

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 418/2021 (S.B.)

Deepak Ramkrishna Koli,
Aged 52 years, Occ. Service,
R/o Khamgaon Road, Sundarkhed,
Dist. Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai- 32.
- 2) The Director General of Police,
Having its office, Near Regal Theatre,
Kolaba, Mumbai.

Respondents

Shri S.P.Palshikar, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGEMENT

Judgment is reserved on 04th July, 2023.

Judgment is pronounced on 07th July, 2023.

Heard Shri S.P.Palshikar, Id. counsel for the applicant and
Shri M.I.Khan, Id. P.O. for the Respondents.

2. In this O.A. orders dated 29.08.2019 and 31.10.2019
(Annexures 13 & 14, respectively) are impugned. By order dated

29.08.2019 the Appellate Authority scaled down punishment of removal from service imposed by the Disciplinary Authority to keeping the applicant on the basic pay of Police Inspector for a period of three years. However, while passing this order instead of the words "removal from service" the words "compulsorily retired from service" were used. This error was corrected by issuing the Corrigendum dated 31.10.2019.

3. This O.A. challenging the orders dated 29.08.2019 and 31.10.2019 is filed on 07.06.2021. According to the respondents, the O.A. is barred by limitation and on this preliminary ground it is liable to be dismissed. Section 21 of the Administrative Tribunals Act, 1985 prescribes limitation of one year. It was contended by Shri Palshikar, Id. Counsel for the applicant that when the impugned orders were passed the applicant was under suspension, this Tribunal, by order dated 25.03.2021 passed in O.A. No. 17/2021 (A-16) directed his reinstatement, he was reinstated on 21.05.2021 and considering this sequence period of limitation to file original application would start to run, if not from 21.05.2021, then certainly from 25.03.2021, and thus the O.A. is well within limitation. This submission is unfounded. It is not supported by any provision of law or authoritative pronouncement. The applicant has relied on following observations in **Prem Nath Bali Vs. Registrar, High Court of Delhi & Another, AIR 2016 S.C. 101**. Wherein it is held:-

"In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee."

These observations will not assist the applicant. It is apparent that the orders impugned herein should have been assailed within the period of limitation i.e. one year. Admittedly, no application for condonation of delay in filing original application was filed. Thus, on the preliminary ground of limitation the O.A. is liable to be dismissed.

4. So far as territorial jurisdiction of this Bench is concerned, the applicant has relied on Rule 6 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988. This rule enables a party posted for the time being within the jurisdiction of a Bench to file original application before that Bench. The respondents have not disputed that as per said Rules this Bench had territorial jurisdiction to entertain this O.A..

5. Though it is held that the O.A. is barred by limitation and liable to be dismissed on this preliminary ground, it would be proper to consider the case on merits as well.

6. The applicant was served with a chargesheet dated 28.11.2013 (A-6). Following charges were laid against him:-

१. दिनांक ०१.०१.२०१३ ते २०.०६.२०१३ या कालावधी मध्ये धुळे शहर पो.स्टे. येथे गंभीर स्वरूपाचे भेटीयोग्य गुन्हे १५ व १ अकस्मात मृत्यू भेटी योग्य प्रकरणे दाखल आहेत. प्रभारी अधिकारी म्हणून यापैकी कोणत्याही गुन्ह्याचा तपास तुम्ही केलेला नाही. परंतु पोलीस स्टेशनला दाखल भाग-६ गुरनं. ४४/२०१३ अत्र सुरक्षा व मानके कायदा-२००६ नियम नियमावली - २०११ चे कलम ३० (२) (अ) सहवाचन कलम ३ (झेड झेड) (व्ही) शिक्षा पात्र कलम ५९ सह १८८ भादंवि. हा असद् हेतूने (Malafide intention) हा गंभीर स्वरूपाचा व भेटी योग्य गुन्हा नसतांना प्रभारी अधिकारी म्हणून स्वतः कडे तपासास घेतला.

