**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.803 OF 2018

DISTRICT : MUMBAI

Shri Ravindra Krishna Javkar.)
Age : 63 Yrs, Occu.: Retired Sr. PI)
R/at New Dindoshi Sankalp Siddhi CHS)
Building No.28/E, Flat No.501,)
Near Mantri Park, Goregaon (E),)
Mumbai – 400 065.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)

2. The Director General of Police.)
State of Maharashtra, having office)
at Old Council Hall, Shahid Bhagat)
Singh Marg, Colaba, Mumbai – 1.)

3. The Commissioner of Police.)
CP Office, Crawford Market, Mumbai)

4. The Addl. Commissioner of Police.)
Eastern Region, having his office at)
Chembur, Mumbai.)...**Respondents**

Mr. R.G. Panchal, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 14.10.2021

JUDGMENT

1. The Applicant has challenged the order dated 22.02.2017 imposing the punishment of deduction of Rs.1000/- pension p.m. for one year and the order of appellate authority dated 03.08.2018 whereby order of punishment has been upheld, invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

While Applicant was serving as Senior Police Inspector at Vikhroli Police Station, he was served with Charge-sheet dated 16.04.2013 attributing certain negligence while functioning as Incharge of Vikhroli Police Station. The charges were, first while Applicant was serving as Senior Police Inspector during his tenure, no effective prohibitive steps were taken against the accused involved in property offences; secondly, there were failure to arrest absconding accused and thirdly, out of 246 offences registered, only in 130 offences, offenders were detected and out of it, in 103 offences only, the Charge-sheets were filed in the Court of law. Thus, the Applicant allegedly failed to perform as Incharge Senior Police Inspector of Police Station and there was also lack of proper guidance by him to his subordinates. The Applicant thereby allegedly neglected his duties, and therefore, action under Rule 3 of Maharashtra Police (Punishment and Appeal) Rules, 1956 (hereinafter referred to as 'Rules of 1956' for brevity) was initiated for imposing punishment. The Applicant submitted his reply denying all the charges by submitting his detailed reply point to point before Enquiry Officer. However, Enquiry Officer by his report dated 16.07.2013 held the Applicant guilty for the charges levelled against him. On receipt of report, the disciplinary authority issued Show Cause Notice to which Applicant submitted reply denying the charges specifically contending that the charges framed against him does not constitute any kind of misconduct or negligence much less punishable under the provisions of 'Rules of 1956'. However,

the disciplinary authority by order dated 22.02.2017 turned down the defence and accepted the enquiry report and imposed punishment of deduction of Rs.1000/- p.m. from his pension for one year since in the meantime i.e. on 30.04.2014, the Applicant stands retired. Being aggrieved by it, the Applicant filed appeal before the Government which came to be dismissed by order dated 03.08.2018. The Applicant has challenged both these orders in the present O.A.

3. To begin with, let us see the charges levelled against the Applicant which are as under :-

> "तुम्ही, वरिष्ठ पोलीस निरीक्षक रवींद्र कृष्णा जावकर (सध्या निलंबित) विक्रोळी पोलीस ठाणे येथे कार्यरत असताना खालील प्रमाणे कसुरी केली आहे.
>
> १) तुम्ही विक्रोळी पोलिस ठाण्याचे वरिष्ठ पोलिस निरीक्षक म्हणून कार्यरत असताना तुमच्या काळात पोलिस ठाणे अभिलेखा वरील मालमत्तेच्या गुन्ह्यातील आरोपी विरुद्ध प्रतिबंधक कारवाई परिणामकारक झाली नाही.
>
> २) तुम्ही विक्रोळी पोलिस ठाण्याचे वरिष्ठ पोलिस निरीक्षक म्हणून कार्यरत असताना तुमच्या काळात अभिलेखा वरील फरार आरोपींना अटक करण्याची कामगिरी परिणाम करत नाही.
>
> २) तुम्ही विक्रोळी पोलिस ठाण्याचे वरिष्ठ पोलिस निरीक्षक म्हणून कार्यरत असताना तुमच्या काळात पोलीस ठाणे येथे नोंदविलेल्या २४६ गुन्ह्यांपैकी केवळ १३० गुन्हे उघडकीस आणण्यात आले आहे. तसेच उघडकीस आणलेल्या गुन्ह्यांपैकी केवळ १०३ गुन्ह्यांमध्ये मा. न्यायालयात दोषारोपपत्र दाखल करण्यात आलेले आहे. गुन्हे उघडकीस आणण्याच्या दृष्टीने तुम्ही तुमच्या अधिपत्याखालील पो.अधि./अंमलदार यांना मार्गदर्शन केले नाही. तसेच एकंदरीत पर्यवेक्षक अधिकारी या नात्याने कमी पडलात.
>
> वरील बाबी गंभीर स्वरूपाचे असून या तुमच्या बेशिस्त व बेजबाबदार वर्तनाबद्दल तुम्ही मुंबई पोलीस (शिक्षा व अपील) १९५६ अंतर्गत नियम ३ अन्वये कोणत्याही शिक्षेस पात्र आहात."

