

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 545 of 2008****WITH CIVIL APPLICATION NO.546/2017 (D.B.)**

Ramlakhan S/o Jagnarayan Upadhyay,
Aged about 70 years, Occ. Nil,
R/o Padnathpur, Post Babuganj,
Tah. Lalganj, Dist. Pratapgarh (UP)

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 2) Inspector General of Police,
Police Mukhalaya, Shahid Bhagat
Singh Marg, Colaba, Mumbai-400 039.
- 3) Superintendent of Police,
Yavatmal, Dist. Yavatmal.

Respondents.

**S/Shri K.D. Manvatkar, S.N. Gaikwad, Advs. for the applicant.
Shri Sainis, P.O. for the respondents.**

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri A.D. Karanjkar, Member (J).**

JUDGMENT

Per : Member (J).

(Delivered on this 23rd day of January,2019)

Heard Shri S.N. Gaikwad, learned counsel for the
applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. We have heard submissions on behalf of the applicant and on behalf of the respondents. The applicant was serving as unarmed police constable on establishment of Superintendent of police Yeotmal. The applicant was accused in two criminal cases. In Cr. Case No.1455/1969 u/s 211 of IPC and Cr. Case No.53/1969 u/s 161 IPC and section 5 Prevention of Corruption Act the applicant was acquitted by the Court on 15-4-1974 and 17-3-1969 respectively. The Magistrate granted "A" summary.

3. When the criminal case No.53/1069 was pending the Superintendent of police served charge sheet on the applicant alleging that the applicant committed misconduct as he avoided to seize blood stained cloths of the deceased and avoided to remain present at the time of cremation of the dead body. It was also alleged that during investigation of that crime the applicant extracted amount Rs.600/ as gratification. The DE was conducted and the Superintendent of police dismissed the applicant from the service vide order dt/ 8-4-1971. The applicant challenged the dismissal in departmental appeal and D.I.G. Amravati allowed the appeal and directed that suspension of the applicant be continued and after the decision in two criminal cases D.E. shall be held de novo. The criminal cases were decided till August 1974 and thereafter the D.E. started de novo. The Superintendent of police ultimately came to the

conclusion that the applicant was guilty of serious misconduct consequently dismissed the applicant from service vide order dt/2-11-1977. The applicant preferred departmental appeal but he was unsuccessful, thereafter he filed Writ Petition No.771/1982 before the Hon'ble High Court. The Hon'ble High Court transferred the writ petition to MAT Nagpur. The petition was heard by the D.B. and the bench was pleased to dismiss it by order dt/ 16-9-1994.

4. It was contention of the applicant that the Superintendent of police was not authorised to initiate the D.E. and serve the charge sheet on him, according to the applicant only I.G. Maharashtra, who was the head of the department was authorised to serve the charge sheet and order the D.E. as he was acquitted in both the criminal cases. In support of the contention the applicant had place reliance on the provision under para 445(2) of the Police Mannual. The applicant had placed reliance on the judgment in case of State of Maharashtra v/s Bhimrao Vitthal Jadhao 1975 Mh.L.J. 807. This contention was turn down by the D.B. MAT Nagpur and the application was dismissed.

5. The applicant being aggrieved by this order filed SLP(civil) No.23671/1995 before the Hon'ble Supreme Court of India and the Hon'ble passed the following order on 13-8-1996.

“In view of the decision of the Bombay High Court in State of Maharashtra vs. Bhimrao Vithal Jadhao (1975 Maharashtra Law Journal 807), it was not correct on the part of the Tribunal to say that the Superintendent of police is the ‘Departmental Head’. He is not. Accordingly, this appeal is allowed and the order of the Tribunal is set aside on this ground alone. It is for the ‘Inspector General of Police (who is the ‘Departmental Head’) to consider and decide whether any disciplinary inquiry is called for against the appellant and take such action as may be called for in accordance with law.”

6. It seems that after the decision in SLP the matter was again kept before the Special Inspector General of Police (Administration) Maharashtra State Mumbai. The Special Inspector General of Police (Administration) Maharashtra State Mumbai passed order on 30-4-1998 and held that the charges against the applicant were proved and the punishment awarded was reasonable and proportionate.

7. It appears from the record that the applicant made representation dt/15-6-1998 to the Inspector General of Police Maharashtra State and submitted that the order passed by the Hon’ble Apex Court was not complied, therefore, his dismissal be set aside. In spite of repeated representation no order was passed by the police authorities, therefore, present original application is filed.

8. The application is mainly opposed on the ground that as per the direction in the SLP, the matter was again re-examined by the Special Inspector General of Police (Administration) (M.S.). It is further submitted that this order was passed by the Special Inspector General of Police on 30/04/1998 as directed by the Hon'ble Apex Court and the O.A. is filed by the applicant in the year 2008, therefore, it is barred by limitation. It is submitted that there is inordinate delay in filing the application is not properly explained and therefore there is nothing in this O.A.

