

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 570 of 2018 (D.B.)**

Shaikh Sirajuddin S/o Shaikh Nizamuddin,  
C/o Pasha Bhai, Ganga Nagar-1, Opp. Summa Hospital,  
Near Aqsa Musjid, Akola.

**Applicant.**

**Versus**

- 1) The Chief Secretary,  
Home Department, State of Maharashtra,  
Mantralaya, Mumbai-32.
- 2) The Director General of Police,  
Shahid Bhagat Singh Marg, Opp. Regal Cinema,  
Colaba, Mumbai-39.
- 3) The Special Inspector General of Police  
(Amravati Range), near Maltekdi, Camp Road,  
Amravati-444 602.
- 4) The Superintendent of Police,  
Police Control Room, Buldhana.

**Respondents.**

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**Shri S.M. Khan, Advocate for the applicant.**

**Shri A.M. Khadatkar, P.O. for the respondents.**

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

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**JUDGMENT****Per : Member (J).****(Delivered on this 29<sup>th</sup> day of November,2018)**

Heard Shri S.M. Khan, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. The applicant joined the service as Police Constable on 07/07/1981. In due course, in the year 1999, he was promoted as Police Nayak. Lateron he was promoted as Police Head Constable on 25/01/2001. The applicant was promoted as Police Sub Inspector (PSI) vide order dated 03/07/2003.

3. It is contention of the applicant that his service record was good, he was good Officer and for the excellent performance given by the applicant in Gadchiroli District, he was honoured with several Awards. It is case of the applicant that in the year 2008 his posting was at Arni Police Station, District Yavatmal. At that time, crime under the Prevention of Corruption Act was registered by the Anti Corruption Bureau (ACB), Yavatmal. It was case that one Shri Awadhut Ukandrao Khandare, Police Personnel demanded bribe for showing unlawful favour to the complainant Shri Shriram Wamanrao Kothale in that matter. On the basis of complaint lodged by Shri S.W. Kothale proceeding was initiated by the ACB, Yavatmal, two panch witnesses were called, the panchanama was recorded and lateron

the panch no.1 and the complainant approached Shri A.U. Khandare, the accused no.1 in the matter. The accused no.1 demanded the bribe, but refused to accept it and he referred the complainant Shri Kothale to present applicant who was at that time PSI, Police Station Arni. It was case of the ACB that when the complainant Shri Kothale contacted the applicant, the applicant asked whether money was brought, but he refused to accept it, as there was no acceptance of money. The Officer of ACB, Yavatmal on the basis of these facts submitted the charge sheet against Shri A. Khandare and present applicant alleging that both were public officials and they demanded illegal gratification from complainant Shri Kothale on 15/07/2008. It was alleged that present applicant abated Shri A. Khandare to commit the offence under the Prevention of Corruption Act. There was full pledged trial in Special Case No.09/2010 before the Special Judge, Darwaha and after trial the learned Special Judge acquitted Shri A. Khandare and the present applicant observing that the offences were not proved beyond reasonable doubt.

4. It is grievance of the applicant that the applicant was suspended in the year, 2010 (03/12/2010) and the order was passed on 03/09/2011 by which the applicant was reverted to the post of Police Head Constable. It is contention of the applicant that the order of reversion passed by the Authority on 03/09/2011 was apparently

unwarranted and contrary to law as without holding disciplinary inquiry that order was passed. It is submitted that without giving opportunity of hearing to the applicant that order was passed, therefore, the order is patently illegal.

5. It is submitted by the applicant that after his acquittal in the criminal trial, he made representation to the respondents, but his representation was turned down and the suspension period was treated as suspension. It is submitted that when there was no substance in prosecution of the applicant, the charges were held not proved, therefore, the suspension period should have been treated as duty period and as it is not done, therefore, miscarriage of justice is caused. The both orders are attacked on the ground that as per procedure it was duty of the disciplinary authority to give opportunity of hearing to the applicant and to record to independent finding about the involvement of the applicant in the crime under the Prevention of Corruption of Act and to record findings that it was misconduct. It is submitted that for treating the suspension period as suspension and for reversion of the applicant to the post of Police Head Constable departmental inquiry was must. It is contention that this procedure prescribed by law is not followed by the disciplinary authority and the higher authority and no heed was paid to the representation made by the applicant, therefore, the impugned orders cannot sustained, the

same be quashed and suspension period be treated as duty period and directions be given to the respondents to reinstate the applicant on the post of PSI.