4. The Applicant submitted his detailed reply denying the charges levelled against him. In this behalf, what is stated in Para Nos.19, 20 and 21 is material, which are as under :-

> "**१९.** विभागीय चौकशी मध्ये माझेवर ठेवण्यात आलेला दोषारोप क्र.१ हा प्रतिबंधक कारवाई परिणामकारक झाली नाही अशा मुद्दयावर आहे. सदर मुद्दयासंबंधाने मी मा. विभागीय चौकशी अधिका-यांच मा. पोलिस आयुक्त, बृहन्मुंबई यांनी पोलिस आयुक्तालयातील पोलीस ठाण्यात कर्तव्य बजावणा-या वरिष्ठ पोलीस निरीक्षक आणि पोलिस निरीक्षक यांचे कर्तव्य वाटप केलेले आहे त्याकडे मी लक्ष वेधू इच्छितो. सदर स्थायी आदेशाप्रमाणे मालमत्तेचे गुन्हे दाखल करणे, तपासावर देखरेख करणे, अधिका-यांना मार्गदर्शन करणे हे कर्तव्य पोलीस निरीक्षक (गुन्हे) यांच्याकडे सोपविण्यात आलेले आहे आणि मालमत्तेच्या गुन्ह्यातील आरोपी वर प्रतिबंधक कारवाई करण्याचे कर्तव्य पोलीस निरीक्षक (कायदा व सुव्यवस्था) यांच्याकडे देण्यात आले असून त्यांना सहाय्यक पोलीस निरीक्षक दर्जाचा अधिकारी मदतनीस म्हणून देण्यात आलेला आहे. सदर आदेशाप्रमाणे दोषारोपात नमूद केलेली प्रत्येक कायद्याची जबाबदारी प्रामुख्याने दिनांक ११/९/२०११ ते २८/६/२०१२ पर्यंत विक्रोळी पोलिस ठाण्यात ठाण्यात कार्यरत असलेले पोलीस निरीक्षक (गुन्हे) व पोलीस निरीक्षक (का व सु) यांची होती. वरिष्ठ पोलिस निरीक्षक म्हणून माजी पोलिस ठाणेच्या सर्व कर्तव्यावर देखरेख करणे अशी जबाबदारी होती. ज्याअर्थी मालमत्तेच्या गुन्ह्यांमध्ये आरोपी अटक करणे व प्रतिबंधक कारवाई करणे ही मुख्य कर्तव्य पोलीस निरीक्षक (गुन्हे) व पोलीस निरीक्षक (का व सु) यांची होती त्याअर्थी सक्षम प्राधिका-यांनी माझ्याविरुद्ध प्राथमिक चौकशी आदेशित करण्यापूर्वी सदर अधिका-यांना किंवा मला ज्ञापन देऊन मी केलेल्या कारवाई बाबत किंवा मी परिणामकारक न केलेल्या कारवाईबाबत माझे स्पष्टीकरण घेणे ही बाब कायदेशीर आणि अत्यंत आवश्यक होती. परंतु मा. सक्षम प्राधिका-यांनी सदर नियमांकडे दुर्लक्ष करून केवळ प्राथमिक चौकशी आदेशित करण्याचा अधिकार महोदयांना दिला होता त्याचा उपयोग करून थेट माझ्याविरुद्ध

