

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.966 OF 2016**

**DISTRICT : MUMBAI**

Shri Sudhir Vasant Pol. )  
Age : 48 Yrs., working as Police Constable )  
(Buckle No.26478), Attached to )  
LA-4-Marol, Andheri (E), Mumbai and )  
Residing at B/5/308, Transit Camp, )  
Mahaveer Nagar, Kandivali (W), )  
Mumbai – 400 067. )...**Applicant**

**Versus**

1. The Commissioner of Police, )  
Mumbai, having office at Mumbai )  
Police Commissionerate, L.T. Marg, )  
Opp. Crawford Market, Fort, )  
Mumbai 400 001. )
2. The State of Maharashtra. )  
Through Principal Secretary, )  
Home Department, having office at )  
Mantralaya, Mumbai 400 032. )...**Respondents**

**Shri A.V. Bandiwadekar, Advocate for the Applicant.**

**Shri N.K. Rajpurohit, Presenting Officer for Respondents.**

**CORAM : SHRI P.N. DIXIT (MEMBER-A)**

**Closed on : 12.06.2018**

**Pronounced on : 15.06.2018**

## **J U D G M E N T**

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri N.K. Rajpurohit, learned Presenting Officer (P.O) for the Respondents.

2. Admitted facts of the case :-

(a) Applicant working as Police Constable in the office of Commissioner of Police, Mumbai developed friendship with widow Pratibha Rao. Applicant is married and having his wife Shobha. While on duty from December 04, 2006 to December 19, 2006, he proceeded on Medical Leave and remained absent. During this period, without obtaining permission from the Senior Officers, he went to Shirdi and allegedly entered into another marriage with Pratibha Rao. He renamed the second wife as Sonali Sudhir Pol and made entry accordingly into State Government Gazette at Page No.161 on 08.02.2007. He entered into rent contract with the owner of the room viz. Jagannath L. Pawar and made rent contract on 11.01.2007 and stated

therein the name of the second wife as Sonali Sudhir Pol. He started staying with her as second wife. The Applicant did not obtain divorce from his first wife viz. Shobha Sudhir Pol. During the departmental enquiry (D.E.) conducted by the office of Commissioner of Police, Mumbai, no documental proof was found of second marriage. However, in view of the material available otherwise including Gazette Notification, Rent Contract Agreement, Photograph of Applicant with the second wife, the Office of the Commissioner of Police came to the conclusion that the Applicant had taken disadvantage of the woman as second wife. This was considered as damaging to the image of the Police Department and hence, the Applicant was dismissed from the service. The Applicant preferred an appeal against the said order to Home Department. The Home Department examined his petition and came to the conclusion that there is no legal proof to indicate that the Applicant had entered into second marriage. However, on the basis of the Photograph with the said woman, Rent Contract having the name of the second wife and change of name in the Gazette proved that the Applicant had extramarital relations with the said woman. This act of the Applicant is damaging police image and is against discipline expected in the force. Keeping in view the responsibility of his

family, the Home Department took lenient view and reduced his salary to basic pay for five years instead of dismissal from the service (impugned order, Page No.15 of the O.A.).

(b) In the light of above facts, the question to be answered is “when the Home Department states the charge of second marriage by the Applicant is not proved, whether the Home Department is justified in awarding him the punishment (impugned order) of reducing his salary to basic pay for five years.

3. The Advocate for the Applicant has made following submissions :-

“(a) The challenge is to the order dated 26.10.2015 passed by the Respondent No. 2 in the form of reduction to basic pay for a period of 5 years in the post of Police Constable thereby modifying the order of dismissed from service passed by the Respondent No. 1 on 1.11.2010.

(b) That the sum and total of the charge levelled against the Petitioner in the Departmental Enquiry was that the Petitioner married woman by name Smt. Pratibha Rao without taking divorce from his first wife, namely, Smt. Shobha Pol. Thus the Petitioner has committed breach of the provisions of

the Hindu Marriage Act, 1955. That while framing the said charge, the background thereof and as between the parties is also mentioned such as unauthorized absence of the Petitioner from duties for 15 days and during the said period having gone to Shirdi and performed the second marriage with Smt. Pratibha Rao in Shrikrishna Temple.

