

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.795 OF 2012

DISTRICT : - AHMEDNAGAR.

MansoorShafi Khan,
Age 41 years,
Occupation Service as Police
Constable, (presently dismissed
From service), R/o. Ahmednagar,
Taluka and District Ahmednagar,
Presently residing at Hasnapur,
Post Loni, TalukaRahata,
Dist. Ahmednagar.

.. APPLICANT.

V E R S U S

- 1] The State of Maharashtra
Through Principal Secretary to
Government, Home Department,
Mantralaya, Mumbai.
 - 2] The Director General of Police
Maharashtra State, Mumbai.
 - 3] The Special Inspector General
of Police, (Administration),
Maharashtra State, Mumbai.
 - 4] The Special Inspector General of Police,
Nashik Region, Nashik.
 - 5] The Superintendent of Police,
Ahmednagar,
Tq. & Dist. Ahmednagar
- .. RESPONDENTS

APPEARANCE : ShriSubhashChillarge – learned
Advocate for the Applicant.
: Mrs. DeepaliShripadDeshpande –
learned Presenting Officer for the
respondents.

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

PER : Hon'bleShri Rajiv Agarwal, V.C. (A)

J U D G M E N T

[Delivered on this 15th day of December, 2016]

1. Heard ShriSubhashChillarge – learned Advocate for the Applicant and Mrs. DeepaliShripadDeshpande – learned Presenting Officer (P.O.) for the respondents.

2. The Applicant has challenged the order dated 29.1.2002 issued by the Respondent No. 5 compulsorily retiring the Applicant from service. The Applicant has also challenged order dated 2.11.2002 issued by the Respondent No. 4, dismissing the appeal against the order dated 29.1.2002. The Applicant has challenged the order dated 20.5.2004 issued by the Respondent No. 3 in

3O.A. NO. 795 OF 2012

Revision, enhancing the penalty to dismissal from service and the order dated 7.1.2012 issued by the Respondent No. 1, upholding the order dated 20.5.2004.

3. Learned Advocate for the Applicant argued that the Applicant was posted at Police Headquarters, Ahmednagar as a Police Constable. A Departmental Enquiry was started against the Applicant as he was unauthorisedly absent from duty from 27.11.1999. Departmental Enquiry was started against the Applicant on 14.8.2000 and the Enquiry Officer (E.O.) submitted report on 10.10.2001 that the Applicant was absent from duty unauthorisedly from 27.11.1999 to 20.2.2001. By order dated 29.1.2002, the Respondent No. 5, compulsorily retired the Applicant from service. The Applicant filed appeal against this order before the Respondent No. 4, who dismissed the same on 2.11.2002. One ShriKhanderaoShinde was working as Special I.G.P, Nashik and he passed the order dated 2.11.2002. The Applicant filed a Revision Application before the Respondent No. 3, who issued a notice to the Applicant on 16.6.2003, asking him to show cause as to why the

4O.A. NO. 795 OF 2012

punishment may not be enhanced to that of dismissal from service. The Applicant submitted a reply on 9.7.2003. However, the Respondent No. 3, who was same ShriKhanderaoShinde, passed the order dated 20.5.2004, dismissing the Applicant from service. Learned Advocate for the Applicant argued that an officer, who is transferred to another post, cannot pass an order in Revision, revising his own earlier order as an appellate authority. The order dated 20.5.2004 is, therefore, void ab initio. The order of the Respondent No. 1 dated 7.1.2012 confirming the illegal order dated 20.5.2004 is also void-ab-initio. Learned Advocate for the Applicant argued that order dated 29.1.2002 is illegal as the Enquiry Officer has proposed the punishment of stoppage of increment and the Respondent No. 5 imposed major penalty of compulsory retirement in breach of Section 25 (1) of the Bombay Police Act. This section is attracted only when an employee is charged for cruel or perverse behavior or he is remiss or negligent in discharge of his duties. Mere absence from duty will not attract this Section.

5O.A. NO. 795 OF 2012

4. Learned Presenting Officer (P.O.) argued that the punishment order dated 29.1.2002 was issued by the Respondent No. 5, after the charges against the applicant were proved in the Departmental Enquiry held against him. The Applicant has not made any grievance about the conduct of Departmental Enquiry. His grievance is that the Respondent No. 5 did not accept the recommendation of Enquiry Officer regarding quantum of punishment. Learned Presenting Officer argued that the Respondent No. 5 had issued a show cause notice to the Applicant on 26.11.2001, enclosing copy of the inquiry report. He had mentioned that he did not agree with the recommendation of the Enquiry Officer regarding quantum of punishment and the Applicant was asked to show cause as to why he should not be removed from service. Learned Presenting Officer argued that the requirements of law were fully complied with and there was absolutely no procedural flow in conducting Departmental Enquiry against the Applicant considering the fact that the Applicant was unauthorizedly absent for more than one year from duty, punishment of compulsory retirement cannot be said to be

6O.A. NO. 795 OF 2012

disproportionate. Learned Presenting Officer contended that the Respondent No. 4 rightly dismissed the appeal by an order dated 2.11.2002. Learned Presenting Officer argued that the long unauthorized absence from duty is clearly covered by 'remiss or negligent in discharge of duties' in Section 25 (1) of the Bombay Police Act.