प्राथमिक चौकशी करण्याचे आदेश मला दिनांक २८/६/२०१२ रोजी निलंबित केल्यानंतर कार्यालयीन आदेश क्रमांक ३४५/पुप्रावि/कक्ष-३/प्रक्र९६४/१२, दिनांक २/८/२०१२अन्वये माझ्याबद्दल मनामध्ये कटुता ठेवून आदेशित केली होती. प्राथमिक चौकशी अधिका-यांनी सुद्धा स्थायी आदेश क्रमांक १५५ मधील नियम आणि तरतुदी विचारात घेऊन विक्रोळी पोलिस ठाण्याचे पोलीस निरीक्षक (गुन्हे) व पोलीस निरीक्षक (का व सु) यांना सक्षम पाचारण करून त्यांना नेमून दिलेल्या कर्तव्याबाबत त्यांनी काय कारवाई केली आणि केलेली कारवाई ही परिणामकारक होती किंवा नाही याबाबत त्यांचे जबाब नोंदविणे नियमबद्ध आणि आवश्यक होते. परंतु प्राथमिक चौकशी अधिका-यांनी सुद्धा त्यांचे जबाब नोंदवलेले नाहीत. गुन्हे उघडकीस आणणे व फरारी आरोपींचा शोध घेणे आणि प्रतिबंधक कारवाई प्रस्तावित करणे या कर्तव्यासाठी पोलिस ठाण्यात गुन्हे प्रकटीकरण अधिकारी, प्रतिबंधक कारवाई अधिकारी आणि गुन्हे प्रकटीकरण पथक, निगराणी पथक आणि फरारी आरोपी शोध पथक कार्यान्वित करण्यात आलेली होती त्यातील अधिकारी आणि अंमलदारांना पाचारण करून सदर कारवाईबाबत त्यांचे जबाब नोंदवणे आवश्यक होते. जर सदर अधिकारी आणि अंमलदाराचे जवाब नोंदवले गेले असते तर माझ्या मार्गदर्शनाखाली पोलिस निरीक्षक (गुन्हे) व पोलीस निरीक्षक (का व सु), गुन्हे प्रकटीकरण अधिकारी, प्रतिबंधक कारवाई अधिकारी, गुन्हे प्रकटीकरण पथकातील पथक प्रमुख, निगराणी पथकातील पथक प्रमुख व फरारी आरोपी अटक पथक प्रमुख यांनी माझ्या मार्गदर्शनाखाली सर्वतोपरी प्रयत्न करून समर्थपणे कारवाई केलेली आहे असे स्पष्ट सांगितले असते व त्यामुळे माझ्यावर ठेवण्यात आलेला कोणताही दोषारोप सक्षम प्राधिका-यांना ठेवण्यास कोणत्याही प्रकारे वाव मिळाला नसता. शिवाय सक्षम प्रतिका-यांनी सुद्धा सदरच्या बाबी विचारात न घेता केवळ मनामध्ये योजिल्याप्रमाणे माझे विरुद्ध कारवाई करण्यासाठी प्राथमिक चौकशी आणि विभागीय चौकशीचे सर्व नियम दुर्लक्षित करून माझ्याविरुद्ध विभागीय चौकशी आदेशित केलेली आहे असे मी नम्रपणे नमूद करीत आहे.

२०. दोषारोप क्र २ आणि ३ यामध्ये ठेवण्यात आलेले दोषारोपाबाबत मी असे सविनय सादर करतो की, सदर दोषारोपात नमूद केलेले मुद्दे हे सुद्धा पोलीस निरीक्षक (गुन्हे) आणि गुन्हा दाखल करून तपास करणारा प्रत्येक अधिकारी व गुन्हे प्रकटीकरण अधिकारी व पथकातील अंमलदार यांच्यावर कायदेशीरपणे सोपवण्यात आलेली होती. सदरचा मुद्दा विचारात घेता मी दोषारोप क्र १ ला जे अभिवेदन सादर केलेले आहे ते सर्व अभिवेदन दोषारोप क्र २ आणि ३ च्या संबंधाने सर्वतोपरी लागू आहे आणि ते दोषारोप क्र २ आणि ३ च्या अनुषंगाने महोदयांनी कृपा करून विचारात घ्यावे अशी माझी विनंती आहे.

