

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 352 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. Bhoom, 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 14.02.2020 (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 17.07.2020 (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 06.01.2020 (Annexure "A-1") by the respondent No.4. Thereby departmental 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 allotted to him within time regarding preparing the notes of the persons due for promotion.

(ii) The applicant submitted his reply dated 24.01.2020 (Annexure "A-2") to the said charge-sheet, thereby he denied the charges leveled against him. It is submitted that after taking charge on 24.10.2018, the applicant noticed that in the year 2018 till September, 2018 not a single promotion order was issued and therefore there are many complaints in that regard from the police officials. Till September, 2018 no Departmental Promotion Committee was constituted. This fact was brought to the notice of respondent No.4. However, no action was taken against the concerned police staff officials. After taking over charge, the applicant even though there was shortage of employee of his department, undertook the important work of pay fixation of the employees as per 7th Pay Commission.

(iii) The applicant, thereafter, addressed letter dated 28.01.2019 (part of Annexure "A-6" collectively) to the respondent No.2 i.e. the Director General of Police seeking guidelines of the persons who by way of transfer and promotion were posted in Osmanabad district under the respondent No.4. The respondent No.2 issued letter dated 25.03.2019 (part of Annexure "A-6" collectively), thereby giving guidelines. The said letter was received by the office of respondent No.4. However, the applicant's Assistant Shri Veer suppressed the said letter. Therefore, letter dated 30.04.2019 (part of Annexure "A-6" collectively) was required to be sent to the office of respondent No.2 seeking guidelines. In view of that some time was lapsed. The applicant therefore was not responsible for causing delay. 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 14.02.2020 (Annexure "A-3") came to be imposed upon the applicant, which is impugned in this Original Application.

(iv) The applicant challenged the said punishment order dated 14.02.2020 (Annexure "A-3") before the respondent

No.3 i.e. the Special Inspector General of Police, Aurangabad by filing departmental appeal on 17.07.2020 (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 17.07.2020 (part of Annexure "A-4" collectively).

(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. It is submitted that when he took over charge, the select lists of policemen eligible for promotion to the post of Police Constable to Police Naikes, Police Naikes to Police Head Constable and Head Constable to Assistant Sub-Inspector was kept unnecessarily pending from 23.01.2019 to 12.07.2019. Due to the negligence on the part of the applicant, 44 policemen have to wait for their promotion.

(ii) It is further submitted that the preliminary enquiry was conducted by Deputy Superintendent of Police (H.Q.), Osmanabad. The applicant was also found responsible for causing delay in issuing the promotion orders in respect of 44 policemen. The select lists of the policemen eligible for promotion recommended by the D.P.C. was ready in the Branch and only the orders of policemen as per their seniority list was to be issued. However, the applicant took near about more than 6 months time for getting issued the orders of promotion. The applicant is unnecessarily trying to shirk his responsibility on his Assistant Shri Veer. The explanation given by the applicant was not satisfactory and therefore, the impugned punishment order was rightly passed and it was rightly upheld in Departmental Appeal. In view of the same,

the Original Application is devoid of merit 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 applicant by letter dated 28.01.2019 sought guidelines from the respondent No.2 for granting promotion to various posts including the persons who were transferred from SRPF due to inter district transfer. As there was no reply to the letter dated 28.01.2019 from the respondent No.2, the applicant again on 30.04.2019 sent reminder letter for seeking guidelines. The respondent No. 2 issued guidelines dated 04.06.2019 which was received by the applicant on 16.06.2019. After receiving the guidelines, the applicant immediately on the very next day put up the note before the respondent No.2. It is further submitted after sanctioning the note by the respondent No.4, immediately the promotion order were issued on 12.07.2019 to all the employees who were due for promotion. There was absolutely no delay on the part of the applicant. The applicant has produced on record the letter dated 30.04.2019 and copies of promotion orders at Annexure "RR-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 submitted that the applicant took nearly 4 months time for issuing the promotion orders. The applicant is unnecessarily trying to shirk his responsibility on Shri Dangat, who is not at all concerned for delay after handing over the charge to the applicant. It is further submitted that the guidelines dated 10.12.2018 to fix up the seniority of the Policemen transferred to the District from SRPF were available in this office. The applicant instead of going through the past record unnecessarily sought guidelines by letter dated 28.01.2019 from the respondent No.2. The applicant has to give explanation for delaying the promotion order from 04.06.2019 to 12.07.2019. That, during the preliminary enquiry, the applicant found responsible for delay in issuing the promotion orders.

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 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 24.01.2020 (Annexure “A-2”) denying the contentions thereof and specifically contended that after taking charge on 24.10.2018, the he noticed that in the year 2018 till September, 2018 not a single promotion order was issued and therefore there were many complaints in that regard from the police officials. Till September, 2018 no Departmental Promotion Committee was constituted. This fact was brought to the notice of respondent No.4. However, no action was taken against the concerned police staff officials. After taking over charge, the applicant even though there was shortage of employees in his

department, undertook the important work of pay fixation of the employees as per 7th Pay Commission.

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 per final impugned order dated 14.02.2023 (Annexure "A-3"). The applicant has challenged the said 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 select lists of policemen eligible for promotion for various posts were kept unnecessarily pending from 23.01.2019 to 12.07.2019. Due to the negligence on the part of the applicant, 44 policemen have to wait for their promotion. It is further submitted that in the preliminary enquiry the applicant was found responsible for delay in issuing the promotion orders in respect of 44 policemen. The select lists of the policemen eligible for promotion was ready in the Branch and only the orders of policemen as per their seniority list was to be issued. However, the applicant took near about than 6 months time for issuing the orders of promotion. The applicant is unnecessarily trying to shirk his responsibility on his Assistant Shri Veer. The explanation given by the applicant was not satisfactory and therefore, the impugned punishment orders are rightly passed.

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 preparing the notes of the persons due for promotion. 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.

15 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 14.02.2020 (Annexure "A-3") issued by the

respondent No.4 and order dated 17.07.2020 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)**

Place:- Aurangabad
Date : 13.02.2023.
SAS O.A.352/2020