

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.899 OF 2018

DISTRICT : SATARA

Shri Dilip Kashinath Pawar.)
Age : 58 Yrs., Occu.: Retired as ASI,)
R/o. Plot No.3, Disha, Shivnagar,)
Sambhaji Nagar, Satara – 415 003.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Superintendent of Police.)
76, Malhar Peth, Satara,)
District : Satara.)
3. The Special Inspector General of)
Police, Kolhapur Range, Kolhapur.)
4. The Director General of Police.)
Shahid Bhagatsinghi Marg,)
M.S. (Adm), Mumbai.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 14.01.2020

JUDGMENT

1. The Applicant has challenged the impugned order of punishment dated 07.03.2017 confirmed in appeal by order dated 29.09.2017 whereby punishment of reduction to the rank of Police Head Constable for one year was imposed and also challenged the impugned order dated 10.07.2018 whereby the suspension period from 28.03.2014 to 29.02.2016 was treated as 'suspension period for all purposes'.

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

The Applicant was posted as Assistant Sub-Inspector (ASI) at Police Station Medha, District Satara. One incident of accident had taken place on 05.01.2014 at Medha. While one Ajit Pawar was taking his dumper No.MH-11-AL-3194 in reverse, it dashed Stationary Tempo No.MH-02-XA-1350 owned by Suryakant Umbarkar and caused damage to it. Suryakant Umbarker, therefore, lodged report in Medha Police Station and thereon, offence under Section 279 of IPC and 184 of Motor Vehicle Act was registered against Ajit Pawar. The investigation was entrusted to the Applicant. The Applicant seized dumper of Ajit Pawar. It is alleged that on 18.03.2014, the Applicant had demanded bribe of Rs.5,000/- to Ajit Pawar to release dumper. Ajit Pawar, therefore, lodged complaint with Anti-Corruption Bureau (ACB) and thereupon, a trap was laid. The Applicant was allegedly apprehended while accepting bribe of Rs.5,000/- by ACB. In sequel, an offence vide Crime No.3/2014 under Section 7, 13(1)(d) read with 13(b) of Prevention of Corruption Act was registered against the Applicant. After completion of investigation, a Special Case No.13/2014 was filed before the Special Court, Satara.

3. On the above background, the Applicant was initially suspended on 25.03.2014 in view of registration of offence against him under the provisions of Prevention of Corruption Act. The Departmental Enquiry (DE) was also initiated simultaneously by issuance of charge-sheet on 24.05.2015. The Applicant submitted his statement of defence denying

all charges. The Enquiry Officer was appointed to conduct the enquiry. In the meanwhile, the suspension of the Applicant was revoked and he was reinstated in service by order dated 26.02.2016.

4. In D.E, the following charges were framed against the Applicant.

१) तुम्ही मेढा पोलीस ठाणेस कार्यरत असताना मेढा पोस्टे भाग ६ गुरनं २/२०१४ भादविस कलम २७९, मो वा का कलम १८४ प्रमाणे दाखल गुन्ह्याचा तपास विहित वेळेत नियमाप्रमाणे पुर्ण करून कायदेशीर कारवाई केली नाही.

२) तुम्ही तक्रारदार यांना आपआधिकारात पदाचा दुरुउपयोग करून वारंवार बोलावून घेवून चौकशी करित होता याबाबत प्रभारी अधिकारी यांना अथवा वरीष्ठांना काही कळविले नाही अथवा त्याबाबतची लेखी नोंद घेतली नाही. तपासाबाबतचा अहवाल वरीष्ठांना सादर केला नाही.

३) तुम्ही तक्रारदार यांचे विरुद्ध केले तापासाचे अनुशंगाने कोणतीही कायदेशी अथवा प्रतिबंधक कारवाई न करता तक्रारदार यांचेशीवाईट हेतुने संपर्क साधून आपले पदाचा दुरुपयोग करून अशोभनीय वर्तन केले आहे.

४) तुम्ही तक्रारदार यांचेशी स्वतःची आर्थिक लाभाकरीता भ्रष्ट मार्गाचा अवलंब केलेने पोलीस दलाची जनमानसातील प्रतिमा मलीन होणेस कारणीभूत झालेला आहात.