२१. दोषारोप क्र १ आणि २ मध्ये असे जे नमूद करण्यात आलेले आहे की कामगिरी परिणामकारक केलेली नाही याबद्दल याबाबत मी असे निवेदन सादर करतो कि, मी केलेली कामगिरी परिणामकारक आहे किंवा नाही हे ठरवण्यासाठी मी विक्रोळी पोलिस ठाणेचा कार्यभार स्वीकारल्यापासून निलंबनाच्या दिनांकापर्यंत केलेली कारवाई ही माझ्या पूर्वीच्या वरिष्ठ पोलिस निरीक्षकाने किंवा माझा कार्यभार स्वीकारल्यानंतरच्या वरिष्ठ पोलीस निरीक्षकांनी त्या त्या मुद्द्यावर केलेल्या कारवाईची किमान सांख्यिकी माहिती अभिलेखावर घेऊन नंतर त्यांची तुलना करून मी केलेली कामगिरी पूर्वीच्या आणि नंतरच्या वरिष्ठ पोलीस निरीक्षकापेक्षा कमी आहे किंवा अधिक प्रमाणात आहे याचे काळजीपूर्वक मूल्यमापन करून मी केलेली कारवाई परिणामकारक आहे किंवा नाही याबद्दल दोषारोप ठेवण्याचा निर्णय घेणे ही बाब सक्षम प्राधिका-यांना अत्यंत आवश्यक आणि नियमबद्ध होती. परंतु तशी कोणतीही तुलनात्मक माहिती प्राप्त करून माझ्याविरुद्धचा पुरावा म्हणून विभागीय चौकशी आदेशित करण्यापूर्वी अगर प्राथमिक चौकशी मध्ये किंवा विभागीय चौकशी मध्ये कोणत्याही प्रकारे अभिलेखावर आलेली नाही. शिवाय सक्षम प्राधिका-यांनी मला वैयक्तिकपणे असे कोणतेही उद्दिष्ट नेमून दिले नव्हते की विशिष्ट कालावधी मध्ये मी कोणकोणत्या शीर्षकाखाली किती कारवाई करणे मला आवश्यक आहे किंवा मी तशी कोणतीही कारवाई केली नाही याबाबतही त्यांनी मला कधी लेखी ज्ञापन दिले नाही, माझा खुलासा मागवलेल्या नाही किंवा तसा कोणताही कागदोपत्री पुरावा प्राप्त करून घेतलेला नाही. यास्तव सदरचे दोषारोप हे सक्षम प्राधिका-यांनी आपल्या वैयक्तिक मतावरून ठेवलेले असून विभागीय चौकशीच्या नियमानुसार ते सर्वतोपरी पुरावाहीन आणि मोघम स्वरुपाचे आहेत आणि वर नमूद केलेला कोणताही दोषारोप माझेवर साक्षीदारांच्या पुराव्यावरून अगर कागदोपत्री पुराव्यावरून सिद्ध झालेला नाही."

5. In Charge-sheet, no witness was cited by the Department. Though the Applicant has denied the charges, no witness was examined in the departmental enquiry in support of the charges. Despite this position, the Enquiry Officer recorded the positive finding simply accepting the charges without stating anything further as to how the charges constitute negligence or misconduct particularly in light of reply filed by the Applicant adverted to above. The Enquiry Officer summarized his conclusion in following words :-

"**<u>निष्कर्ष</u>**

अपचारी रवींद्र कृष्णा जावकर, वरिष्ठ पोलीस निरीक्षक, विक्रोळी पोलिस ठाणे (सध्या निलंबित) यांचे विरुद्धच्या आम्ही घेतलेल्या विभागीय चौकशीत सक्षम प्राधिकरणाकडून कोणीही सरकारी साक्षीदार निर्देशित केलेले नव्हते. तसेच अपचारी यांचे

विरुद्ध घेण्यात आलेल्या प्राथमिक चौकशीत देखील कोणाही साक्षीदार यांचा जबाब नोंद करण्यात आलेला नव्हता. अपचारी यांचेविरुद्धची विभागीय चौकशी ही अपचारी रवींद्र जावकर हे दि.११/०९/११ ते २८/०६/१२ पर्यंतच्या कालावधीत वरिष्ठ पोलीस निरीक्षक म्हणून कार्यरत असताना पोलीस ठाणे अभिलेखावरील मालमत्तेच्या गुन्ह्यातील आरोपींविरुद्ध प्रतिबंधक कारवाई परिणामकारक झाली नाही.

