव्यावर हजर व्हाल असा प्राथमिक चौकशीत लेखी जबाब दिला आहे. तुमचा प्रदीर्घ सेवाकाळ विचारात घेता तुम्हाला पूर्णतः जाणीव आहे की, तुम्ही सरकारी नोकर असून तुमच्या अटीवर शासन कारभार होत नसून तो सरकारी नियम व अटीवर आधारित होत असतो. त्यादृष्टीने तुम्ही तुमचे अपंगत्व तपासण्यासाठी जाण्याचे स्पष्टपणे नाकारून आजमितीस तुम्ही वैद्यकीय तपासणीसाठी गेलेला नाहीत. तुमचे सदर वर्तन हे शिस्तीचा भंग करणारे आहे. यावरून तुम्ही वरिष्ठांच्या आदेशाचे व सरकारी नियमांची अवहेलना करीत असल्याचे स्पष्ट होत आहे.

५. सदर गैरहजेरीतून कर्तव्यावर हजर होण्यासाठी तुम्हाला उद्यापर्यंत ३ ज्ञापने देण्यात आली असून सदरपैकी ०२ ज्ञापन तुमच्या कुटुंबीयांनी तर, ०१ ज्ञापन तुम्ही स्वतः स्वीकारले आहे. मात्र सदर ज्ञापनाचे गांभीर्य लक्षात न घेता तुम्ही अद्यापि कर्तव्यावर गैरहजर आहात. सदर ज्ञापने तुम्हाला मिळाल्याबाबत तुम्ही प्राथमिक चौकशीत मान्यही केलेले आहे. यावरून तुमची कर्तव्याबाबतची अनास्था व बेपर्वाई स्पष्ट होते.

६. तुमची १) पो.प.क्र.२९९/भाग-३, दिनांक २०.१०.२०१० आणि २) पो.प.क्र.३८९/भाग-३, दिनांक २४.२.२०११ अन्वये सशस्त्र पोलीस ते चुनाभट्टी पोलीस ठाणे अशी बदली दर्शविण्यात आली आहे. सदर बदलीच्या ठिकाणी हजर होण्यासाठी तुम्हाला दिनांक २७.०२.२०११ रोजी स्थित कार्यमुक्त करण्यात आलेले असूनही बदलीच्या ठिकाणी तुम्ही अद्यापपर्यंत हजर झालेला नाहीत. यावरून तुम्हाला वरिष्ठांच्या आदेशाचा, शासकीय नियमांचा कोणताही आदर नाही.”

3. After completion of departmental enquiry (DE), the Respondent No.2 – Commissioner of Police, Mumbai by order dated 09.10.2012 imposed punishment of compulsory retirement under Section 25 of Maharashtra Police Act, 1951. Being aggrieved by it, the Applicant has filed appeal before the Government. In appeal, the Government by its order dated 04.01.2018 confirmed the finding of holding the Applicant guilty for the charges leveled against him. However, considering 30 years' past service of the Applicant, the Government modified the order of compulsory retirement and passed the order of strict warning. By the said order, it was directed that period from the date of compulsory retirement till reinstatement being out of service period will not be considered for pay and allowances except for pension purposes. Against the said order, the Applicant has made representation *inter-alia* contending that the appellate authority had taken 6 years' period for decision of appeal and he ought to have been granted pay and allowances for the period for which he was out of duty. However, the Government by its order dated 26th June, 2019 rejected the representation confirming its earlier order denying pay and allowances to the Applicant for out of service period.

4. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the correctness of the order passed by the Government denying pay and allowances for out of service period *inter-alia* contending that Government had taken unreasonable time of 6 years for deciding appeal and had appeal being decided earlier, the Applicant would have been reinstated much earlier so as to get the benefit of pay and allowances. He further submits that before passing of any such order of rejection of pay and allowances for out of service period, an opportunity of hearing ought to have been given and there being no such opportunity of hearing, there is breach of principles of natural justice.

5. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer sought to support the impugned order contending that the Appellate Authority

had already taken lenient view by setting aside the order of compulsory retirement and refusal of pay and allowances for out of service period is legal on the principle of 'no work no pay'.