२. सदर गुन्हा श्री. किशोर आत्माराम सांकुके, अन्न व औषध प्रशासन अधिकारी, धुळे यांचे फिर्यादी वरून भाग -६ गुरनं. ४४ / २०१३ अन्न सुरक्षा व मानके कायदा-२००६ नियम नियमावली-२०११ चे कलम ३० (२) (अ) सहवाचन कलम ३ (झेड झेड) (व्ही) शिक्षा पात्र कलम ५९ सह भादंवि. १८८ प्रमाणे दाखल केला आहे. सदरच्या गुन्ह्यात भादंवि. ची गंभीर कलमे ४२०, ४६७, ४६८, ४७१ समाविष्ट करूनही तो भाग ५ ऐवजी भाग- ६ मध्ये हेतुपूर्वक, असद्हेतूने (Malafide intention) वरिष्ठ अधिकाऱ्यांची गुन्ह्यांवरील देखरेख, भेट व पडताळणी टाळण्यासाठी दाखल केला आहे..

३. सदर गुन्हयाचे तपासाकामी दिनांक २३.०६.२०१३ रोजी श्री. विजय अशोक चव्हाण परिविक्षाधीन पोलीस उप निरीक्षक, व पोलीस कर्मचारी नामे (१) पोको/४४८, नरेंद्रसिंग इंद्रसिंग कच्छवाह, (२)पोको/१०८७, कैलास पन्नालाल जोहरे, (३)पोको/१३८४, रवीकिरण गणपत राठोड यांचे तपास पथक पोलीस अधीक्षकांची लेखी परवानगी न घेता, अनाधिकृतित्या गुजरात राज्यात पाठविले. तपास पथक पाठविण्या संदर्भात आजपर्यंत कार्यालयीन कार्यात्तर मंजुरी प्राप्त केली नाही, ही कृती पुर्णतः संशयास्पद असून, वरिष्ठ अधिकाऱ्यांची अधिकाराची अवमान्यता करणारी आहे.

४. सदर गुन्हयाचे तपासामध्ये (अ) ट्रक क्रमांक जीजे १६ / एक्स-६५१५ जप्तीचा पंचनामा केलेला नाही, परंतु मुद्देमाल पावतीवर तो जप्त केल्याचे दर्शविले आहे. (ब) गुन्हयातील आरोपी नामे चरणजितसिंग शामसिंग संधु रा. भरोच (गुजरात) यांस दिनांक २२.०६.२०१३ रोजी १०२० वाजता अटक केल्याचे रिमांड रिपोर्टा मध्ये नमूद केले आहे. त्या दिवशी सकाळी १०१० ते १२१० या कालावधीत स्टेशन डायरीचा चार्ज स्वतः कडे असतांना व आरोपीस स्वतः अटक केली असतांना त्याची स्टेशन डायरी मध्ये नोंद घेतली नाही. मा. सर्वोच्च न्यायालयाचे आरोपी अटक करण्याच्या मार्गदर्शक तत्वांचे पालन केले नाही.

५. दिनांक २२.०६.२०१३ रोजी धुळे शहर पो.स्टे. येथे १ सहाय्यक पोलीस निरीक्षक व ४ नियमीत पोलीस उप निरीक्षक असे अनुभवी तपासी अंमलदार

उपलब्ध असतांना श्री. विजय अशोक चव्हाण, परिविक्षाधीन पोलीस उप निरीक्षक यांना तपासासाठी गुजरात राज्यात पाठविले. तुमची ही कृती असद्हेतूची (Malafide intention) व संशयास्पद आहे.

६. पोकाँ-४४८ नरेंद्रसिंग इंद्रसिंग कच्छवाह, नेमणूक धुळे शहर पोस्टे. या गोपनीय शाखेचे काम करणाऱ्या कर्मचाऱ्यास गुन्हे प्रकटीकरणाचे (डी.बी.पथक) ११ पोलीस कर्मचारी यांचे स्वतंत्र पथक कार्यरत असतांना सुध्दा अनधिकृतरीतीने गुन्हे प्रकटीकरणाची जबाबदारी सोपवून तपास पथकातील सदस्य म्हणून विनापरवाना दिनांक २३.०६.२०१३ रोजी गुजरात राज्यात पाठविले.

