

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 650 OF 2016

DIST. : DHULE.

Ramesh S/o Kashinath Ratnaparkhi,
Age : 53 years, Occu.: Service
(as Police Inspector – presently under
suspension), R/o: Bunglow No.17,
Police Officers Quarters, Phashi Pool,
Dhule.

.. APPLICANT.

V E R S U S

1. State of Maharashtra
Through the Secretary,
Home Department, M.S.,
Mantralaya, Mumbai-32.

2. The Superintendent of Police,
Dhule.

.. RESPONDENTS.

APPEARANCE :- Shri Avinash Deshmukh, learned
Advocate for the Applicant.

: Shri M.P. Gude, learned Presenting
Officer for the Respondents.

**CORAM : HON'BLE SHRI J.D. KULKARNI,
MEMBER (J)**

ORAL ORDER
[Delivered on this 20th day of December, 2016]

Heard Shri Avinash S. Deshmukh, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. The applicant viz. Ramesh S/o Kashinath Ratnaparkhi is the Police Inspector at Police Headquarter, Dhule. At the time of his suspension i.e. on 29.7.2016 the applicant was posted at Taluka Police Station, Dhule. Vide impugned order dated 29.7.2016 the applicant has been kept under suspension by respondent No. 2, the Superintendent of Police, Dhule. As per the suspension order the applicant has been kept under suspension for the following reasons : -

“तुम्ही, पोनि/रमेश काशिनाथ रत्नपारखी, नेम.धुळे तालुका पो.स्टे. सौ. कोमल युवराज परदेशी, रा. शिवसागर कॉलनी धुळे यांनी दि. ०६. ०७.२०१६ रोजी धुळे तालुका पोस्टे येथे त्यांचे पती श्री.युवराज भिला परदेशी, हे दि.०२.०७.२०१६ रोजी शिरुड चौफुली येथे आम्हांस सोडून कोठेतरी निघून गेलेले आहेत ते आज पावेतो घरी आलेले नाहीत म्हणून सौ.कोमल परदेशी यांनी त्यांचे पती मिसींग झाले बाबत मिसींग रजि.नं. २०/२०१६ प्रमाणे दाखल केली होती. सदरची मिसींग ही असई/राजेंद्र आनंदराव शिरसाठ यांचे कडेस चौकशी कामी देण्यात आली होती

अर्जदार दिपक भिला परदेशी रा. कालिकादेवी नगर धुळे यांनी दि. ११.०७.२०१६ रोजी पोनि/धुळे तालुका पोस्टे या नावे तक्रारी अर्ज दिलेला आहे. तसेच अर्जदार यांनी अपर पोलीस अधिक्षक धुळे यांना समक्ष भेटून दि. १६.०७.२०१६ रोजी दिलेला तक्रारी अर्ज देखील या कार्यालयाचे जा.क्र.२९६/अर्ज-१/चौ.अ./प्र.भेट/३३२/२०१६, दि. १६.०७.२०१६ अन्वये धुळे तालुका पोस्टे यांचे कडेस चौकशीकामी पाठविण्यात आलेला होता.

वास्तविक सदरची मिसिंग व तक्रारी अर्जात नमुद मुदयावरून हा खुनासारखा प्रकार असल्याचे वाटत असतांना देखील त्याचे गांभीर्य लक्षात न घेता तसेच अर्जाची चौकशी स्वतःकडे न घेता निष्काळजीपणे व बेजबाबदारपणे सदर तक्रारी अर्जाची चौकशी असई/राजेंद्र शिरसाठ यांचे कडे दिलेली आहे.

सदर मिसिंग व तक्रारी अर्जासंदर्भात आपण काहीही कार्यवाही न केल्यामुळे दि. २३.०७.२०१६ रोजी अर्जदार दिपक भिला परदेशी हे पोलीस अधिक्षक धुळे यांना प्रत्यक्ष भेटून तक्रारी अर्ज दिला होता. पोलीस अधिक्षक धुळे यांनी सदर तक्रारी अर्जासंदर्भात पोलीस निरि. /स्थानिक गुन्हे शाखा धुळे यांना चौकशी करण्यास सांगितले होते.