अशाप्रकारे तुम्ही सदर गुन्ह्याचे तपासकामी आपआधिकारात पदाचा दुरुपयोग करून स्वःताचे आर्थिक फायदयासाठी चौकशी करित होता असे चौकशीत निष्पन्न झालेले आहे. तुम्ही तुमचे कर्तव्यातील बेशीस्त बेजबाबदारपणा व विमार्गगामी कृत्यामुळे तुम्ही मुंबई पोलीस (शिक्षा व अपिल) नियम १९५६ मधील नियम ३ मधील नमुद कोणत्याही शिक्षेस पात्र आहात.”

5. The Enquiry Officer Shri P.D. Sawant during enquiry recorded the statements of six Police witnesses and on completion of enquiry exonerated the Applicant from Charge Nos.1 to 3. However, he held the Applicant guilty for Charge No.4 and submitted Enquiry Report to the Disciplinary Authority i.e. Superintendent of Police, Satara. On receipt of Enquiry Report, the Respondent No.2 issued Show Cause Notice to the Applicant on 22.12.2016 as to why he should not be dismissed from service in view of guilty for Charge No.4. The Applicant accordingly submitted his explanation and replied to Show Cause Notice. However, the Respondent No.2 accepted the report of Enquiry Officer holding the Applicant guilty for Charge No.4 and imposed punishment of reduction in rank to the post of Police Hawaldar for one year by order dated 07.13.2017. The Applicant had preferred an appeal before Special Inspector General of Police, Kolhapur Range which was dismissed on 29.09.2017. Being aggrieved by it, the Applicant had filed revision under Section 27-A of Maharashtra Police Act before Director General of Police, State of Maharashtra which came to be dismissed on 05.06.2018.

6. In the meantime, the accused has been acquitted from the charges levelled against him under the provisions of Prevention of Corruption Act in Special Case No.13/2014 on 08.01.2018. After acquittal, the Applicant had filed an application before Respondent No.2 to treat his suspension period as 'Duty Period'. However, it came to be rejected treating the period from 28.03.2014 to 29.02.2016 as 'suspension period for all purposes' on the ground that he is already subjected to punishment of reduction in rank for one year in DE.

7. On the above background, the Applicant has filed the present O.A. challenging the order of imposition of punishment as well as the order of treating suspension period from 28.03.2014 to 29.02.2016 as 'suspension period for all purposes'.

8. Shri R.M. Kolge, learned Advocate for the Applicant assailed the impugned order of imposition of punishment contending that the Applicant was held guilty for Charge No.4 without any iota of evidence in departmental proceedings, and therefore, the impugned orders are unsustainable in law and it is more so, in view of acquittal of the Applicant in Criminal Case. He thus submits that the Applicant was held guilty for the charge of corrupt practice from which he is ultimately acquitted by competent Court of law, and therefore, the punishment is totally erroneous and unsustainable in law. He had also invited Tribunal's attention to the deposition of witnesses to drive home his point that none of the witness had deposed about the alleged acceptance of bribe by the Applicant. As regard period of suspension, he submits that the Applicant is entitled to pay and allowances and the said period is required to be treated as 'duty period' in view of clear acquittal in Criminal Case and for absence of incriminating evidence to sustain the Charge No.4 of DE.

9. Per contra, the learned P.O. made feeble attempt to justify the impugned orders. In this behalf, she referred some statements made by witness Awate and witness Nikam before Enquiry Officer. She

particularly referred to Question No.17 and answer from the evidence of Shri Awate and from the evidence of witness Nikam, which are as under:-

From evidence of Shri Awate :

“प्रश्न :- दि.१७.१२.२०१४ रोजीच्या प्राथमिक चौकशीच्या जबाबामध्ये तुम्ही सफौ पवार यांनी पोलीस खात्याची प्रतिमा मलिन आहे काय ? तसेच त्यांच्या पदाचा त्यांनी दुरुपयोग केला आहे का ? याबाबत होय केला आहे असे आपण म्हटले आहे.

उत्तर :- मी भुईंज पोलीस स्टेशन नेमणुकीचे सफौ इंगवले यांनी मला दि.१७.१२.२०१४ रोजी जसे सांगितले तसाच मी जबाब लिहलेला आहे. आज दि.०४.११.२०१५ रोजी दिलेला जबाब हा खरा आहे.