6. The respondents have submitted their reply which is at P.B. page no. 60. It is contention of the respondents that though the applicant was acquitted from the charges in Special Case No.09/2010, but considering the material against him, the respondent no.4 passed the order for treating the suspension period as suspension. It is submitted that the applicant was not acquitted in the Special Case No. 09/2010 for the reason that there was no stretch of evidence against him, but he was given benefit of doubt and for this reason there is no substance in this application. It is contention of the respondents that the applicant is misguiding the Tribunal and it is settled law that as per the Mumbai Police (Punishment and Appeal) Rules, 1956 and the Maharashtra Police Act, 1951, there is no provision for interference in the order passed by the Competent Authority. In short, it is contention of the respondents that the order of reversion and order to treat suspension period as suspension are legal in law and no interference is required.

7. In order to examine the rival submissions, it is necessary to peruse the Judgment delivered by the learned Special Judge in Special Case No. 09/2010. In para-11 of the Judgment the learned

Special Judge observed that the prosecution could not examine the complainant Shri Kothale as he was dead. The panch no.1 was examined and while appreciating the evidence, the learned Special Judge observed that the Panch no.1 in his cross examination admitted that when amount was tendered by the complainant to the accused no.1 in that case and to the present applicant, both refused to take that amount offered by the complainant. In para-15 while appreciating the evidence of panch no.1, the learned Special Judge has observed that the panch no.1 has admitted that the accused did not accept the amount of bribe and on 16/07/2008 the accused did not demand the amount of bribe and considering this admission given by panch no.1, the learned Special Judge recorded findings that though the complainant was ready to pay the amount of bribe as none of the accused accepted the amount of bribe and the very fact was sufficient to show that there was no substance in the case of the prosecution that illegal gratification was demanded. It is observed by the learned Special Judge had the accused demanded amount of bribe, then they would have accepted it and there was no reason for not accepting the bribe when it was demanded. The learned Special Judge also observed that in para-18 of the Judgment that after the trap, the complainant gave in writing to the ACB Officer Shri Mankari that the complainant had no grievance against the accused about gratification.

8. The learned Special Judge has further observed that there was evidence on record that the accused no.1 was investing a crime against the informant /complainant and his son and this might be the cause to take revenge by involving the accused in a false case. It is also observed that the evidence of panch no.1 was not cogent and convincing about the demand of gratification by the accused and in the complaint there was no allegation against the accused no.2 and similarly the matter of inquiry was with accused no.1 only. The learned Special Judge also observed in para-20 of the Judgment that as there was no inquiry in the hand of accused no.2, i.e., the applicant, therefore there was no reason for the accused no.2 i.e. the applicant to demand the amount of the bribe from the informant. It is observed by the learned Special Judge that these circumstances were sufficient to infer that the accused were involved in a false matter and considering the entire evidence, the learned Special Judge held that he was of the opinion that the prosecution failed to prove beyond reasonable doubt that any of the accused had demanded the amount of gratification from the informant/complainant or the accused no.2, i.e., the present applicant had abated the accused no.1 to demand the amount of bribe from the informant. It must be remembered that there is a difference between establishing a case beyond reasonable doubt and giving benefit of doubt, in criminal trial the burden lies on the

prosecution to establish the charges against the accused beyond reasonable doubt and benefit of doubt is a case where two hypothesis one in favour of prosecution and other in favour of the accused are probable. It is doubtful situation therefore, the court can not record positive finding as to involvement of the accused. It appears that the finding recorded by the trial court that the evidence was not sufficient to prove that any of the accused demanded the amount of gratification or the accused no.2 i.e. the applicant abated the accused no.1 to demand the bribe, these findings are specific one. Under these circumstances, it is not possible to accept that merely because giving benefit of doubt the present applicant was acquitted.

9. In this regard I would like to point out that though the applicant was acquitted in Special Case No.09/2010, the disciplinary authority had jurisdiction to examine the matter independently by holding the departmental inquiry. The disciplinary authority could have initiated departmental inquiry and after recording evidence, would have recorded independent findings that the allegations made in the criminal case against the present applicant were reasonably true, but it is not done.