त्याप्रमाणे पोनि.स्था.गु.शा. धुळे यांनी सदर तक्रारी अर्जात नमुद मुदयांचे अनुषंगाने चौकशी केली असता सदरचे प्रकरण हे मिसिंगचे नसून खुनाचे प्रकरण असल्याचे निष्पन्न झाल्यामुळे त्या संदर्भात दि. २७.०७.२०१६ रोजी धुळे शहर पो.स्टे. येथे भाग-५ कामात गुरनं १६४/२०१६, भादवि कलम -३०२, २०१, ३४ प्रमाणे गुन्हा दाखल करण्यात आला आहे.

सदर तक्रारी अर्जातील मुद्दे हे अतिशय गंभीर स्वरूपाचे असताना देखील आपण स्वतः त्या प्रमरणी चौकशी केली नाही किंवा असई/राजेंद्र शिरसाठ यांना चौकशी कामी योग्य ते मार्गदर्शनही केले नसल्यामुळे खुनासारखा गंभीर गुन्हा आपण उघडकीस आणू शकला नाहीत. त्याच तक्रारी अर्जासंदर्भात पोनि/स्थागुशा धुळे यांनी चौकशी करून खुनाचा गुन्हा उघडकीस आणलेला आहे. यावरून आपण आपल्या कर्तव्यात अत्यंत बेजबाबदारपणा तसेच निष्काळजीपणा किंवा लबाडी केल्याचे निष्पण झाले आहे.

त्यामुळे उक्त कसरीबददल आपणास जबाबदार धरण्यात येवून, आम्हास मुंबई पोलीस अधिनियम-१९५१ चे कलम २५ व मुंबई पोलीस (शिक्षा व अपिले)-१९५६ चे नियम -३ (१) (१-अ) (एक) (ब) अन्वये प्रदान केलेल्या अधिकाराचा वापर करून या आदेशाद्वारे आपणांस सदरचा आदेश प्राप्त झाले दिनांकापासून शासकीय सेवेतून निलंबित करण्यात येत आहे.”

3. It seems from the suspension order that some departmental enquiry is contemplated against the applicant and, therefore, he has been kept under suspension.

4. According to the applicant, the Superintendent of Police, Dhule, is not authorized and competent to pass suspension order in respect of the applicant. It is stated that the competent authority to keep the applicant under

suspension is Government/Special Inspector General of Police of the Region and no departmental enquiry is pending against the applicant. It is, therefore, prayed that the impugned order of suspension dated 29.6.2016 be quashed and set aside and the applicant be reinstated forthwith and necessary directions to that effect be issued to respondent No. 2.

5. Respondent Nos. 1 & 2 have filed affidavit in reply. It is stated that one complaint in Crime No. 164/2016 under Section 304 for offences punishable under Sections 302, 201, r/w 34 of IPC was filed. The applicant however, was found negligent in enquiring said complaint and, therefore, he has been kept under suspension. It is stated that as per the provision of Section 3 (1) (A-1)(i)(a) of the Bombay Police (Punishment and Appeals) Rules 1956, the Superintendent of Police has full authority and fully competent to keep the applicant under suspension. It is stated that the preliminary enquiry has been conducted, which leads to suspension of the applicant.

6. The respondents admitted that the Competent Authority to keep the applicant under suspension is Inspector General of Police (Nashik Region) and vide order dated 6.8.2016 the said authority has granted post-facto sanction to the suspension order issued by respondent No. 2.

7. Heard Shri Avinash Deshmukh – learned Advocate for the Applicant and Shri M.P. Gude – learned Presenting Officer for the respondents. I have also perused the application, affidavit, affidavit in reply filed by the respondents and various documents placed on record by the respective parties.

8. The only material point to be considered in this case is whether the impugned order of suspension passed by the Superintendent of Police, Dhules, in respect of the applicant, who is Police Inspector, is legal and proper?

9. The learned Advocate for the applicant invited my attention to the Notification issued by the Government of Maharashtra in its Home Department on 12.1.2011,

which states about the competent authority, who can place particular officer under suspension. The said Notification reads as under: -

“अधिसूचना

गृह विभाग, मंत्रालय, मुंबई-४०० ०३२.
दिनांक - १२ जानेवारी, २०११

मुंबई पोलीस
(शिक्षा आणि अपीले)
नियम, १९५६

क्रमांक-एमआयएस/१९१०/प्र.क्र.१८५/पोल-६अ, मुंबई पोलीस अधिनियम, १९५१ याच्या कलम ५ (ख), खंड (एक) द्वारे प्रदान करण्यात आलेला अधिकारांचा वापर करून, महाराष्ट्र शासन, याद्वारे, अनुसूचीच्या स्तंभ (२) मध्ये विनिर्दिष्ट केलेल्या प्रत्येक प्राधिका-यांना, अशा प्राधिका-यासमोर अनुसूचीच्या स्तंभ (३) मध्ये अनुक्रमे नमूद केलेल्या पोलीस अधिका-यांना निलंबनाधीन ठेवण्याचे अधिकार प्रदार करित आहे:-