From evidence of Shri Nikam :

प्रश्न :- सफौ पवार यांनी कोणत्या कारणास्तव पोलीस खात्याची प्रतिमा मलिन केली आहे ?

उत्तर :- सफौ पवार यांनी हे शासकीय नोकर आहेत हे त्यांना माहित असताना देखील त्यांनी मागणी केली आहे.

प्रश्न :- सफौ पवार यांनी कशाची मागणी केली ?

उत्तर :- सफौ पवार यांनी पैशांची मागणी केली आहे.

प्रश्न :- सफौ पवार यांनी पैशांची मागणी कोणत्या कारणासाठी केली ?

उत्तर :- अपघातातील वाहन सोडण्यासाठी.

10. The statement referred to above from the evidence of Shri Awate and Shri Nikam cannot be read in isolation or out of context as admittedly, these two witnesses are not eye-witnesses of the demand of bribe. All that, they are deposing on the basis of complaint lodged by Ajit Pawar alleging demand of money by the Applicant to release dumper. This being the position, whatever statement they made, it is based on registration of crime registered against the Applicant under the provisions of Prevention of Corruption Act. In other words, they have no primary knowledge of the alleged incident of demand of bribe nor they were present at the time of alleged demand of money. Therefore, the statement referred by the learned P.O. from their evidence can hardly be accepted as evidence to prove Charge No.4 for which the Applicant is held guilty in DE.

11. Indeed, the Police Constable Awate is examined on the point of recording of Spot Panchanama of the accident case. The statement made by him in cross-examination are material, which are as follows :-

“प्रश्न :- सफ़ौ पवार यांनी तुमच्यामते पोलीस खात्याची प्रतिमा मलिन केली आहे काय ?
उत्तर :- त्याबद्दल मला काही सांगता येत नाही.

प्रश्न :- सफ़ौ पवार यांनी त्यांचे पदाचा दुरुपयोग केला आहे काय ?
उत्तर :- याबद्दल मला काही सांगता येत नाही.’’

As such, in view of the statement made in cross-examination, the evidence of this witness is hardly of any assistance to sustain Charge No.4.

12. In so far as evidence of witness Nikam is concerned, in cross-examination, he fairly admits that there was no demand of money by the Applicant to the complainant in his presence. He again made clear in cross-examination that he came to know about the alleged demand of money after registration of crime against the Applicant. Suffice to say, the statement referred to by the learned P.O. is hardly of any use to prove Charge No.4.

13. Apart in D.E, witness viz. Suryakant Umbarkar (whose tempo was damaged in accident), Abhijeet Bera who repaired tempo of Umbarkar, Suresh Daund, Head Constable on Station Office duty and Head Constable Patne were examined. None of the witness deposed that there was any demand of money in their presence. Basically, they were examined regarding the investigation of accident case. In cross examination, they feigned ignorance about demand of money by the Applicant to the complainant Ajit Pawar. Suffice to say, their evidence is of no assistance to prove Charge No.4.

14. Indeed, Charge No.4 is based upon registration of crime under the provisions of Prevention of Corruption Act against the Applicant. These being the position, the complainant Ajit Pawar or Punch witness of trap Panchanama were the only witnesses who could have thrown some light on the point of demand of money by the Applicant. However, none of them is examined. There is specific mention in the enquiry report that the complainant Ajit Pawar did not remain present in the enquiry despite

enough opportunities and service of summons. Resultantly, there is no evidence legally admissible on the point of demand of money.

15. As stated above, Charge No.4 of maligning image of Police Department was totally based upon registration of offence against the Applicant under the provisions of Prevention of Corruption Act. The Applicant is admittedly acquitted in Criminal Case and the said Judgment had attained finality. This being the position, the Charge of maligning the image of Police because of alleged demand and acceptance of bribe in view of acquittal of the Applicant in Criminal Case is bound to fail unless there is some evidence on the point of demand of bribe or its acceptance in DE. However, there is absolutely no iota of evidence on this point in DE. The complainant Ajit Pawar abstained from the enquiry. The learned P.O. could not point out any direct or primary evidence on the point of demand of bribe or its acceptance by the Applicant.