७. सदर गुन्ह्यातील जप्त पानपराग पानमसाला बदलून त्याऐवजी स्क्रॅप (खराब) पानमसाला ठेवण्यासाठी साक्षीदार श्री.इरफान अब्दुलगनी खोखर, रा. पुणे यांना प्रवृत्त करून, त्यापोटी गैरहेतूने व स्वतःच्या आर्थिक फायद्यासाठी दिनांक २४.०६.२०१३ रोजी रुपये ४५,००,०००/- लाचेची मागणी केली. या मागणीचे पुर्ततेसाठी श्री. विजय अशोक चव्हाण, परिविक्षाधीन पोउनि. (मोबाईल क्रमांक- ९५५२५२४९८९) यांचे मार्फतीने श्री. इरफान अब्दुलगनी खोखर यांचे मोबाईल फोन क्रमांक ९९२३३०४००० व मोबाईल फोन क्रमांक ७७०९१००००० द्वारे पाठपुरावा करून तडजोडीअंती रु.२०,००,०००/- लाचेची रक्कम निश्चीत केली. त्यापैकी दिनांक २९.०६.२०१३ रोजी साक्षीदार नामे श्री. इरफान अब्दुलगनी

खोखर यांचेकडून साक्षीदार नामे इम्तीयाज अली महम्मद पंजा, व अकिल तांबोळी यांचे समक्ष रु.५,००,०००/- व दिनांक १९.०७.२०१३ रोजी साक्षीदार श्री. इम्तीयाज पंजा यांचेकडून रु.५,००,०००/- या प्रमाणे एकूण रु.१०,००,०००/- लाचेची रक्कम पोर्को. ४४८ नरेंद्रसिंग इंद्रसिंग कच्छवाह यांचे हस्ते स्विकारली.

८. सदर गुन्हयातील जप्त मुद्देमाल बदलून त्याऐवजी स्क्रॅप (खराब) पानमसाला ठेवण्यासाठी व तडजोडीअंती साक्षीदार श्री. इरफान खोखर यांचे कडून रु.२०,००,०००/- लाच घेण्याचे निश्चीत केले. सदर लाचेची रक्कम प्राप्त करण्यासाठी श्री. विजय अशोक चव्हाण, परिविक्षाधीन पोउनि, व गोपनीय कामकाज पाहणारे पोर्को. ४४८ नरेंद्रसिंग इंद्रसिंग कच्छवाह यांचे मार्फतीने सातत्याने पाठपुरावा करून दिनांक २९.०६.२०१३ रोजी रु.५,००,०००/- व दिनांक १९.०७.२०१३ रोजी रु.५,००,०००/- स्विकारले. अश्या रितीने तुम्ही व परिविक्षाधीन पोउनि विजय अशोक चव्हाण, पोर्को. ४४८ नरेंद्रसिंग इंद्रसिंग कच्छवाह या सर्वांनी संगनमत करून, बेकायदेशिरपणे स्वतःच्या आर्थिक प्राप्तीसाठी लोकसेवक हे पद धारण करीत असतांना, पदाच्या जबाबदारीचे जाणीवपूर्वक उल्लंघन करून, पोलीस विभागाची प्रतिमा मलीन करण्याचे कृत्य केले आहे. "

By this order dated 28.11.2013 itself Additional S.P., Dhule was appointed as Enquiry Officer. Initially, the Enquiry Officer was Additional S.P., Dhule. Thereafter, Additional S.P., Nandurbar took over

as Enquiry Officer. He submitted report of enquiry (A-8) to the Disciplinary Authority holding as follows:-

“एकंदरीत सदर प्रकरणी झालेल्या प्राथमिक चौकशीत नोंदविण्यात आलेल्या जबाबावरून तसेच उपलब्ध असलेल्या दस्तऐवजी पुराव्यावरून तसेच विभागीय चौकशीत नोंदविण्यात आलेल्या सरकारी साक्षीदारांच्या जबाबांवरून तसेच सरकारी दस्तऐवजावरून अपचारी पोनि डी.आर. कोळी यांचेवर वरील प्रमाणे ठेवण्यात आलेले दोषारोप क्रमांक १,२,३,४,७ व ८ हे निर्विवादपणे सिध्द झाले आहेत. तसेच दोषारोप क्रमांक ६ हा अंशतः सिध्द होतो व दोषारोप क्रमांक ५ हा सिध्द होत नाही.”

