

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 818 OF 2011

DISTRICT: - JALNA.

Vasant S/o Shivbahadur Shrivas,
Age – 29 years, Occu. Erstwhile
Nhavi (Barber) in S.R.P.F.-III “C”,
Commandant, Jalna.

.. APPLICANT.

V E R S U S

- 1] The State of Maharashtra,
[Copy to be served on GPA)
- 2] The Commandant, S.R.P.F.,
Group-II, Jalna, “C” Company. .. RESPONDENTS.

APPEARANCE : Shri A.S. Deshmukh – learned
Advocate for the applicant.

: Shri M.P. Gude – learned Presenting
Officer for the respondents.

CORAM : **HON’BLE SHRI RAJIV AGARWAL,**
VICE CHAIRMAN (A)
AND
HON’BLE SHRI J.D. KULKARNI,
MEMBER (J)

DATE :

J U D G E M E N T

[Per : Hon'ble Shri J.D. Kulkarni, Member (J)]

The applicant viz. Vasant S/o Shivbahadur Shrivasa, was serving as a Navhi (Barber) under respondent No. 2, the Commandant, S.R.P.F., Group-II, Jalna, "C" Company. Vide impugned order dated 3rd November, 2009 he was removed from service for the alleged act of misconduct by Commandant, S.R.P.F., Group-II, Jalna, "C" Company, as a result of Departmental enquiry initiated against him. Against the order of removal from service as aforesaid the applicant filed an appeal before the respondent No. 1, Special I.G., S.R.P.F., Nagpur. The said appeal filed by the applicant came to be dismissed vide order dated 20th April, 2010 and, therefore, the applicant has filed the present Original Application. The applicant has prayed that the order passed by respondent No. 2 dated 3rd November, 2009 and order passed by the Appellate Authority dated 20th April, 2010 confirming the order passed by respondent No. 2 may be quashed and set aside and

respondent No. 2 be directed to allow the applicant to join duties as a barber with S.R.P.F. Group-III, Jalna.

2. It seems that the applicant was served with a charge-sheet dated 10.6.2008, whereby 4 charges were framed against him and the said charges are as under: -

- “१. तुम्ही दि. ४/६/२००७ रोजीच्या विनंती अर्जानुसार दिनांक ५/६/२००७ चे ८/६/२००७ पर्यंत १ दिवस नैमित्तिक रजा व ३ दिवस साप्ताहिक सुटी असे एकूण ४ दिवस देवकार्यासाठी गावी जाण्याच्या कारणा वरून रजेवर गेला. तुम्हास नैमित्तिक रजा पास क्रमांक ७३ दिनांक ०४/०६/२००७ अन्वये दिनांक ०४/०६/२००७ रोजी १९०० वाजता सदर रजेवर कार्यमुक्त करण्यात आले. सदर रजा हि तुम्ही खोटे कारणे दर्शवून घेतलेली आहे. कारण तुम्ही रजा कालावधीत मुख्यालय बाहेर गेलेलेच नाही.
२. दिनांक ०६/०६/२००७ रोजी २३.४५ वाजता बारबार शॉपमधुन सुरेश रामअवतार श्रीवास नेमणुक ए कंपनी हे त्यांचा गळा कापल्याने ओरडत हजेरी ग्राऊंडवर आले. त्यावेळी तुम्ही त्याठिकाणी हजर होतात हे साक्षीदार यांच्या जबाबात नमुद केल्याप्रमाणे सिध्द होत आहे.
३. सदर घटना बारबार शॉपमध्ये घडली त्यावेळी बारबार शॉपमध्ये व त्या परिसरात तुमच्या व्यतिरिक्त इतर कोणत्याही न्हाव्यास साक्षीदाराने पाहिले नाही म्हणजेच या घटनेच्या वेळी तुम्ही एकटेच तेथे हजर होतात.
४. वरिल दोषारोपानुसार तुम्ही धार्मिक कार्यासाठी रजा मागून शासनाची दिशाभूल केली. व गैरकृत्य करण्यासाठी गट परिसरात न्हावी कक्षामध्येच वास्तव्यास राहिला व सदर खुन प्रकरणी तुम्ही संशयित होवून तुम्हास अटक होवून तुमच्या विरुध्द पोलीस स्टेशन सदर बाजार जालना येथे खुनाचा गुन्हा

दाखल झाला आहे. म्हणजेच तुमचे हे कृत्य हे शिस्तप्रिय पोलीस खात्यास न शोभणारे असून मानवतेच्या दृष्टीकोनातून काळीमा फासणारे आहे.”

3. Due departmental enquiry was conducted and ultimately the applicant was removed from service.

4. According to the applicant, from the charges framed against him in departmental enquiry it will be seen that at the most charge No. 1 can be said to be a charge. The other charges cannot be said to be charge at all. We find sum and substance in the contention raised by the applicant as charge Nos. 2, 3 & 4 are statements of facts. The fact that the applicant was present when one Shri Suresh Ramavatar Shrivastava came on the presentee ground crying that his throat was cut. Such statement cannot be a charge. Similarly the fact that the incident took place in the barber shop and that nobody had seen the applicant at that time and, therefore, the applicant only was present there cannot be a charge. At the most it is a statement of fact. So far as charge No. 4 is concerned, it is stated that the applicant did not leave the headquarter though he sought permission to leave headquarter after getting leave

sanctioned on the ground of some religious function. It can be a charge that the applicant was arrested as a suspect in a crime and crime was registered against him and, therefore, his arrest has lowered down the image of Police Department. If the charges of murder are proved against the applicant the said charge can be said to be a charge, but admittedly the applicant has been acquitted honorably from the charge 302 of IPC. It is also material to note that the applicant was never charged in the departmental enquiry as regards alleged murder committed by him.