अनुसूची

अ.क्र (१)	प्राधिकारी (२)	ज्यांना निलंबनाधीन ठेवता येईल असे अधिकारी (३)
१.	अप्पर पोलीस महासंचालक (प्रशासन), पोलीस महासंचालक यांचे कार्यालय, महाराष्ट्र राज्य, मुंबई	पेलीस निरीक्षक आणि त्यापेक्षा कमी दर्जा असलेले पोलीस अधिकारी
२.	संबंधित पोलीस आयुक्तालयातील (पोलीस आयुक्त लोहमार्ग यासह) सर्व पोलीस आयुक्त	पेलीस निरीक्षक आणि त्यापेक्षा कमी दर्जा असलेले पोलीस अधिकारी
३.	त्या त्या परिक्षेत्रातील विशेष पोलीस महानिरीक्षक,	पेलीस निरीक्षक आणि त्यापेक्षा कमी दर्जा असलेले पोलीस अधिकारी
४.	विशेष पोलीस महानिरीक्षक (मोटार वाहन)	पेलीस निरीक्षक आणि त्यापेक्षा कमी दर्जा असलेले पोलीस अधिकारी
५.	विशेष पोलीस महानिरीक्षक, राज्य राखीव पोलीस बल पुणे आणि नागपुर	पेलीस निरीक्षक आणि त्यापेक्षा कमी दर्जा असलेले पोलीस अधिकारी

६.	पेलीस उप महानिरीक्षक, गडचिरोली परिक्षेत्र, गडचिरोली	पेलीस निरीक्षक आणि त्यापेक्षा कमी दर्जा असलेले पोलीस अधिकारी
७.	सर्व प्राचार्य, पोलीस प्रशिक्षण विद्यालय, पोलीस अधीक्षक, बिनतारी संदेश	पोलीस निरीक्षक आणि त्यापेक्षा कमी दर्जा असलेले पोलीस अधिकारी (पोलीस निरीक्षकांच्या संदर्भात मुंबई अधिनियम, १९५१ च्या कलम २७ (२)(क) च्या तरतूदीना अधीन राहून)

उपरोक्त निलंबनाचे आदेश नियुक्ती प्राधिका-यांपेक्षा कनिष्ठ दर्जा असलेल्या प्राधिका-याने काढले असतील तर, असा प्राधिकारी, मुंबई पोलीस (शिक्षा व अपील) नियम, १९५६ याच्या नियम ३, पोट.नियम (१-अ), खंड (एक) च्या परंतुकानुसार ज्या परिस्थितीत निलंबनाचे आदेश देण्यात आले ती परिस्थिती नियुक्ती प्राधिका-यास ताबडतोब कळवावी.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नांवाने.

सही/-

(मि.रा.वाढवे)

महाराष्ट्र शासनाचे सह सचिव, गृह विभाग.”

10. From the aforesaid Notification, it will be clear that the Police Officers of the rank of Police Inspector & below can be kept under suspension by the Special Inspector General of Police of that Region. The said Notification also shows that in case the officer is kept under suspension by the lower authority than the competent authority then said suspension shall be as per the provisions of Bombay Police (Punishment and Appeal) Rules, 1956, Rule 3 (1-a)(1). The said provision is analogous to proviso to Rule 4

of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

11. Perusal of the impugned order shows that the copy of the suspension order was not forwarded along with the reasons for suspension to the competent authority.

12. The learned Presenting Officer invited my attention to post-facto sanction accorded by the Inspector General of Police, Nashik Region, but it is dated 8th August, 2016 and the order of suspension is dated 29.7.2016. Hence the copy of the order along with details of circumstances under which it was required to be passed, are not conveyed to the competent authority.

