

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 350 OF 2020
(Subject:-Minor Punishment)**

DISTRICT: - OSMANABAD

Ramraje s/o Ganpatrao Pawar,)
Age: 42 years, Occu. Service as Head Clerk,)
In the office of Sub-Divisional Police Officer,)
Tq. Bhoim, Dist. Osmanabad.)...**APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Home Department, Maharashtra State,)
Mantralaya, Mumbai-32.)
2. **The Director General of Police,**)
Maharashtra State, Shahid Bhagatsing)
Marg, Kulaba, Mumbai- 400 001.)
3. **The Special Inspector General of Police,**)
Aurangabad.)
4. **The Superintendent of Police,**)
Osmanabad.)..**RESPONDENTS**

APPEARANCE : Shri K.G. Salunke, learned Advocate
for the applicant.
: Shri D.R. Patil, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **13.02.2023.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned order of minor punishment dated 30.11.2019 (Annexure "A-3") issued by the respondent No.4 i.e. the Superintendent of Police, Osmanabad imposing punishment of stoppage of one increment without cumulative effect as well as order dated 11.07.2020 (part of Annexure "A-4" collectively) issued by the respondent No.3 i.e. the Special Inspector General of Police, Aurangabad confirming the order of punishment in departmental appeal.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant was initially appointed on 01.10.1989 on Group-IV post in the Police Department. He was promoted to the post of Junior Clerk on 24.03.2000, Senior Clerk on 06.12.2012 and Head Clerk on 08.02.2018 w.e.f. 11.09.2015. The applicant took charge of Head Clerk at the office of respondent No.4 i.e. the Superintendent of Police, Osmanabad on 24.10.2018 from Shri P.A. Dangad. While

working there, the applicant was served with charge sheet dated 25.06.2019 (Annexure "A-1") by the respondent No.4. Thereby joint enquiry was proposed against the applicant and two others as per Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 on the allegations that the applicant had not completed the work (i.e. the work of granting deemed date of promotion case of Police Head Constable Mr. B.Y. Gade) within time.

(ii) The applicant submitted his reply dated 14.11.2019 (Annexure "A-2") to the said charge-sheet, thereby he denied the charges leveled against him. He submitted that Shri P.A. Dangad was working as Sr. Grade Clerk from whom he took charge on 24.10.2018. Shri P.A. Veer who was working as Junior Grade Clerk with the applicant was instructed by the applicant many times to complete Mr. Gade's deemed date proposal. However, Shri Veer did not complete the said proposal. Therefore, delay was caused. The said reply, however, was not considered by the respondent No.4 i.e. the Superintendent of Police, Osmanabad and minor punishment by order dated 30.11.2019 (Annexure "A-3") came to be imposed upon the applicant, which is impugned in this Original Application.

(iii) The applicant challenged the said punishment order dated 30.11.2019 (Annexure "A-3") before the respondent No.3 i.e. the Special Inspector General of Police, Aurangabad by filing departmental appeal on 13.01.2020 (part of Annexure "A-4" collectively). The respondent No.3, however, without considering the applicant's role and explanation maintained the said punishment by dismissing the departmental appeal vide order dated 11.07.2020 (part of Annexure "A-4" collectively).

(iv) In fact, Mr. Veer who was working as Junior Grade Clerk was responsible for the said lapse as he failed to complete the work of preparing proposal and to put it before the applicant. For the said lapse, the applicant issued show cause notices dated 30.11.2018 and 05.12.2018 to Mr. Veer who was responsible for delay caused in Mr. Gade's deemed date case. In view of the same, the applicant is not at all responsible for delay caused in dealing with the deemed date case of Mr. Gade.

(v) It is further contended that the impugned order of punishment is issued without holding enquiry and giving opportunity of hearing to the applicant as contemplated

under Rule 10(3) read with Rule 8 of M.C.S. (Discipline & Appeal) Rules, 1979. The explanation given by the applicant is not considered by the disciplinary and appellate authority. Hence, this application.

3. The Original Application is resisted by filing affidavit in reply on behalf of the respondent Nos. 1 to 4 by one Smt. Anuradha Vitthal Udamale working as the Sub-Divisional Police Officer, Sub-Division Omerga, District Osmanabad. Thereby she denied the adverse contentions raised in the Original Application.