5. Learned Presenting Officer stated that the Applicant filed Revision Application before the Respondent No. 2. After considering the serious nature of misconduct of the Applicant, the Respondent No. 3 issued a notice to the Applicant asking him to show cause, as to why he should not be dismissed from service. The respondent No. 3 passed order dated 20.5.2004 on behalf of the Respondent No. 2 and dismissed the Applicant from service. Learned Presenting Officer (P.O.) argued that this order has been issued in full compliance with the law. The Respondent No. 1 has dismissed application against the aforesaid order on 7.1.2012. Learned Presenting Officer argued that there is no merit in the present Original Application and it may be dismissed.

7O.A. NO. 795 OF 2012

6. We find that the Applicant has challenged order dated 29.1.2002 issued by the Respondent No. 5, compulsorily retiring him from service. There is no allegation that the Departmental Enquiry against the Applicant was conducted in any manner violating any rules or laws. It appears that the Enquiry Officer in his report dated 10.10.2001 held that the charge against the Applicant was fully proved. He recommended that the period of absence from duty may be treated as leave without pay and two increments may be stopped as punishment. However, the Respondent No. 5, did not accept the recommendation of Enquiry Officer about quantum of punishment and issued show cause notice dated 26.11.2001 to the Applicant to show cause as to why he should not be removed from service. After considering reply of the Applicant dated 21.12.2001, the Respondent No. 5 passed the order dated 29.1.2002. We do not find any procedural or other irregularity in the order passed by the Respondent No. 5. It was not necessary for him to accept recommendation of the Enquiry Officer regarding quantum of punishment. The

8O.A. NO. 795 OF 2012

charge of long unauthorized absence was proved and for a Police personnel, this definitely amounts to his being remiss or negligent in discharge of his duties. The punishment of compulsory retirement is not violative of Section 25 (1) of the Bombay Police Act and it cannot be called disproportionate to the misconduct of the Applicant. In other words, we do not find any ground to interfere with the order dated 29.1.2002 issued by the Respondent No. 5. The order of the Appellate Authority viz. the Respondent No. 4 dated 2.11.2002 maintains the order of the Respondent No. 5 and it also does not suffer from any infirmity.

7. The Applicant claims that he filed a Revision Application before the Respondent No. 3 (para 3-J of O.A.). The Respondent No. 2 in his affidavit in reply dated 21.1.2014 contended that the Respondent No. 3 is competent to hear Revision Application under Rule 15 of the Maharashtra Police (Punishments & Appeal) Rules, 1956 and under Section 27-A, B of the Maharashtra Police Act. In fact, Section 27-A of the Bombay Police Act deals with Revision while Section 27-B deals with Review. The

9O.A. NO. 795 OF 2012

Review of an order can be done by the authority, who had passed the original order. Powers of Review are conferred only on the State Government and the Director General & Inspector General of Police (one entity). The orders of the Respondent No. 4 and the Respondent No. 5 could not be reviewed. The Applicant has applied for Revision under Section 27-A of the Bombay Police Act. Under this Section, State Government or Director General & Inspector General of Police (one entity) can revise an order passed by a subordinate authority. In the present case, powers of the Respondent No. 2 viz. Director General & Inspector General of Police, Maharashtra State, were exercised by the Respondent No. 3, who has been apparently authorized under Maharashtra Police (Punishment and Appeal) Rules, 1956 to act on behalf of the Respondent No. 2. As regards procedural aspect viz. giving a show cause notice in case of enhancing the punishment is concerned, that was followed. However, the Applicant claims that Shri Khanderao Shinde passed the order as appellate authority, confirming the punishment of compulsory retirement on 2.11.2002. The

same ShriKhanderao, enhanced the punishment in Revision by order dated 20.5.2004. Learned Advocate for the Applicant relied on the Judgment of Hon'ble Gujarat High Court in Letters Patent Appeal No. 2892/2010 In Special Civil Application No. 12499/2010 dated 19.1.2011, Hon'ble Gujarat High Court has held that an order passed by an officer as Disciplinary Authority cannot be heard by the same officer, if he is promoted to the post of Appellate Authority. This will be in violation of the principles of natural justice and will be a case of deemed bias. In the present case, there is no denial of the fact that the order dated 2.11.2002 in appeal has been passed by ShriKhanderaoShinde. He upheld the punishment of compulsory retirement imposed by the Respondent No. 5 upon the Applicant. Order of the Respondent No. 3 dated 20.5.2004 is also passed by the same ShriKhanderaoShinde. Order of Hon'ble Gujarat High Court is also regarding powers of Appellate and Revisional Authorities under the Bombay Police Act. The facts are quite similar and the action of the Respondent No. 3 is definitely in violation of the principles of natural

11 O.A. NO. 795 OF 2012

justice and it has caused deemed bias against the Applicant. This order cannot be sustained. Similarly, the order dated 7.1.2012 issued by the Respondent No. 1 confirming the order dated 20.5.2004 of the Respondent No. 3 is unsustainable.

8. The orders dated 20.5.2004 passed by the Respondent No.3 and order dated 7.1.2012 issued by the State Government are hereby quashed and set aside. The orders dated 2.12.2001 passed by the Respondent No. 5 and the order dated 2.11.2002 issued by the Respondent No. 4 are confirmed. The Applicant may be granted admissible benefits on the basis of order of compulsory retirement dated 2.12.2001 within three months from the date of this order.

9. The present Original Application is partly allowed in these terms with no order as to costs.

MEMBER (J)

O.A.NO.795-2012(hdd)-2016(DB)

VICE CHAIRMAN (A)