(c) That from reading of all the six charges as levelled against the Petitioner it is clear that the charge pertains to only one allegation about the Petitioner having contracted the second marriage with Smt. Pratibha Rao during subsistence of first marriage with Smt. Shobha Pol. Thus it is clear that there is no specific charge at all being levelled against the Petitioner either in the alternative to above or separately about the Petitioner having maintained illicit relations with Smt. Pratibha Rao.

(d) That in fact even the documentary and oral evidence adduced by the Department in the Departmental Enquiry held that the charge about contracting the second marriage by the Petitioner being not proved but held that it cannot be avoided to hold that the Petitioner had extra marital illicit relations with Smt. Pratibha Rao. That even the Enquiry Officer recorded the finding only in that behalf. This came to be accepted by the

Respondent No. 1 – Commissioner which is clear from the recitals in the show cause notice and the order of punishment dated 1.11.2010. That even the Appellate Authority, namely, the Respondent No. 2 also considered the said charge to be the only charge proved against the Petitioner and thus affirmed the findings of the Respondent No. 1.

(e) That thus it is clear that all along all the concerned held against the Petitioner that he had maintained extra marital illicit relations with Smt. Pratibha Rao. That, however, this was not the charge at all against the Petitioner. Thus in short what was not the charge is held as proved, and what was in fact the charge was held as not proved. Thus there is a serious error of law and fact on the face of record which entitles this Hon'ble Court to invoke its power of judicial review vis-a-vis the administrative decision.

(f) That in support of the aforesaid contention, the Petitioner wants to rely upon the decision of the Hon'ble Tribunal rendered on 6.1.2016 in O.A. No. 773 of 2012 [C.S. Sangmath V/s. The Commissioner of Police, Solapur], (paras 14 and 16 of the said decision).

(g) That for the purposes of appreciating the contention of the Petitioner about the punishment being disproportionate, that para 19 of the said decision is relied upon by the Petitioner. That similarly the Petitioner wants to rely upon the Rule 449[3] of the B.P.M. Vol. 1 and the Circular dated 20.11.1998 issued by the Respondent No. 2. That in fact, according to the Petitioner in the light of the allegations levelled against him in the Departmental Enquiry that either there should be full exoneration of the Petitioner or being found guilty that there cannot be imposition of such minor penalty.

(h) That in the alternative and without prejudice to above, according to the Petitioner even for the sake of argument, it is presumed that the Petitioner was subjected to another charge of maintaining illicit relations with Smt. Pratibha Rao, even then that cannot be said to be misconduct at all being committed by the Petitioner within the meaning of section 25 of the Bombay Police Act, 1951 and as interpreted by the Hon'ble Bombay High Court [D.K. Deshmukh and V.M. Kanade JJ] while rendering the decision on 20.2.2008 in Writ Petition No. 2751 of 2003 [Shri P.S. Gaikwad V/S. The State of Maharashtra].

(i) That admittedly the Petitioner was not furnished the copy of the report of the Enquiry Officer by the Respondent No. 1 alongwith the show cause notice or otherwise and even then relying upon the said report adverse to the Petitioner, that the Respondent No. 1 punished the Petitioner by imposing the punishment of dismissal from service. This resulted in denial of the reasonable opportunity and consequent serious violation of the principles of natural justice.

(j) That this resulted in the serious prejudice being caused to the Petitioner. This is because the report of the Enquiry Officer is one of the important and relevant documents which came to be relied upon by the Respondents against the Petitioner in the Departmental Enquiry. That had such a copy of the Enquiry Officer report being furnished to the Petitioner alongwith the show cause notice by the Respondent No. 1, then in that event he would have had an opportunity to demonstrate as to how the said report did not bring home the guilt against the Petitioner and as to how the charge levelled against the Petitioner was not established. Thus this is the case of perverse findings being recorded by the Enquiry Officer and the Respondents.