(i) It is not disputed that the applicant took charge of the post of Head Clerk on 24.10.2018 from Shri P.A. Dangat, Sr. Grade Clerk. One Head Constable/396 B.Y. Gade had applied on 20.06.2018 for deemed date of the post of Head Constable. His case for deemed date was kept pending by Shri P.A. Dangat from 20.06.2018 to 24.10.2018 without any action and simply giving the papers to his Assistant Jr. Grade Clerk Shri P.A. Veer. After the applicant taking over charge of the table Shri P.A. Veer had put office note on that file through the applicant on 24.12.2018. The applicant instead of submitting the file to the Superintendent of Police for further orders had kept the said office note unnecessarily till

17.07.2019 falsely showing in paragraph No.6 that the said office note was returned to Jr. Grade Clerk Shri Veer on 27.12.2018. As regards this delay from 24.12.2018 to 17.07.2019, the applicant could not give satisfactory explanation.

(ii) In fact Shri P.A. Dangat, Shri P.A. Veer and applicant all were found responsible for delay. The applicant had no power to issue show cause notice to Jr. Grade Clerk Shri Veer. Shri Veer, who was found responsible for keeping matter pending for the period of two months for which his increment is also withheld for one year. In the circumstances, punishment imposed upon the applicant of withholding increment for one year is not commensurate to the gravity of the charge proved against the applicant. Hence there is no merit in the Original Application and is liable to be dismissed.

4. The applicant filed affidavit in rejoinder denying the adverse contentions raised in the affidavit in reply. It is specifically submitted that the file of Head Constable Shri Gade was in the custody of Shri Dangat from 20.06.2018 to 24.10.2018. After taking over the charge from Shri Dangat by the applicant, Shri Veer put up the file before the applicant for the first time on 24.12.2018. As some deficiency was

found in the file, the file was again returned on 25.12.2018 to Shri Veer for removing the said deficiency. Shri Veer again put up the file before the applicant on 26.12.2018. In view of that the applicant issued show cause notice to Shri Veer seeking explanation for putting the file belatedly and it was returned the file to Shri Veer. The applicant has produced on record the documents at annexure "R R-1" to substantiate the said contention.

5. The affidavit in sur-rejoinder is filed on behalf of the respondent Nos. 1 to 4 by Shri Mukund Bankatrao Aghav working as Police Inspector in the office of the Superintendent of Police, Osmanabad, District Osmanabad. Thereby he denied the adverse contentions raised in the affidavit in rejoinder and placed on record the preliminary enquiry report dated 06.06.2019 (page No.55 of P.B.) to substantiate that the applicant never returned the file of Shri Gade to Shri Veer as claimed by the applicant on 27.12.2018.

6. The applicant got amended the Original Application taking up legal submissions that no liberty was granted to the applicant to lead evidence by production of documents or examining the witnesses in accordance with the provisions of

Rule 10(3) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. In view of that the impugned order of punishment vitiated.

7. Additional affidavit in reply to the said amended Original Application is filed on behalf of the respondent No.4 by one Vijayant Shankarlal Jaiswal working as In-charge Deputy Superintendent of Police (HQ), Osmanabad, District Osmanabad. Thereby he denied adverse contentions raised in the amended Original Application.

8. I have heard at length the arguments advanced by Shri K.G. Salunke, learned Advocate for the applicant on one hand and Shri D.R. Patil, learned Presenting Officer representing the respondents on other hand.

9. Considering the facts of the case, the provisions of Rule 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 will be required to be taken into consideration.

The said Rule is as follows:-

“10. Procedure for imposing minor Penalties.-

(1) Save as provided in sub-rule (3) of rule 9, no order imposing on a Government servant any of the minor penalties shall be made except after,-

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving

him a reasonable opportunity of making such representation as he may wish to make against the proposal;

- (b) holding an inquiry in the manner laid down in Rule 8, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking into consideration the representation, if any, submitted by the Government servant under clause (a) of this rule and the record of inquiry, if any, held under clause (b) of this rule;
- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the Commission where such consultation is necessary.

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government's servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, [the words or to impose any of the penalties specified in clauses (v) and (vi) of sub-rule (1) of the rule (5)] an inquiry shall be held in the manner laid down in sub-rule (3) to (27) of Rule 8, before making any order of imposing on the Government servant any such penalty.

(3) The record of the proceeding in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against to him;
- (ii) a copy of the statement or imputations of misconduct or misbehaviour delivered to him;
- (iii) his representations, if any;

- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor.”