२) अभिलेखावरील फरार आरोपींना अटक करण्याची कामगिरी परिणामकारक नाही.

३) विक्रोळी पोलीस ठाणे येथे नोंदविलेल्या २४६ गुन्ह्यांपैकी केवळ १३० गुन्हे उघडकीस आणण्यात आले आहेत. तसेच उघडकीस आणलेल्या गुन्ह्यांपैकी केवळ १३० गुन्ह्यांमध्ये मा. न्यायालयात दोषारोपपत्र दाखल करण्यात आलेले आहे. गुन्हे उघडकीस आणण्याच्या दृष्टीने अधिपत्याखालील पोलीस अधिकारी / अंमलदार यांना मार्गदर्शन केले नाही. तसेच एकंदरीत पर्यवेक्षक अधिकारी या नात्याने कमी पडले याबाबत वरिष्ठ पोलीस निरीक्षक विक्रोळी पोलीस ठाणे यांनी जा.क्र.४८६४/१३, दि.२८/०६/१३ अन्वये सादर केलेल्या अहवालावरुन स्पष्ट होत आहे.

अपचारी रवींद्र कृष्णा जावकर यांनी त्यांचेविरुद्ध घेण्यात आलेल्या विभागीय चौकशीच्या अनुषंगाने सादर केलेल्या बचावाचे निवेदनातील मुद्द्यांचा विचार करता अपचारी यांनी बचावाचे निवेदनातील परिच्छेद क्र.८ ते १६ नुसार त्यांना सोयीचे असलेल्या तांत्रिक बाबींचा आधार घेतला आहे.

परिच्छेद क्र.१९ मध्ये अपचारी यांनी स्वत:चे बचावाचे निवेदनात ''वरिष्ठ पोलीस निरीक्षक म्हणून माझी पोलीस ठाणेच्या सर्व कर्तव्यावर देखरेख करणे अशी जबाबदारी होती'' हे कबूल करीत आहेत. अपचारी यांनी वरिष्ठ पोलीस निरीक्षक म्हणून विक्रोळी पोलिस ठाणे येथे कार्यरत असताना स्वत:ची जबाबदारी ओळखून पोलीस ठाण्याच्या पोलिस निरीक्षक (गुन्हे), पोलीस निरीक्षक (का व सु), गुन्हे प्रकटीकरण पथकाचे अधिकारी व अंमलदार यांचे कामकाजावर परिणामकारक देखरेख केली असती तर त्यांचे कार्यालयातील कामगिरी ही अधिक उंचावली असती यावरून अपचारी रवींद्र जावकर् यांचे विरुद्ध विभागीय चौकशीत ठेवण्यात आलेले दोषारोप हे निर्विवाद सिद्ध होत आहे.

अपचारी रवींद्र जावकर, वरिष्ठ पोलीस निरीक्षक (सध्या निलंबित) यांचेविरुद्ध घेण्यात आलेल्या विभागीय चौकशीतील दोषारोपाबाबत केलेली चौकशी तसेच अपचारी यांनी विभागीय चौकशीत सादर केलेल्या बचावाचे निवेदनातील मुद्द्यानुसार वरिष्ठ पोलीस निरीक्षक म्हणून अपचारी यांची जबाबदारी असताना अपचारी हे विक्रोळी पोलिस ठाण्यात वरिष्ठ पोलीस निरीक्षक म्हणून कामकाज पाहत असताना पोलिस ठाण्याची कामगिरी परिणामकारक होईल, फरार आरोपी अटक करावयाचे कामगिरीवर देखरेख करण्यास, तसेच गुन्हे उघडकीस आणण्याच्या दृष्टीने पर्यवेक्षक अधिकारी म्हणून कमी पडले हे दोषारोप सिद्ध होत आहेत.

