

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 351 OF 2020
(Subject:-Minor Punishment)**

DISTRICT: - OSMANABAD

Ramraje s/o Ganpatrao Pawar,)
Age: 53 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 two annual increments without cumulative effect as well as order dated 20.07.2020 (part of Annexure "A-4" collectively) issued by the respondent No.3 i.e. the Special Inspector General of Police, Aurangabad modifying the order of punishment reducing it to the effect of stoppage of one annual increment without cumulative effect from stoppage of two annual increments without cumulative effect 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 06.05.2019 (Annexure "A-1") by the respondent No.4. Thereby departmental enquiry was proposed against the applicant as per Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 on the allegations that the applicant had not completed the preparation of roster work allotted to him within time and that he had not submitted the same within time.

(ii) The applicant submitted his reply dated 19.05.2019 (Annexure "A-2") to the said charge-sheet, thereby he denied the charges leveled against him. He submitted that he took charge of his work on 24.10.2018 from Shri P.A. Dangad. It was pointed out that by that time he noticed that the roster was not prepared since 2015 to 2017. In spite of the same, the promotions were granted and even recruitment process for 62 posts of Constable was held without roster. The respondent No.4 did not take any action against those persons, who were holding the charge at the relevant point of time.

(iii) It was further submitted that after taking over the charge by the applicant on 24.10.2018 within three months information about roster point was called for. The applicant collected the requisite information, but could not submit it after getting it verified from the office of Assistant Police Commissioner, Aurangabad. Meanwhile the applicant had attended other pending work for about eight to nine months of pay fixation in implementation of 7th Pay Commission and other important work. No action is taken against his Assistant Mr. P.A. Veer, who had kept pending 300 to 350 important matters.

(iv) 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.

(v) 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, considered the applicant's reply partly and reduced the

punishment as stoppage of one annual increment without cumulative effect vide order dated 20.07.2020 (part of Annexure "A-4" collectively).

(vi) 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, 19793. 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. It is submitted that the applicant himself has produced duty chart of his post of Head clerk (Annexure "A-5"), which states that the maintenance of Roster Register is the responsibility of Head Clerk of Establishment Branch.

The applicant, however, has not discharged his duty of preparing and maintaining Roster Register. Due to negligence of the office staff working in Establishment Branch, the promotions and recruitments of Constables had to be done without Roster. The explanation given by the applicant was not satisfactory and therefore, the impugned punishment orders are rightly passed. In view of the same, the Original Application is devoid of merit and is liable to be dismissed.

4. The applicant filed his affidavit in rejoinder denying the adverse contentions raised in the affidavit in reply.

(i) It is specifically contended that it was not possible for the applicant in limited period to update the Roster Register from 2014 to 2019. The enquiry was conducted in pursuance to the complaint given by the applicant regarding recruitment process etc. The copy of enquiry report dated 07.05.2021 was also submitted to the respondent No. 4 by Deputy Superintendent of Police (H.Q.), S.P. Office Osmanabad. In the said enquiry report, it is clearly stated that the Roster Register was not maintained and was kept pending since 2015 to 2017 and the same was also not verified from the Competent Authority.

(ii) It is further submitted that after taking over the charge, the applicant completed the Roster Register and submitted the same for verification on 02.03.2019 to the Competent Authority i.e. the Divisional Commissioner Aurangabad. The said office verified the same. The copy of approved Roster Register is at Annexure "RR-2".

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 respondent No.4 i.e. the Superintendent of Police, Osmanabad, District Osmanabad, thereby he denied the adverse contentions raised in the affidavit in rejoinder. It is submitted that in spite of documents placed on record by the applicant in the affidavit in rejoinder, the applicant cannot shrink his responsibility of updating Roster Register

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 provisos 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 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. Accordingly, the applicant filed his reply/representation dated 19.05.2020 (Annexure “A-2”) denying the contentions thereof and specifically contending that the roster was not prepared since 2015 to 2017. In spite of the same, the promotions were granted and even recruitment process for 62 post of Constable was held without roster. The respondent No.4 did not take any action against those persons who were holding the charge at the relevant point of time. After taking over the charge by the applicant on 24.10.2018, within three months information about roster point was called for. The applicant collected requisite information, but could not submit it after

getting it verified from the office of Assistant Police Commissioner, Aurangabad. Meanwhile the applicant has attended other pending work for about eight to nine months of pay fixation in implementation of 7th Pay Commission and other important work. No action is taken against his Assistant Mr. P.A. Veer who had kept pending 300 to 350 important matters. The said reply, however, was not considered by the respondent No.4 i.e. the Superintendent of Police, Osmanabad and minor punishment by order date 30.11.2019 (Annexure "A-3") came to be imposed upon the applicant, which is impugned in this Original Application.

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 two annual increments without cumulative effect upon the applicant as per final impugned order dated 30.11.2019 (Annexure "A-3").

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 was totally negligent in preparing and updating the Roster Register within stipulated time, which was necessary for further process of promotion. The applicant is shirking his responsibility though it is part of his duty as per duty list under the grab of he was overburdened. However, in the affidavit in rejoinder the applicant has specifically placed on record the documentary evidence showing the efforts made by him for updating Roster Register and also placing on record that the Roster Register was not updated during the period of 2014 to 2017 and on the complaint made by the applicant the enquiry was

conducted. All these points were duly raised by the applicant in his reply to the charge-sheet. It was however, not appreciated while passing impugned punishment order by the respondent No.4 of stoppage of two annual increments without cumulative effect vide order dated 30.11.2019 (Annexure "A-3"). However it appears that in the departmental appeal, the respondent No.3 considered the said reply partly and modified the impugned order of punishment vide order dated 20.07.2019 (part of Annexure "A-4" collectively) reducing the punishment from stoppage of two annual increments without cumulative effect to stoppage of one annual increment without cumulative effect.

14. 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. Some negligence can be attributed to the applicant in not updating the Roster Register in time. However, the same cannot be said to be gross negligence. 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. In the circumstances, both 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 20.07.2020 modifying 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)