

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 922 OF 2012

DISTRICT: - BEED.

Sudam S/o Dnyanoba Kuchekar,

Age : 43 years, Occ: Service,

R/o : H. No. 105, Police Colony,

Balepeer, Nagar Road, Beed.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra
(Copy to be served on C.P.O.,
MAT, Bench at Aurangabad).
2. The Addl. Director General of
Police (Administration),
M.S., Mumbai.
3. The Special Inspector General of
Police, Aurangabad Range,
Aurangabad.
4. The Superintendent of Police,
Beed District, Beed. .. RESPONDENTS.

APPEARANCE : Shri Avinash S. Deshmukh – learned
Advocate for the applicant.

: Smt. Resha S. Deshmukh – 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'ble Shri J.D. Kulkarni,**
Member (J)]

J U D G M E N T

[Delivered on this 16th day of December, 2016]

1. The applicant viz. Sudam S/o Dnyanoba Kuchekar, has faced a departmental enquiry on the charges of misconduct. The said charges are stated in detail on page Nos. 47 to 50 (both inclusive). On conclusion of the departmental enquiry the Superintendent of Police, Beed i.e. Respondent No. 4 passed the following final order: -

“अंतिम आदेश.

मी, रविंद्र सेनगांवकर पोलीस अधीक्षक बीड आदेश निर्गमित करतो की, मुंबई पोलीस (शिक्षा व अपिल) नियम १९५६ मधील नियम ३ मधील तरतुदीनुसार अपचारी पोना/१०८३ एस.डी.कुचेकर नेमणूक पोलीस ठाणे बीड ग्रामीण यांना पोलीस नाईक पदावरून पोलीस शिपाई पदावर (०३) वर्षे कालावधीसाठी पदावनत करण्यात येत आहे. सदर शिक्षेच्या कालावधीत

किरकोळ रजेव्यतिरिक्त ईतर कोणत्याही रजेचा समावेश असणार नाही तसेच मुळ पदावर पुनःस्थापनेनंतर भावी वेतनवाढी प्रलंबीत राहणार नाहीत.

तसेच शिक्षेमुळे अपचारी व्यथित होत असल्यास सदरचा आदेश मिळाले तारखेपासून (६०) दिवसात मा. विशेष पोलीस महानिरीक्षक, औरंगाबाद परिक्षेत्र औरंगाबाद यांना अपील अर्ज सादर करू शकतात.”

2. The applicant has filed an appeal against the aforesaid order of punishment in the departmental enquiry on 5.4.2011. The Appellate Authority i.e. respondent No. 3, the Special Inspector General of Police, Aurangabad Range, Aurangabad was pleased to pass order on 13th September, 2011 in the said appeal and dismissed the appeal. The final operative order passed by the Appellate Authority is at page No. 63 and the same is as under: -

“-: आ दे श :-

अपचारी पोना/१०८३ एस.डी.कुचेकर, बिड यांचा पोलीस अधिक्षक बिड योनी दिलेल्या पोना पदावरून पो.शि. पदावर तीन वर्षे कालावधीसाठी पदावनतीच्या शिक्षेविरुद्धचा अपिल अर्ज फेटाळण्यात येत आहे.

२/- सदर शिक्षेने कसुरदार हे जर व्यथित होत असतील तर ते हे आदेश मिळाल्याच्या दिनांकापासून (६०) दिवसाचे आत पोलीस

महासंचालक महाराष्ट्र राज्य मुंबई योना योग्य मार्फतीने फेरअपिल करु शकतात.

सही/-

(रितेश कुमार)

विशेष पोलीस महानिरीक्षक,
औरंगाबाद परिक्षेत्र औरंगाबाद”

3. Being aggrieved by both these orders this Original Application is filed by the applicant. The applicant has requested to call record and proceedings in relation to the impugned order passed by the competent authorities in the departmental enquiry, as well as, by the Appellate Authority and requested that both the orders be quashed and set aside and all consequential benefits be granted to the applicant.

4. Respondent Nos. 2 to 4 have filed affidavit in reply and tried to justify the order. It is stated that the enquiry has been carried out as per the due procedure under Bombay Police (Discipline and Appeal) Rules, 1956 and also as per the provisions of Bombay Police Act, 1951. Due opportunity was given to the applicant and the applicant never raised any objection in the departmental enquiry in this regard. All the principles of natural justice have been followed. The

Appellate Authority has also considered all the pros and cons of the procedure and has rightly dismissed the appeal.

5. Heard Shri Avinash S. Deshmukh – learned Advocate for the applicant and Smt. Resha S. Deshmukh – learned Presenting Officer for the respondents. We have also perused the application, affidavit, affidavit in reply filed by the respondents and various documents placed on record by both the parties.