6. While deciding appeal, the Government observed as under :-

“निष्कर्ष :

सदर प्रकरणी वादी यांची बाजू ऐकून घेण्यात आली तसेच वादी यांनी सादर केलेली व इतर उपलब्ध कागदपत्रे तपासण्यात आली. त्यावरून असे दिसून येते की वादी यांनी स्वतःच्या अधिकारात राखीव महिला कर्मचा-यांना सोडले, महिला कर्मचा-यांच्या गैरसोयीबद्दल तक्रार अर्ज लिहून देणे हे काम त्यांनी मुख्यालयाच्या जवळ राहात असल्याने तसेच देखरेख अधिकारी असल्याने केल्याचे त्यांनी त्यांच्या खुलाश्यात नमूद केले आहे. कोणतीही पूर्वसूचना न देता, पूर्वपरवानगी न घेता रजा मंजूर न करता स्वाधिकारात गैरहजर असणे ही बाब पोलिस दलासारख्या शिस्तप्रिय खात्यास न शोभणारी बदनामीकारक आहे, ही कसुरी नाकारता येण्यासारखी नाही. वादी यांचेविरुद्ध विभागीय चौकशीमध्ये ठेवलेले दोषारोप सिध्द झालेले आहेत तथापि वादी यांनी त्यांच्या गैरहजेरीबद्दल कळविलेले कारण विचारात घेता, अपिलार्थीला दिलेली ‘सक्तीने सेवानिवृत्त’ ही शिक्षा त्यांची ३० वर्षे झालेली सेवा पाहता ही शिक्षा मानवीय दृष्टीने कठोर असल्याचे माझे मत आहे. शासनाचे टप्प्याटप्प्याने शिक्षा देण्याचे धोरण विचारात घेता विषयांकित अपील अर्जाप्रकरणी मी खालीलप्रमाणे निर्णय देत आहे.”

7. Indisputably, after the order passed by Appellate Authority, the Applicant was reinstated on 31.03.2019 on attaining the age of superannuation. Furthermore, indisputably, the order passed by Government as regard confirming finding holding the Applicant guilty for the charges leveled against him had attained finality. As such, the issue for consideration is whether the order passed by the Government rejecting pay and allowances for out of service period is legal and valid.

8. It is the Appellate Authority which while considering appeal preferred by the Applicant has set aside the order of compulsory retirement and modified it into lesser punishment of strict warning. While doing so, the Appellate Authority declined to grant pay and allowances to the Applicant for the period from the date of compulsory till reinstatement i.e. out of service period.

9. Though the learned Advocate for the Applicant raised the issue of principles of natural justice on the point of refusal of pay and allowances for out of service period, he could not point out any such express provision of law or rule which stipulates for issuance of prior notice to the Applicant before passing the order to that effect.

10. As stated above, indeed, the Appellate Authority while considering appeal itself has passed the said order, and therefore, the question of issuance of prior notice to the Applicant did not survive. The Appellate Authority was empowered to pass any such order as it deems fit in law. Since Applicant was out of service from the date of compulsory retirement i.e. from 09.10.2012 to 21.03.2018, the pay and allowances for the said period was declined. Since Applicant was not on duty, he was not entitled to pay and allowances for out of service period on the principle of 'no work no pay'.

11. True, the Appellate Authority has taken 6 years' period for deciding appeal. However, that delay *ipso-facto* would not confer any right in favour of the Applicant to claim pay and allowances for the period in which he was not on duty on the principle of 'no work no pay'. Apart, this is not a case where finding holding the Applicant guilty for the charges has been set aside so as to hold the order of compulsory retirement bad in law. As stated above, the Appellate Authority has confirmed the finding recorded by Disciplinary Authority holding the Applicant guilty, but taking lenient view modified the order of compulsory retirement and ordered for his reinstatement.

12. No hard and fast rule can be laid down in regard to grant of back-wages and each case has to be determined on its own facts and grant of back-wages is not automatic. This is not a case where the Applicant was unlawfully prevented from discharging his duties, so as to claim back-wages for out of service period. He was compulsorily retired in view of positive finding against him for serious misconduct in D.E. The said finding has been confirmed by Appellate Authority. As such, grant of all consequential benefits with back-wages cannot be as a matter of course. If the Applicant held guilty for serious misconduct and compulsorily retired and the finding is confirmed by Appellate Authority, then grant of back-wages for out of service period would amount to giving benefit to the Applicant for his own wrong, which is totally impermissible in law.

Even where a Government servant is reinstated in service after acquittal in Criminal Case the acquittal itself would not be ipso-facto enable the Government servant to claim back-wages. In this behalf, reference be made to **2004 (1) SCC 121 (Union of India Vs. Jaipal Singh)**. In that matter, the Government servant was tried for the offence under Section 302 read with 34 of I.P.C. and convicted by Sessions Court. However, in appeal, he was acquitted as a consequence thereof came to be reinstated in service with full back-wages. The order of reinstatement and full pay and allowances was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court quashed the order of full back-wages with the finding that State cannot be made liable to pay back-wages for which State could not avail the services of a Government servant.

13. In this view of the matter, in my considered opinion, the Applicant is not entitled to pay and allowances for the period on which he was not on duty.

14. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned order dated 26th June, 2019 holds no water and O.A. deserves to be dismissed. Hence, the following order.

ORDER

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

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

Mumbai
Date : 06.07.2021
Dictation taken by :
S.K. Wamanse.

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