5. In view of the aforesaid circumstances the only material charge framed against the applicant in departmental enquiry seems to be charge No. 1, whereby it was alleged that the applicant vide application for one day casual leave obtained permission to leave the headquarter from 5.6.2007 to 8.6.2007, but did not leave headquarter. He was relieved on 4.6.2007 at 1900 hours, but in stead of proceeding on leave he remained at headquarter and, therefore, it is alleged that he gave false

reason for obtaining one day casual leave and remained at headquarter though he was permitted to leave headquarter.

6. From charge itself it is clear that the applicant was to leave headquarter for 4 days out of which 3 days were weekly holidays and he proceeded on casual leave for 1 day only. Learned Advocate for the Applicant submits that if the totality of the charge is taken into consideration, it will have to be seen as to whether the impugned order of removal of the applicant from service is proportionate or not?

7. It seems from the enquiry report dated 23.6.2002 that the show cause notice was issued to the applicant and he was directed to submit his explanation and accordingly the applicant has submitted his explanation. It seems that the department has examined two witnesses viz. (१) मेजर ओएसआय/१५२ ए एस घुगे, नेमणुक अ कंपनी, & (२) सपोशि/१०४७ ए एस भारती, नेमणुक डी कंपनी.

Shri Ghuge has stated that one Suresh Ramavatar Shrivas came in injured condition shouting that, “मुझे बचाव मुझे बचाव” on the presentee ground and he was saying that, “मेरे को वसंत श्रीवासने मारा है, मेरा गला काटा है, मुझे जल्दी दवाखाने मे लेके चलो साब” and at that time the applicant only was present. It further seems from the evidence of Shri A.S. Bharati that, Suresh Ramavatar Shrivas crying in his presence and saying that, “शिंदे साब मुझो बचाव, मुझे वसंत ने मारा है” and that Suresh Shrivas was injured. Even accepting the entire evidence as it is, it seems that no charge is proved against the applicant.

8. As already stated the applicant was prosecuted in the criminal charge of murder of Suresh Shrivas and the competent Sessions Judge has acquitted the applicant from said charge. It is also material to note that the applicant has not been charged for negligence while performing the duty of a Barber. We can understand that had the applicant been charged that while performing duty of a Barber he negligently cut the throat of Suresh Shrivas and thereby said Sueresh Shrivas died, the same would be a serious charge, but that is not the charge in the

departmental enquiry. Since the applicant has been acquitted in a criminal case the charge that because of his arrest in a murder trial, the dignity of the Police Department has lowered down is also not proved.

9. Learned Presenting Officer has invited out attention to the affidavit in reply filed by the respondent Nos. 1 & 2. In paragraph No. 6 of the said affidavit in reply, it is stated that it was duty of the applicant not to allow any private person to reside in a Barber Shop and cooking in the Barber Shop. It is not known as to why such statement is made as there is no charge to that effect against the applicant. It is stated that FIR was registered against the applicant in crime No. 117/2007 under section 302 of I.P.C. and the applicant was arrested, and hence, the departmental enquiry was also conducted against the applicant. As already stated the charges in the criminal trial and those in the departmental enquiry are also different.

10. We have perused the enquiry report, as well as, various documents placed on record pertaining to

departmental enquiry and we are satisfied that there is absolutely no evidence against the applicant. Even for arguments' sake, it is accepted that the applicant obtained one day casual leave and permission to leave the headquarter for 4 days considering weekly holidays for religious purpose, but remained at home, that itself cannot be a ground to remove the employee from service.

11. We are, therefore, satisfied that the order of removal of the applicant from service, as passed by respondent No. 2 on 3rd November, 2009, and the order passed by the Appellate Authority dated 20.4.2010 confirming the said order, are absolutely illegal, without substance and, therefore, cannot be sustained in the eye of law. In any case, the order of removal from the service merely because the applicant remained at headquarter though he obtained casual leave of one day and permission to leave headquarter on religious ground, cannot be said to be proportionate considering the charges leveled against the applicant.

12. Considering the fact that the applicant was facing trial under Section 302 of I.P.C. and that he did not work during the period from the date of his removal coupled with the fact that the applicant did not claim back-wages, the applicant shall not be entitled to any back-wages.

13. We, therefore, pass the following order: -

ORDER

- (i) The order passed by respondent No. 2 on 3rd November, 2009 and the order passed by the Appellate Authority confirming the said order on 20.4.2010 are quashed and set aside.
- (ii) Respondents are directed to reinstate the applicant in service and allow the applicant to join the duty as Barber with S.R.P.F., Group-III, Jalna. Such order shall be passed forthwith or in any case within two months from the date of this order.
- (iii) Accordingly, the present Original Application stands disposed of with no order as to costs.

MEMBER (J) VICE CHAIRMAN (A)