विभागीय चौकशी अधिकारी म्हणून आम्ही अपचारी रवींद्र कृष्णा जावकर, वरिष्ठ पोलीस निरीक्षक, विक्रोळी पोलिस ठाणे (सध्या निलंबित) यांचेवरील दोषारोप सिध्द होत असल्याने त्यांना शिक्षा देण्याची शिफारस करीत आहोत"

6. The disciplinary authority too did not consider the defence statement filed by the Applicant and observed that the reply filed by him is unsatisfactory. Since by that time, the Applicant stands retired, the disciplinary authority imposed punishment of deduction of pension of Rs.1000/- p.m. for one year invoking Rule 27 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity). The appellate authority also confirmed the punishment without dealing with the defence statement and the contention raised by the Applicant that the charges levelled against him does not constitute negligence or misconduct on his part.

7. It is on the above background, the Applicant has filed the present O.A. challenging the order of punishment.

8. Shri R.G. Panchal, learned Advocate for the Applicant sought to assail the orders of punishment *inter-alia* contending that the charges framed against the Applicant does not constitute misconduct for negligence and all that, it pertains to alleged inefficiency or failure to achieve 100% result while discharging duties. He has further pointed out that the Applicant was Senior Police Inspector and the actual work of detection of crime, investigation, etc. was dealt with by Police Inspector (Crime) and Police Inspector (Law & Order). It is those Officials who were entrusted with the actual investigation, detection of offender, filing of Charge-sheet, etc. His duty was to supervise their functioning as Senior Police Inspector, but basically those functions were entrusted to Police Inspector (Crime) and Police Inspector (Law & Order) as specifically explained in reply to the Charge-sheet but the same were not at all dealt with or pondered over by the disciplinary authority and by appellate authority. According to him, such charges at the most could be treated failure to achieve the high standard of efficiency in performance of duties and it could be subject matter of writing adverse entries in Annual Confidential Report, but it cannot be construed as omission to perform duties or commission of misconduct. He has further pointed out that conversely in the ACR for the year 2011-12 which was the period of alleged misconduct, the Applicant was rated as a very good Police Officer and there are no such adverse entries in ACR. He has further stressed that there are no such fixed parameters to achieve the results, since it depends upon so many factors and in absence of any such parameters, the Applicant cannot be held guilty for the charges levelled against him. In this behalf reliance is placed on the Judgment of Hon'ble Supreme Court in ***(1979) 2 SCC 286 [Union of India Vs. J. Ahmed & Ors.]***.

9. In the above mentioned case, the Hon'ble Supreme Court in Para 9 summarized law in this behalf held as under :-

> "***9.*** *The five charges listed above at a glance would convey the impression that the respondent was not a very efficient officer. Some negligence is being attributed to him and some lack of qualities expected of*

an officer of the rank of Deputy Commissioner are listed as charges. To wit, charge 2 refers to the quality of lack of leadership and charge 5 enumerates inaptitude, lack of foresight, lack of firmness and indecisiveness. These are qualities undoubtedly expected of a superior officer and they may be very relevant while considering whether a person should be promoted to the higher post or not or having been promoted, whether he should be retained in the higher post or not or they may be relevant for deciding the competence of the person to hold the post, but they cannot be elevated to the level of acts of omission or commission as contemplated by Rule 4 of the Discipline and Appeal Rules so as to incur penalty under Rule 3. Competence for the post, capability to hold the same, efficiency requisite for a post, ability to discharge function attached to the post, are things different from some act or omission of the holder of the post which may be styled as misconduct so as to incur the penalty under the rules. The words 'acts and omission' contemplated by Rule 4 of the Discipline and Appeal Rules have to be understood in the context of the All India Services (Conduct) Rules, 1954 ('Conduct Rules' for short). The Government has prescribed by Conduct Rules a code of conduct for the members of All India Services. Rule 3 is of a general nature which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty. Lack of integrity, if proved, would undoubtedly entail penalty. Failure to come up to the highest expectations of an officer holding a responsible post or lack of aptitude or qualities of leadership would not constitute failure to maintain devotion to duty. The expression 'devotion to duty' appears to have been used as something opposed to indifference to duty or easy-going or light-hearted approach to duty. If Rule 3 were the only rule in the Conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But Rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Allegations in the various charges do not specify any act or omission in derogation of or contrary to Conduct Rules save the general Rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character of personal ability would not constitute misconduct for the purpose of disciplinary proceedings."