10. In the present case it seems that before the conclusion of the trial the Superintendent of Police, Yavatmal passed order on 3<sup>rd</sup>



September, 2011 and without conducting inquiry, straightway reverted the applicant to the post of Police Head Constable and transferred him to Buldhana. The Annex-A-5 is the reversion order dated 3<sup>rd</sup> September, 2011. In this order it is simply mentioned that as the applicant was involved in Crime No. 3073/2008 under the Prevention of Corruption Act, 1988 under Sections 7, 12, 13 (2), therefore he was reverted and repatriated to his original cadre of Police Head Constable. In our view, this action taken by the Superintendent of Police, Yavatmal was without following the due procedure provided in Law. As per the Maharashtra Police Act, the procedure is prescribed under Section 25 for awarding punishment to the Subordinate Officers of the Police Force. Similarly, the State Government or the Disciplinary Authority mentioned under Section 25 (1) (A) of the Maharashtra Police Act, may award punishment issuing warning, reprimand, extra drill, fine, stoppage of increments and the higher Police Officers were authorised to award the major punishment. Section 26 of the Maharashtra Police Act prescribes the procedure to be followed before awarding punishment. The Section is as under :-

**“(26) Procedure to be observed in awarding punishment –**

*Except in cases referred to in the second proviso to clause (2) of article 311 of the Constitution of India, no order of punishment under sub section (1) of section 25 shall be passed unless the prescribed procedure is followed.”*

11. The Bombay Police (Punishments and Appeals) Rules, 1956, Rule-3 says that without prejudice to the provisions of any law for the time being in force, the following punishments may be imposed upon any Police Officer, namely suspension, reduction in rank or grade pay or removal from any office or compulsory retirement or removal from service, dismissal with disqualification etc. The Rule 2 says that no Police Officer to whom these rules apply shall be departmentally punished otherwise than in accordance with the provisions of the rules. The Rule 4 is very specific and mandatory which says that no punishment specified i.e. reduction in rank, suspension, removal from service, compulsory retirement and dismissal from service be imposed on a Police Officer, unless a departmental inquiry into the conduct is held and a note of the inquiry with the reasons for passing such order is made in writing under the signature. In the present case the learned P.O. appearing for the respondents candidly admitted that when the order was passed by the Superintendent of Police, Yavatmal on 3<sup>rd</sup> September, 2011, no departmental inquiry was conducted. Thus, it seems that the impugned order of reversion is apparently passed without following the due procedure laid down in the rules which are discussed above.

12. My attention is invited to Annex-A-8 order dated 06/09/2016 passed by the Superintendent of Police, Buldhana. By

this order it was held that as the applicant was acquitted giving benefit of doubt, therefore, his suspension period from 03/12/2010 to 08/03/2016 be treated as suspension. It is apparent that when Superintendent of Police, Buldhana passed this order on 6<sup>th</sup> September, 2016 no opportunity of hearing was given to the applicant, no evidence was recorded to record the findings that how there was substance in the allegations made against the applicant in the criminal case. Thereafter vide Annex-A-9 representation was made by the applicant to the Director General of Police (M.S.). Similar the representation was made on 01/02/2017, it was informed to the applicant by the Special Inspector General of Police (Administration) that as decision was taken by the competent authority, there was no provision to interfere in that decision under the Maharashtra Police Act, 1951 and rules. Similarly, it was informed by the Superintendent of Police to the applicant that earlier decision was maintained.

13. After considering all the aspect of the case, in our opinion it was necessary for the disciplinary authority to initiate the departmental inquiry against the applicant if they had desire to award punishment of reversion or to treat period of suspension as suspension, but this procedure laid down in the service rules was not followed and therefore we are compelled to record finding that

impugned order passed by the disciplinary authority treating the suspension period as suspension and reverting the applicant from the post Police Sub Inspector to the post of Police Head Constable are contrary to law, hence cannot be sustained. In the result, the following order :-

**ORDER**

- (i) The O.A. is allowed in terms of prayer clause no.7 (i), (ii), (iii) and (iv).
- (ii) The impugned orders of suspension and reversion are set aside.
- (iii) No order as to costs.

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

**(Shree Bhagwan)**  
**Member (A).**

**Dated :- 29/11/2018.**

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