13. According to the learned Advocate for the applicant, issue as regards the Authority of Superintendent of Police, to keep Police Inspector under suspension has been dealt with by this Tribunal in O.A. No. 196/2014 [Rajkumar Ganpat Sonwane Vs. the State of Maharashtra & Another] and O.A. No. 702/2013 decided on 21st February, 2014 and in both these cases, it has been held that the Superintendent of Police has no power to keep the Police

Inspector under suspension. It has been observed in paragraph Nos. 11 to 15 of O.A. No. 196/2014 as under: -

“11. It is pointed out that the said sub sec. 2 (a) of sec. 25 was under consideration of this Tribunal while deciding original application St. no. 2690/2000 / original application no. 456/2000 decided by order dated 22.11.2000 and the relevant observations thereof are as under :-

“The words in the section 25 show that it is only during the pending enquiry that power of Suptd. Of Police to place Inspector of Police under suspension can be invoked for a limited period. The suspension order shows that there is no pending enquiry but a proposed enquiry. There is difference between a proposed enquiry and a pending enquiry. In the circumstances, I am of the view that the impugned order suffers from more than one vice. Firstly, there is no pending enquiry as

stated in the impugned order itself. Pendency of enquiry is sine quo non. As there is no pending enquiry hence the order is bad.”

12. Thus, the aforesaid observations clarify that, sec. 25 (2) (a) confers limited powers upon the Superintendent of Police to put an employee holding the post of Police Inspector, under suspension, pending enquiry into the complaint till the order of Inspector General or Deputy Inspector General of the Police can be obtained. However, in the instant case the impugned suspension order dated 27.2.2014 discloses that, there is no pending enquiry against the applicant herein but, with the proposed / preliminary departmental enquiry. Pendency of enquiry is sine quo non and hence, since there is no pending enquiry against the applicant herein, the impugned suspension order is bad in law.

13. Besides this, vide letter dated 28.2.2014 (Annex. C) issued by Special

Inspector General of Police, Nanded ex-post facto sanction was accorded to the action taken by the Superintendent of Police, Latur of suspending the applicant herein and it is not the order of putting the applicant under suspension. Sec. 25 (2) (A) of Bombay Police Act, 1951 contemplates to submit suspension order passed in respect of Police Inspector to the higher authority for seeking further orders and it is for the higher authorities to pass further orders in the form of either issuing fresh suspension order or rejecting the suspension order with consequential order of cancellation of suspension order issued by the SP. Accordingly, issuance of fresh suspension order is not only mode contemplated by sec. 25 (2) (a) of the Bombay Police Act, 1951. Apart from that, the letter dated 28.2.2914 issued by the Special Inspector General of Police, Nanded is simply the ex-post facto sanction to the action of Superintendent of Police, Latur of suspending the applicant herein, which is obviously not a fresh suspension order.

14. The learned Counsel for the applicant places reliance on the orders passed by this Tribunal in original application nos. 691/2013 decided on 2.11.2013 and 702/2013 decided on 18.11.2013, wherein reliance was placed on the orders in original application St. 2690 of 2000 / original application no. 456 of 2000 decided on 22.11.2000, where in it is observed thus :-

“It will be seen that Rule 437 of the Police Manual is the extraction of powers conferred by the State under section 25 in the Act. It will be seen from reading of Section 25 (2) of the Act that the powers of District Superintendent to place Inspector under suspension rises only when there is a pending enquiry into complaint against such Inspector and till then the order of Inspector General or Deputy Inspector General of Police can be obtained. Thus the power is restricted one under certain circumstances and only

for a limited period and limited purpose. It is not absolute in the sense in which the power is vested with I. G. or D. I. G. of Police.”

15. These observations are crystal clear that, sec. 25 (2) (a) confers limited power upon the Superintendent of Police to put an employee holding the post of Police Inspector under suspension, pending enquiry and that enquiry is not inclusive of proposed / preliminary enquiry.”

14. In view of the aforesaid observations, it will be clear that no enquiry was pending against the applicant when the impugned order of suspension has been passed. The order of suspension has not been forwarded to the competent authority along with reasons for keeping the applicant under suspension. The applicant being Police Inspector, the competent authority to dismiss him, is Government.

15. On conspectus of discussion in foregoing paragraphs, it will be thus crystal clear that the impugned

order of suspension of the applicant dated 29.6.2016 is illegal, and therefore, the same is required to be quashed and set aside. Hence, I pass the following order: -

ORDER

- (i) The present Original Application is allowed.

- (ii) The order of suspension dated 29.7.2016 passed by respondent No. 2 is quashed and set aside.

- (iii) The respondents are directed to forthwith reinstate the applicant in service with all consequential benefits.

MEMBER (J)

O.A.NO. 650-2016(hdd)-2016