10. Per contra, Shri A.J. Chougule, learned Presenting Officer adverting to Section 25 of Maharashtra Police Act submits that the Applicant failed to discharge his duties and was found negligent in performance, and therefore, it attracts penalty. On this line of submission, he submits that in fact, the Department has taken lenient view by imposing punishment of reduction of pension of Rs.1000/- p.m. for one year considering that he is already retired from service and the impugned orders are legal and valid.

11. True, the scope of interference by the Tribunal in the matter of domestic enquiry is very limited since the Tribunal cannot act as a second Court of appeal and adequacy as well as reliability of evidence cannot be looked into in judicial review. However, where *ex-facia* conclusion is so unreasonable or arbitrary that no reasonable person would ever arrive at such conclusion or where conclusion is perverse, the interference by the Tribunal is inevitable. The present matter needs to be examined keeping in mind these legal principles.

12. Section 25 of Maharashtra Police Act referred by learned P.O. is as under :-

> **"25. Punishment of the members of the subordinate ranks of the Police Force departmentally for neglect of duty, etc.**
>
> [(1) The State Government or any officer authorized under sub-section (2), in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who in the opinion of the State Government or such authorized officer, is cruel, perverse, remiss or negligent in, or unfit for, the discharge of his duties, any one or more of the following penalties, namely :-
>
> > (a) recovery from pay of the whole or part of any pecuniary loss caused to Government on account of the negligence or breach of orders on the part of such Inspector or any member of the subordinate rank of the Police Force;
> >
> > (b) Suspension;
> >
> > (c) reduction in rank, grade or pay, or removal from any office of distinction or withdrawal of any special emoluments;
> >
> > (d) compulsory retirement;

> (e) removal from service which does not disqualify for future employment in any departmental other than the Police Department;
>
> (f) dismissal which disqualifies for future employment in Government service."

13. To begin with perusal of Charge-sheet reveals that it is issued invoking Rule 3(1) of Maharashtra Police (Discipline & Appeal) Rules, 1956 (hereinafter referred to as 'Rules of 1956' for brevity) without mentioning as to under which provisions, the charges levelled against the Applicant constitute misconduct for initiating D.E. Be that as it may, Section 25(1) of Maharashtra Police Act provides for the punishment of members of subordinate rank of Police Force where in the opinion of competent authority, the concerned Police Personnel is cruel, perverse, remiss or negligent or unfit for discharge of his duties.

14. Now turning to the facts of the present case, what was the charge against the Applicant was his failure to supervise the work of Police Station as Senior Police Inspector. In reply to the Charge-sheet, the Applicant has categorically denied the charges raising specific contention that as per standing orders issued by Police Commissioner, the work of registration of crime, the investigation and guidance to that behalf is entrusted to Police Inspector (Crime). Whereas, the work of apprehending the accused in property offences and to take prohibitory action against them is entrusted to Police Inspector (Law & Order). He has thus specifically pointed out that these duties were assigned to Police Inspector (Crime) and Police Inspector (Law & Order). However, the Enquiry Officer or disciplinary authority completely ignored this contention raised by the Applicant. In view of such specific contention, it was incumbent on the part of Enquiry Officer as well as disciplinary authority to deal with these contentions. However, no such effort was made to find out who was actually entrusted with the investigation of crime and detection of offences for which charges are framed against the

Applicant in D.E. True, the Applicant was Senior Police Inspector and was to supervise the work of subordinates. But the fact remains that the actual work of investigation, detection, etc. was specifically entrusted to concerned P.I. (Crime) and P.I. (Law & Order). Interestingly, what is stated in Charge-sheet that the Applicant has failed to guide subordinates working under him and has not worked to the satisfaction. In other words, the charges were pertaining to efficiency or maintaining high standard or achieving 100% result which cannot be said constitute negligence or misconduct in the light of Judgment of Hon'ble Supreme Court in J. Ahmed's case (cited supra). In that case, the charges were regarding failure to take effective, preventive measures against widespread disturbances, complete lack of leadership, failure to give proper direction to subordinates and failure to control situation. The Hon'ble Supreme Court held that such charges relate to the efficiency of an Officer and lack of efficiency, failure to attempt high standard of ability while holding the post themselves would not constitute misconduct. It has been further observed that there may be negligence in performance of the duties and lacks in performance, but that would not constitute misconduct.