(k) That the Respondent No. 1 has not filed the Affidavit-in-Reply. That from the perusal of the Affidavit-in-Reply of the Respondent No. 2, it is clear that the same is sketchy and as such totally vague. Thus there is no effective reply to any of the averments including the grounds raised by the Petitioner in his O.A. That apart there is no Affidavit-in-sur-Rejoinder filed by the Respondent No. 2 to the Affidavit-in-Rejoinder of the Petitioner. That there is also no denial about the interpretation of section 25 of the Bombay Police Act, 1951 made by the Hon'ble Bombay High Court in the aforesaid decision in the context of illicit relationship maintained by the Police officer, though this point is specifically mentioned by the Petitioner.

(l) That in fact in the Affidavit-in-Reply filed by the Respondent No. 2, it is also not contended that in the light of the limited power of the judicial review available to the Hon'ble Tribunal under the Administrative Tribunals Act, 1985 vis-a-vis administrative orders passed by the Respondents, that there is no scope for the Hon'ble Tribunal to interfere with the impugned order. That in fact in the identical case like the present one, there is a decision of the Hon'ble Tribunal in the matter of Mr. Sangmath, wherein the Hon'ble Tribunal has considered the scope of the judicial review and held

that where what is not the charge against the delinquent employee is held as proved and punishment imposed upon him, then that is the fittest case to interfere otherwise it would amount to failure of justice.

(m) That the aforesaid decision of the Hon'ble Tribunal is the complete answer to the contention raised by the Learned Presenting Officer for the Respondents about the scope of the judicial review and that too by relying upon the decision of the Hon'ble Supreme Court in the matter of B.C. Chaturvedi V/S. The Union of India, reported in A.I.R. 1996 page 484. That in fact reading page 5 thereof, it is clear that the said decision is not at all applicable to the facts of the present case. That on the contrary the said decision supports the case of the Petitioner.

(n) That in the said decision, it is held that it is not an Appeal from the decision but the review of the 'manner in which the decision is made. That the power of judicial review is meant to ensure that the individual receives fair treatment and whether the findings or conclusions are based on some evidence. This would mean some legal evidence which would appeal to the common sense / prudent person. That in the present case, admittedly the Enquiry

Officer and the Respondents have held that the charge of contracting the second marriage by the Petitioner with Smt. Pratibha Rao is not established. That even then it has held that the Petitioner had maintained illicit relations with Smt. Pratibha Rao. When in fact this was not the charge.”

4. In support of the same, learned Advocate for the Applicant has made following citations.

**(i) Writ Petition No.2751 of 2003 (Poornanand Shivajirao Gaikwad Vs. State of Maharashtra & Ors., dated 20<sup>th</sup> February, 2008);**

**(ii) Original Application No.773 of 2012 (Chanbasayya Sangayya Sangamath Vs. The Commissioner of Police, Solapur, dated 06.01.2016).**

5. While refuting the arguments made by the learned Advocate for the Applicant, learned P.O. has made following submissions.

(a) Applicant Shri S.V. Pol while working as Police Constable committed misconduct and therefore a chargesheet dated 17.11.2008 was issued to him. There were total six charges levelled against him which are mentioned in the chargesheet (annexed at

Exhibit "B" page no.16 of the Original Application). The charges were proved against the Applicant in the Departmental Enquiry. The Enquiry Report is annexed at page no.19-A to 19-J of the Original Application.

(b) The judgment cited by the Applicant i.e. in Writ Petition No.2751 of 2003, in that case the only charge levelled against the petitioner was that he was having illicit relations with one Prabhavati Bapursaheb Baigade and he has ill-treated his wife and sent her to her parent's house and in the chargesheet the department has relied on M.C.S.(Discipline and Appeal) Rules, though the Applicant in that case belongs to police force. For a person belonging to police force, Bombay Police Act rules are applicable and not M.C.S. (Discipline and Appeal) Rules and accordingly Section 25 of Bombay Police Act was applicable and therefore Hon'ble High Court has allowed the Writ Petition. The said judgment is not applicable in the present case. In the present case, there are not only charges against the Applicant regarding illicit relationship with one lady but several other charges i.e. total six charges are levelled against him. Section 25 is rightly applied in this case and therefore the judgment cited by the Applicant is not applicable. The another judgment passed by the

Hon'ble Tribunal in O.A.No.773/2012 is also not applicable in the facts of this case.