6. The learned Advocate for the applicant submits that the departmental enquiry conducted against the applicant is against the guidelines issued in the Government Resolution dated 1.4.2003 by the Additional Director General of Police (Administration), Mumbai. The said guidelines have placed on record at page Nos. 64 to 71 (both inclusive). The learned Advocate for the applicant submits that the respondents have not followed the guideline No. अ) (११), which reads as under: -

“अ) नियमांचे पालन न केल्याने येणारी अनियमितता.

११) काही प्रकरणात पदावनीच्या शिक्षेचा कालावधी २ वर्षांपेक्षा जास्त असल्याचे निदर्शनास आले आहे. पोलीस निरीक्षक व त्याखालील

*अधिकारी/ कर्मचारी विभागीय चौकशी, नियम पुस्तिका नियम २६
(बी) नुसार पदावनीच्या शिक्षेचा कालावधी कोणत्याही परिस्थिती मध्ये
दोन वर्षांपेक्षा जास्त असता कामा नये.”*

7. It is submitted that as per the said guidelines the period of reversion shall not in any case exceed two years, but the respondent Nos. 1 & 2 have not followed that guidelines.

8. In paragraph No. 6 (xiii) it has been mentioned that the punishment imposed by the respondents is not as per the Circular dated 1.4.2003. Paragraph 11 of the said Circular clearly shows that respondent No. 2 has specifically laid down in the year 2003 that under no circumstances, the punishment of reversion should and could be imposed for a period of exceeding two years, and in spite and in the teeth of said specific directives issued by respondent No. 2 on 1.4.2003, the respondent No. 4 was pleased to visit with punishment of reversion for a period of three years i.e. exceeding two years. Vague contentions have been made in the reply affidavit and no specific reply is given as to why the

punishment exceeding two years have been imposed upon the applicant.

9. From the aforesaid circumstances, we are satisfied that the Appellate Authority has not applied mind and has not considered as to whether the guidelines issued in the Government Resolution dated 1.4.2003 has been followed. This point is agitated in the appeal, but there is no comment on this point by the Appellate Authority. The applicant has stated that he was not called for hearing by the Appellate Authority. The Appellate order however, shows that he was called. It seems that the applicant has raised an issue that the punishment for more than three years is not legal on which the Appellate Authority has observed as under: -

“आम्ही अपचारी यांचा अपीलअर्ज, संक्षिप्त कार्यवाहीची कागदपत्रे तसेच पोलीस अधिक्षक यांचे निराकरण अभिप्राय व अपचारी यांचे पुर्व सेवाभिलेखाचे अवलोकन केले. तसेच अपचारी यांना दि. ३.८.२०११ रोजी समक्ष मुलाखतीस बोलावुन त्यांचे म्हणणे समक्ष ऐकुन घेतले त्यांचे म्हणणे समाधान कारक नसल्याने व पोलीस अधिक्षक यांनी अपचारी यांना दिलेली पोना पदावरुन पो.शि. पदावर तीन वर्ष कालावधीसाठी पदावनतीची शिक्षा हि कसुरीचे प्रमाणात योग्य असल्याने त्यामध्ये हस्तक्षेप करण्याची आवश्यकता वाटत नाही करिता पुढील प्रमाणे आदेश निर्गमित करण्यात येत आहेत.”

10. The aforesaid reasoning however, seems to be without application of mind. Had respondent No. 3, the Special Inspector General of Police Aurangabad, had gone through the guidelines issued vide Government Resolution dated 1.4.2003 properly, it should have occurred to him that in no case the period of reversion shall be more than two years. The findings given by the Appellate Authority as regards the period of punishment is, therefore, perverse to the facts on record and, therefore, we are satisfied that the order of both the authorities so far as it relates to period of punishment of reversion seems to be not legal. Hence, we are satisfied that this matter is required to be remanded back to the Appellate Authority i.e. respondent No. 3.

11. In view of the above, we pass the following order: -

ORDER

- (i) The present Original Application is partly allowed.
- (ii) The order of punishment passed by the Appellate Authority i.e. respondent No. 3 dated 13th September, 2011 is quashed and set aside and the matter is remanded back to respondent No. 3

for considering the points raised by the applicant in his appeal afresh.

- (iii) The respondent No. 3 shall give an opportunity to the applicant to appear before him and to submit his case and thereafter shall pass necessary order in the appeal within a period of three months from the date of this order and shall communicate the decision taken to the applicant in writing.
- (iv) In the facts and circumstances of the case, there shall be no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

O.A.NO.922-2012(hdd)-2016(DB)