Thereafter, show cause notice dated 13.02.2019 (A-9) was issued to the applicant proposing punishment of removal from service. The applicant submitted reply dated 27.02.2019 (A-10). The disciplinary authority imposed punishment of removal from service by order dated 10.04.2019 (A-11). The disciplinary authority concluded:-

“५. पोनि कोळी हे पोलीस स्टेशनचे प्रभारी अधिकारी होते, त्यामुळे त्यांच्या अधिनस्त अधिकारी कर्मचा-यांनी केलेल्या कारवाईची जबाबदारी त्यांची आहे. त्यांच्याविरुद्धच्या ८ दोषारोपांपैकी ६ दोषारोप पुर्णपणे सिध्द झाले आहेत. त्यांनी त्यांच्या अभिवेदनामध्ये कोणतेही संयुक्तिक / समाधानकारक उत्तर

सादर केलेले नाही, तसेच अभिवेदनामध्ये मांडलेल्या मुद्द्यांच्या पृष्ठयर्थ कोणताही पुरावा सादर केलेला नाही.

६. तसेच, प्रस्तावित केलेली शिक्षा ही गंभीर स्वरूपाची असल्याने पोलीस निरीक्षक, दीपक रामकृष्ण कोळी यांना दि.५/४/२०१९ रोजी पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांच्या समक्ष वैयक्तिक सुनावणीसाठी बोलाविण्यात आले होते. परंतु सुनावणीच्यावेळी त्यांनी त्यांच्यावरील दोषारोपाबाबत कोणतेही समाधानकारक स्पष्टीकरण अथवा नवीन मुद्दा उपस्थित केला नाही. त्यामुळे, पो.नि., कोळी यांना कारणे दाखवा नोटीसमध्ये प्रस्तावित केलेली "शासन सेवेतून कमी (Removal from service)" करणे ही शिक्षा कायम करणे, त्यांच्या कसुरीच्या प्रमाणात व न्यायदानाच्या दृष्टीकोनातून योग्य ठरेल अशा निष्कर्षाप्रत मी येत आहे. म्हणून मुंबई पोलीस अधिनियम १९५१ मधील नियम क्र.२५(२) अन्वये मला प्रदान असलेल्या अधिकारान्वये "सक्षम प्राधिकारी" म्हणून मी पुढील प्रमाणे आदेश देत आहे.

आदेश

मी सु.कु. जायसवाल, पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई याद्वारे पोलीस निरीक्षक, दीपक रामकृष्ण कोळी, यांना "शासन सेवेतून कमी (Removal from Service)" ही शिक्षा अंतिम आदेशात देत आहे.

२. सदर शिक्षेने अपचारी व्यथित होत असतील तर हे आदेश मिळाल्या दिनांकापासून ६० दिवसांचे आत ते शासनास अपील करू शकतात. "

In appeal preferred by the applicant the punishment was scaled down as above by the impugned order dated 29.08.2019 and this was followed by the Corrigendum dated 31.10.2019 which, too, is impugned.

7. It was argued by Advocate Shri Palshikar that in chargesheet (A-6) itself there was reference to appointment of Enquiry Officer, the applicant was yet to file reply to chargesheet, thus the matter could be said to have been pre-judged giving rise to an inference of bias. To support this submission reliance was placed on **State of Punjab Vs. V.K.Khanna & Ors., AIR 2001 Supreme Court 343**. In this case it is held:-

"It is well settled in Service Jurisprudence that the authority has to apply its mind upon receipt of reply to the charge-sheet or show cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise."