16. At the cost of repetition, it is necessary to point out that whatever witnesses examined in departmental proceeding were connected with the investigation of accident case and not related to the demand of bribe by the Applicant. Charge Nos.1 to 3 were related to alleged lapses on the part of Applicant in the investigation of accident case. However, the Enquiry Officer finds nothing against the Applicant and exonerated him from Charge Nos.1 to 3. However, the Enquiry Officer held the Applicant guilty for Charge No.4 stating that the Applicant maligned the image of Police in Society by indulging in corrupt practice, which is basically framed upon the registration of Crime under the provisions of Prevention of Corruption Act. The Applicant thus hold guilty for Charge No.4 on the hypothesis of guilty for accepting bribe from Ajit Pawar. The said Charge could have been said sustainable in case, if there was some evidence of demand or acceptance of bribe in departmental proceedings or in case of conviction of the Applicant in Criminal Case. However, it is not so. Resultantly, there is no escape from the conclusion that the

finding recorded by the Enquiry Officer and accepted by Disciplinary Authority is unsustainable in law, it being a case of holding a delinquent guilty without any evidence.

17. The Tribunal is conscious about the settled legal position relating to jurisdiction of this Tribunal to interfere with DE. Undoubtedly, the standard of proof required to prove offence in Criminal Case is proof beyond reasonable doubt, whereas in departmental proceedings, charge can be proved on preponderance of probability. However, at the same time, there must be some evidence to support the charge and if there is no evidence, then interference by the Tribunal is inevitable.

18. Thus, applying the principles enunciated by the Hon'ble Supreme Court, this being the case of holding the Applicant guilty without any iota of evidence, I am satisfied that no reasonable person could ever come to such conclusion in fact situation. Unfortunately, the Disciplinary Authority as well as Appellate Authority failed to consider the crucial aspect of absence of any such evidence to sustain the Charge No.4. Indeed, the Appellate Authority simply reproduced the ground raised by the Applicant including absence of evidence but without giving any reasons dismissed the appeal solely on the ground that the explanation given by the Applicant is unsatisfactory. Needless to mention that it was for the Department to prove the charge with some evidence though not beyond doubt alike Criminal Case. Suffice to say, the Appellate Authority also fails to perform its obligation to ensure that the charge for which the Applicant held guilt is supported by some evidence. It is thus explicit that the Disciplinary Authority as well as Appellate Authority imposed the punishment only because of registration of Crime against the Applicant under the provisions of Prevention of Corruption Act in which the Applicant was ultimately acquitted.

19. Now, turning to the impugned order dated 10.07.2018 whereby treating the period from 28.03.2014 to 29.02.2016 was treated as

'suspension period', it is explicit from the perusal of order that it is based upon the sentence of deduction of reduction in rank imposed upon the Applicant in departmental proceedings. Indeed, the Disciplinary Authority was required to call upon the explanation from the Applicant before passing any such order as mandatorily provided under Section 72(5) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). Admittedly, no such notice was given to the Applicant. Apart, the Competent Authority was under obligation to record its finding as to whether the suspension was wholly unjustified or justified as contemplated under Rule 72(3) of 'Joining Time Rules 1981'.

20. In view of aforesaid discussion as concluded above, the charge of holding the Applicant guilty for Charge No.4 is unsustainable in law. Resultantly, the period undergone during suspension is required to be treated as 'duty period for all purposes'. The Respondent No.2 failed to see the effect of acquittal of the Applicant in Criminal Case. Suffice to say, the order dated 10.07.2018 treating the period from 28.03.2014 to 29.02.2016 as 'suspension period' is also unsustainable in law and liable to be set aside.

21. The totality of aforesaid discussion leads me to conclude that the impugned orders are not sustainable in law and O.A. deserves to be allowed. Hence, the following order.

ORDER

(A) The Original Application is allowed.

(B) The impugned order dated 07.03.2017 and confirmed by Appellate Authority on 29.09.2017 holding the Applicant guilty and consequent punishment are quashed and set aside.

- (C) The order dated 10.07.2018 treating the period from 28.03.2014 to 29.02.2016 as 'suspension period' is quashed and set aside. It be treated as 'duty period for service benefits'.
- (D) Monetary benefits be accordingly released in favour of Applicant within two months from today.
- (E) No order as to costs.

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

Mumbai
Date : 14.01.2020
Dictation taken by :
S.K. Wamanse.