(c) The Applicant was given all opportunities and there was sufficient material on record to prove the charges levelled against the Applicant. The respondents after going through the facts brought on record through witnesses, documents and statements recorded during the Departmental Enquiry came to the conclusion that after perusal of Departmental Enquiry final report and also after personal hearing given to the Applicant came to the conclusion to award punishment to the Applicant. There was sufficient evidence to prove that the Applicant has committed relationship with Complainant lady by the proof of rental agreement that he was staying with her in a rented room, photocopy of lady with Applicant and also the Complainant's name published in the official gazette by the applicant.

(d) The Applicant has mentioned in the appeal that he has worked 20 years in the police department and he is going to retire in the year 2025. He has crossed age of 45 years and he is not able to get any other job for his livelihood. Further he mentioned that, his children are studying and he will not able to complete their education and also

not be able to take care of his family. Therefore the department took sympathetic view and reduced the punishment. In the appellate order the authority has mentioned that instead of giving harsh punishment, it gave punishment step by step to give chance to improve. A sympathetic view taken by the department, and accordingly, the punishment was reduced. Further the contention of the respondents that Applicant was given all opportunities in Departmental Enquiry and in appeal while considering appeal of the Applicant; Applicant was also given personal hearing on 13.08.2015. After considering all the facts and records, Appellate Authority passed reasoned and speaking order of reduction of Basic Pay of Police Constable for the period of 5 years.

(e) As per the judgment of the Hon'ble Supreme Court reported in 1995 SCC (6) 749 in the case of B.C. Chaturvedi V/s Union of India and Ors. held in para 12 that –

*“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned*

*to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”*

(f) As per the said judgment of the Hon’ble Apex Court, in a judicial review, scope to interfere with punishment order is very limited. As per the said judgment the Hon’ble Court/Tribunal in its power of judicial review does not act as an Appellate

Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere with the punishment order finds that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice but in the present case there is no violation of principle of natural justice. Further the Hon'ble Supreme Court held strict rules of evidence are not applicable in the departmental enquiry but finding must be based on some evidence. In the present case the Enquiry Officer has held that there was sufficient evidence against applicant to prove the charges. Therefore, in a judicial review the Hon'ble Tribunal may not interfere in the decision of the Respondent and dismiss the Original Application.

(g) Learned P.O. contended that in view thereof Original Application filed by the Applicant has no substance.”

6. In support of the same, learned P.O. has made following citation :-

**“B.C. Chaturvedi V/s. Union of India reported in AIR 1996 S.C. 484.”**

7. Findings :-



In the light of the foregoing, I find that the issue regarding minor punishment given to the Applicant does not appear to be illegal, irrational or arbitrary. The reasons for the above findings are as under.

8. Reasons :-

- (i) The award of punishment given by the Home Department for his misconduct damaging image of the force is substantiated by his pronounced behavior in the form of efforts made to get the name of second wife in the Gazette Notification, in entering into rent contract agreement with the owner of the house and photograph with the second wife. The Home Department has made it clear that the punishment is not awarded for entering into second marriage, but for the misconduct breaching discipline of the force by the Applicant. As stated by the Home Department themselves, the department has taken lenient view, looking at the helplessness of the family members. Perusal of the record indicates that the Applicant had been provided adequate opportunity to come clean, but he has not refuted the facts, particularly regarding his photo with the lady, proof of rental agreement and his stay in rented room with second wife and importantly, change of name in the Gazette Notification of the second wife. The Home

Department has considered all these facts and given the impugned order. As mentioned by the Hon'ble Supreme Court in the Judgment of **B.C. Chaturvedi** (supra), this Tribunal in its power of judicial review, does not act as an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

- (ii) There is nothing to indicate that the impugned order issued by the Home Department is illegal, irrational or arbitrary. In fact, the impugned order is well reasoned, based on irrefutable evidence and lenient to the Applicant.

9. In view thereof, the Original Application stands hereby dismissed with no order as to costs.

Sd/-

**(P.N. Dixit)**  
**Member-A**  
**15.06.2018**

Mumbai  
Date : 15.06.2018  
Dictation taken by :  
S.K. Wamanse.