15. Furthermore, as rightly pointed out by the learned Advocate for the Applicant, no such parameters or criteria are fixed for detection of crime and in absence of any such fixed parameters, mere inefficiency or inability to guide the subordinates *per se* cannot constitute misconduct much less entailing departmental action and punishment. Notably, no such material was produced on record during the enquiry to compare the performance of the Applicant with the performance of other P.Is or Police Officer holding same position to show that the performance of the Applicant was much below or unsatisfactory as compared to his counterpart.

16. As such, the perusal of charges clearly reveals that it was regarding lack of efficiency or failure to attempt highest results which

could be subject matter of evaluating the performance of the Applicant while writing ACR. As rightly pointed out by the learned Advocate for the Applicant that in the relevant year, the Applicant's performance in ACR is rated 'Very Good' by Reporting Officer which was modified as 'B+' (Positively Good) by Reviewing Authority. In the column of Administrative Ability, Initiative Drive, he is shown 'Very Good'. As such, the charges levelled against the Applicant run counter to his ACR and it is difficult to accept that Applicant's performance was highly unsatisfactory or average, so as to sustain the charges leveled against him for imposing punishment.

17. Needless to mention that the detection of crime, availability and collection of evidence depends upon various factors and differ from case to case. Often, certain offences remain undetected for want of evidence. If the offence remains undetected for want of evidence or due to particular modus operandi of the offender, it is difficult to jump to the conclusion that the concerned Police Officer as guilty for negligence in performance of duties, so as to punish him in D.E. unless there is something positive, directly attributable to negligence. As such, lack of excellent qualities and failure to attempt 100% results and higher standard of performance *per se* would not constitute misconduct or negligence, so as to punish in departmental proceedings. The Enquiry Officer has simply accepted *ipse-dixit* of the charges without taking pain to see how it constitutes misconduct in the light of contentions raised by the Applicant. If the charges leveled against the Applicant is held misconduct, in that event, every Police Officer who failed to give 100% results will be guilty of misconduct and liable for punishment. I am afraid that such deficiency in performance would constitute misconduct for the purpose of punishment.

18. It is nowhere the case of Respondents that any point of time, any Show Cause Notice or Memo was issued to the Applicant pointing out

any such deficiencies in his performance or failure to detect crime registered in the Police Station.

19. The Enquiry Officer did not bother to call for the record to find out the reasons for non-detection of crime and non-filing of Charge-sheet in the Court of law. As stated above, the filing of Charge-sheet necessitates detection of crime, collection of evidence, etc. which was assigned to P.I. (Crime). There is nothing on record to indicate what was the nature of those offences which remained undetected and the reasons therefor. In absence of any such collection of evidence and fixed parameters for the performance of a Police Officer, in my considered opinion, he cannot be held guilty for negligence. There has to be some direct positive material clearly attributing negligence in the performance of duties. Mere failure to guide subordinates can hardly be said sufficient for punishment in D.E. At the most, it would be the relevant consideration for assessment of performance in general while taking entry of his performance in ACR. Suffice to say, the principles laid down by Hon'ble Supreme Court in ***J. Ahmed's*** case are squarely attracted and impugned order is bad in law.

20. The totality of aforesaid discussion leads me to sum-up that the impugned order holding the Applicant guilty of the charges levelled against him, the punishment is totally unsustainable in law and liable to be quashed. The O.A, therefore, deserves to be allowed. Hence, the following order.

O R D E R

(A) The Original Application is allowed.

(B) The impugned orders dated 22.02.2017 and 03.08.2018 are quashed and set aside.

(C) The amount, if any, recovered in pursuance of impugned orders from the pension of the Applicant be refunded within a month.

(D) No order as to costs.

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

Mumbai
Date : 14.10.2021
Dictation taken by :
S.K. Wamanse.
D:\SANJAY WAMANSE\JUDGMENTS\2021\October, 2021\O.A.803.18.w.10.2021.Penalty & Pension.doc

Uploaded on