9. In order to examine whether direction given by the Hon'ble Apex Court in SLP is complied or not. It is necessary to peruse the direction given by the Hon'ble Apex Court vide Annex-A-D. After reading the order passed by the Hon'ble Apex Court it seems that the Inspector General of Police was the departmental head of the State Police Force and he was directed to consider and decide whether any disciplinary inquiry was called for against the applicant and to take such action as may be called for in accordance with the law.

10. Thus it seems that there was specific direction to the Inspector General of Police to examine the case as directed by the Hon'ble Apex Court. On perusal of Annex-A-E it seems that the order was passed by Special Inspector General of Police

(Administration) (M.S.), though there was direction to the Inspector General of Police to comply the order, but it was not done. Even for sake of argument it is accepted that the Special Inspector General of Police (Administration) (M.S.) was authorized to comply the order then also it is necessary to examine whether in strict sense that order was complied by him. After reading the order at Annex-A-E it seems that the Special Inspector General of Police (Administration) (M.S.) simply observed that he examined the case of the applicant and the charges levelled against him were substantially proved, therefore, the punishment awarded by the Superintendent of Police was reasonable and there was no necessity to interfere in the punishment.

11. It appears that the Special Inspector General of Police (Administration) (M.S.) did not examine the issue whether there was a need to initiate departmental inquiry against the applicant and without deciding this issue the Special Inspector General of Police (Administration) (M.S.) mechanically passed the order.

12. It appears from the facts and the circumstances of the case that it was contention of the applicant in the T.A. No.534/1992 that only Inspector General of Police (M.S.) was authorized to direct his departmental inquiry as per the provisions under Para 445 (2) of The Bombay Police Manual and for this purpose reliance was placed by the applicant on the Division Bench Judgment of the Hon'ble

Bombay High Court in case of **State of Maharashtra Vs. Bhimrao Vithal Jadhav (1975 Mh.L.J.,807)**. That while deciding that O.A. it was held that the ratio in case of Bhimrao Vithal Jadhav was not applicable and the O.A. was dismissed. While deciding the SLP the Hon'ble Apex court observed that the Division Bench of MAT Nagpur did not consider the ratio in case of Bhimrao Vithal Jadhav and therefore wrongly held that the Superintendent of Police was the Departmental Head, consequently the Hon'ble Apex Court directed the Inspector General of Police who was the Departmental Head of the State Police Force to examine whether there was necessity to initiate the inquiry against the applicant and to take further action if it was necessary.

13. After reading Annex-A-E, order passed by the Special Inspector General of Police it seems that he avoided to apply his mind while deciding the matter, he did not examine the issue whether the departmental inquiry was essential when "A" summary was granted. What exercise was done by the Special Inspector General of Police is that he only endorsed the finding recorded in the previous inquiry and the punishment and its extent. In view of this situation we are compelled to say that the Inspector General of Police so also the Special Inspector General of Police (MS), have not complied the order passed by the Hon'ble Apex Court.

14. It appears from the record that since passing of the order at Annex-A-E the applicant repeatedly made several representations to the Inspector General of Police and higher authorities to decide his matter in accordance with the directions issued by the Hon'ble Apex Court, but no heed was paid to his representations. Ultimately in the year 2007 it was informed to the applicant that there was no substance in his representations, ultimately the applicant filed O.A. for reliefs. In view of these facts we accept that the order passed by the Hon'ble Apex is not complied by the Inspector General of Police, consequently the applicant's dismissal is illegal.

15. In view of the above background, it is necessary to take into account the fact that the applicant had joined the service long back in the year 1966, he was placed under suspension when the crimes were registered against him in the year 1969. When the criminal cases were pending the applicant was dismissed, that dismissal was set aside by the then Inspector General of Police and the matter was sent to the Superintendent of Police, Yavatmal to proceed further with the inquiry after the decision of the criminal cases. Both criminal cases were decided and the applicant was acquitted in the year 1974, thereafter the departmental inquiry was again proceeded and the applicant was dismissed from service in the year 1977. It seems that since 1977 and also before it the applicant

is fighting for the justice and he is knocking the doors of the Court and Tribunal. Under these circumstances, considering the age of the applicant so also the fact that the applicant has now no source of income, we think that it is fit case to condone the delay. In view of all the circumstances as the respondents have not complied the order passed by the Hon'ble Apex court (Annex-A-D), therefore, the order dismissing the applicant from service can be sustained, it is liable to be set aside. Hence we pass the following order –

ORDER

The impugned order of dismissal of the applicant from the service passed by the Superintendent of Police, Yavatmal on 02/11/1977 and confirmed by the Special Inspector General of Police on 30/04/1998 are hereby set aside. The matter is remanded back to Director General of police (MS) and Head of Police Force to decide the case of the applicant in view of the order passed by the Hon'ble Apex Court in SLP No. 23671/1995, the Director General of police and Head of the Police Force shall comply this order within three months from the date of this order. No order as to costs.

(A.D. Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 23/01/2019.

ORDER

In view of the reasons discussed in O.A. 545/2008 the C.A.No.546/2017 stands disposed off. No order as to costs.

(A.D. Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 23/01/2019.

dnk.