In this ruling it is also held:-

“The test is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor would not arise.”

On the other hand, the respondents have relied on **South Bengal State Transport Corporation Vs. Ashok Kumar Ghosh and Ors. (2010) 11 Supreme Court Cases 71**. In this case it is held:-

13 in our opinion, it may be open for a disciplinary authority to initiate the departmental proceedings on consideration of the reply of an employee but as an absolute proposition of law it cannot be said that before initiating the departmental enquiry or appointing an enquiry officer, reply of the delinquent employee is required to be obtained and considered unless it is the requirement of the rules. There may be cases where the charges are of such a nature that the disciplinary authority may not require any reply from the

delinquent employee but straightaway initiate the departmental enquiry and appoint an enquiry officer.

15. Now referring to the authority of this Court in V.K. Khanna¹, relied on by the High Court, same is clearly distinguishable. In the said case the charge-sheet dated 24-4-1997 was issued to the delinquent employee who happened to be the Chief Secretary of the State and he was asked to submit his reply within 21 days but even before his reply, the Chief Minister made a statement on 27-4-1997 that a Judge of the High Court would look into the charge against him. The aforesaid act of the Chief Minister coupled with other factors led this Court to conclude that the action was actuated by bias. In the present case the facts are completely different.

In the instant case there are no circumstances to conclude that due to appointment of Enquiry Officer even before the applicant had submitted his reply to the chargesheet, his case was pre-judged and the enquiry was vitiated on account of bias.

8. It was further argued by Advocate Shri Palshikar that Enquiry Officer who started the enquiry did not conclude the same, the Enquiry Officer was changed mid-way and thereby the enquiry stood vitiated. In support of this submission reliance was placed on

Dr.M.N.Dasamma Vs. State of Andhra Pradesh, AIR 1973 Supreme Court 2275. In this case it is held:-

Where a tribunal consists of more than one member and an enquiry is held by a single member, he alone can report his findings to the Government and his report shall be deemed, by virtue of the proviso to S. 7 to be the report of the tribunal. Where, however a single member has not held any enquiry but merely heard the arguments which cannot form part of the enquiry under Section 8 read with R. 7 (1) (iii), his report to the Government cannot be deemed to be the report of the Tribunal. It is essential under the substantive part of Sec. 7 that all the members of the Tribunal should submit their report. Consequently, the report submitted by him alone would be illegal and void and the order of dismissal based thereon cannot be allowed to stand.

These observations are clearly not applicable to the facts of the case in hand. Here, enquiry was properly conducted by the Enquiry Officer who submitted his report which formed the basis for imposition of punishment.

9. It was submitted by Shri Khan, Id. P.O. that considering limited scope of powers of judicial review interference by this Tribunal would not be warranted. In support of this submission reliance was

placed on **State of Andhra Pradesh & Ors. Vs. S. Sree Rama Rao, AIR 1963 SC 1723**. In this case it is held:-

“11. In our judgment the proceedings before the Departmental Authorities were regular and were not vitiated on account of any breach of the rules of natural justice. The conclusions of the departmental officers were fully borne out by the evidence before them and the High Court had no jurisdiction to set aside the order either on the ground that the "approach to the evidence was not consistent with the approach in a Criminal case nor on the ground that the High Court would have on that evidence come to a different conclusion. The respondent had also ample opportunity of examining his witnesses after he was informed of the charge against him. The conclusion recorded by the punishing authority was therefore not open to be canvassed, nor was the liability of the respondent to be punished by removal from service open to question before the High Court.”

The respondents have also relied on **Deputy General Manager & Ors. Vs. Ajai Kumar Srivastava (2021) 2 SCC 612**. In this case it is held:-

“24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making

process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact."

10. Considering facts of the case and scope of judicial review no interference with the impugned orders would be warranted. Hence, the **original application is dismissed with no order as to costs.**

(Shri M.A.Lovekar)
Member (J)

Dated :-07/07/2023.
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 07/07/2023.
and pronounced on

Uploaded on : 10/07/2023.