10. In the case in hand, it appears that in compliance of Rule 10 (1) of the said Rules, 1979, proposal to take action against the applicant-Head Clerk, Shri P.A. Dangat-Senior Grade Clerk and Shri P.A. Veer-Junior Grade Clerk along with imputation of misconduct was served (Annexure “A-1” collectively) and opportunity of making such representation to submit his reply/representation was given to the applicant and others. Accordingly, the applicant filed his reply/representation dated 14.11.2019 (Annexure “A-2”) denying the contentions thereof and specifically contended that Shri Veer did not put up the file of Police Head Constable/396 Shri B.Y. Gade who was claiming deemed date before him in time. The said Shri Veer did not give preference to this case under the pretexts of attending other matters.

11. It appears that thereafter, the disciplinary authority did not decide to conduct or hold enquiry in the manner laid down in Rule 10 of M.C.S. (Discipline and Appeal) Rules,

1979 and instead allegedly after considering the reply imposed punishment of withholding of one annual increment without cumulative effect upon the applicant as well as Shri P.A. Dhangad- Senior Grade Clerk and Shri P.A. Veer-Junior Grade Clerk as per final impugned order dated 30.11.2019 (Annexure "A-3"). The applicant has challenged the said order to his extent in this Original application.

12. Upon perusal of the provisions of Rule 10 (2) and 10 (3) of M.C.S. (Discipline and Appeal) Rules, 1979 it would be seen that if the disciplinary authority after considering the reply/representation of the applicant, if proposed to impose punishment of withholding of increments affecting of pension or withholding increment of pay for a period exceeding three years or withholding increments of pay with cumulative effect for any period, departmental enquiry as contemplated under Rule 8 of Rule 1979 is mandatory. Ultimately the disciplinary authority imposed punishment of withholding of annual increment of one year without cumulative effect, which is minor punishment which cannot be said to be having effect on the pensionary benefit adversely.

13. In the affidavit in reply the respondents have come out with the contention that the applicant allegedly made false

entry dated 27.12.2018 mentioning of seeking explanation from Shri Veer for not putting the file in time and returned the same to Shri Veer with direction to submit fresh proposal and that the file was found laying in the custody of Shri Veer. These are serious allegations. Consideration of such contentions is not reflected in the impugned order of punishment. The respondents have sought to justify the impugned order of punishment by taking some fresh plea in the affidavit in reply, which is not whispered in the impugned order of punishment. In view of the same, such justification will have to be discarded.

14. As per the impugned punishment order, the assistant of the applicant, his predecessor and the applicant are held responsible for misconduct and misbehaviour and punishment of withholding of one annual increment without cumulative effect is imposed upon the applicant and two others. Here we are concerned with punishment imposed upon the applicant. Upon perusal of the impugned punishment order, I find that there is no proper appreciation of the defence raised by the applicant, which is supported by the documentary evidence and which is placed on record by the applicant himself along with rejoinder as Annexure "RR-

1". From record it appears that the file of Head Constable-396 Shri B.Y. Gade seeking deemed date by application dated 20.06.2018 was pending and was attended after 17.07.2019. No doubt, some negligence can be attributed to the applicant in handling the said file. The applicant's Assistant's negligence also cannot be ignored. It appears that the applicant issued show cause notice to his Assistant Shri Veer seeking explanation as to why there was delay in putting up the file and that he also complained about alleged misbehaviour of Shri Veer to his superior.

15. Considering the overall facts of this case, in my considered opinion, imposing punishment of withholding of one annual increment without cumulative effect is a bit harsh and is not in accordance with law and it is not commensurate with the misconduct alleged against the applicant. In the circumstances, this is a fit case to reduce the punishment imposed upon the applicant and to impose punishment of 'Censure' as contemplated under Rule 5(1) (i) of M.C.S. (Discipline and Appeal) Rules, 1979, which would suffice the purpose.

16. Record further shows that the respondent No.3 before whom the departmental appeal was preferred by the applicant

also did not consider the defence in accordance with law and moreover, the contention raised by the applicant in his reply was not considered in proper perspective. Hence, the impugned orders are liable to be quashed and set aside and to modify. Hence, I proceed to pass the following order:-

ORDER

The Original Application is partly allowed in following terms:-

- (A) The impugned order of punishment dated 30.11.2019 (Annexure "A-3") issued by the respondent No.4 and order dated 11.07.2020 confirming the order of punishment issued by the respondent No.3 (part of Annexure "A-4" collectively) are quashed and set aside and modified as under:-

“The punishment of ‘Censure’ as contemplated under Rule 5(1) (i) is imposed upon the applicant.”

- (B) No order as to costs.

(V.D. DONGRE)
MEMBER (J)