MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 703 / 2022 (S.B.)

Mukhtar Dawood Shaikh,
Aged about 52 years,
Occ. Police Inspector,
Sir J.J.Marg Police Station.

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai- 32.

2) Director General of Police (Administration),
Mumbai.

3) The Joint Commissioner
of Police (Administration) Mumbai.

4) Commissioner of Police,
Nagpur City, Nagpur
Maharashtra.

Respondents

Shri S.Ateeb, ld. Advocate for the applicant.

Shri V.A.Kulkarni, ld. P.O. for the Respondents.

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

JUDGMENT

Judgment is reserved on 27th Mar., 2023.

Judgment is pronounced on 31st Mar., 2023.

Heard Shri S.Ateeb, ld. counsel for the applicant and Shri V.A.Kulkarni, ld. P.O. for the Respondents.

2. The applicant who holds the post of Police Inspector was served with a show cause notice dated 17.03.2022 (A-2) the notice stated as follows:-

> तुम्ही पो.नि. मुख्तार दाऊद शेख तत्का. नंदनवन पोलीस ठाणे, नागपूर शहर येथे कार्यरत असतांना खालील प्रमाणे कर्तव्यात कसुरी केली आहे.
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> १) तुम्ही, नंदनवन पोलीस ठाणे, नागपूर शहर, येंथे दि. २२/०९/२०२१ रोजी पोलीस ठाणे प्रभारी म्हणून कार्यरत असतांना , मृतक तुषार ठाकुर यांच्यावर मेडीकल हॉस्पीटल नागपूर येथे उपचार सुरु होता, उपचार सुरु असतांना वैद्यकिय अधिकारी यांनी त्यास दि. २२/०९/२०२१ रोजी मयत घोषीत केल्याने पोलीस ठाणे, नंदनवन नागपूर शहर येथे मर्ग क्र. १०२/२०२१ कलम १७४ जा.फौ. दि.२२/०९/२०२१ रोजी गुन्हा दाखल करण्यात आला. मृतकाच्या छातीवर जखमा असतांना सदर घटनेचे गांभीर्य लक्षात घेवून मेडीकल हॉस्पीटल येथे स्वत: जावून मृतकाचे नातेवाईकांकडे चौकशी करुन आरोपीचा शोध घेणे आवश्यक असतांना तुम्ही आरोपीचा शोध घेतला नाही.
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> २) तुम्ही सदर प्रकरणात पोलीस ठाणे नंदनवन, नागपूर येथे अप. मृत्यू क्र.५५५/२०२१ कलम ३०२,३४ भा.द.वि. प्रमाणे गुन्हा दाखल करण्यास हेतुपुरस्सपरपणे विलंब केला.
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> ३) तुम्ही कर्तव्यात हलगर्जीपणा , निष्काळजीपणा व बेजबाबदार वर्तन करुन महाराष्ट्र नागरी सेवा (वर्तणूक)नियम १९७९ मधील नियम ३ उपनियम (१)(दोन)चे उल्लंघन करुन पोलीस दलाच्या शिस्तिचे उल्लंघन केले आहे.
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> तुम्ही शिस्तप्रिय पोलीस दलात कार्यरत असुन तुमचे उपरोकत वर्तन हे बेशिस्त, बेजबाबदार व निष्काळजीपणाचे आहे. तुमच्या उपरोक्त कसुरीबाबत तुम्ही मुंबई पोलीस (शिक्षा व अपील) नियम १९५६ अंतर्गत नियम क्रमांक ३ अन्वये कोणत्याही शिक्षेस पात्र आहात.

उपरोकत कसुरीच्या अनुषंगाने पो.नि. मुख्तार दाऊद शेख तत्का. नंदनवन पोलीस ठाणे, नागपूर शहर सध्या नेमणुक जे.जे. मार्ग पोलीस ठाणे, मुंबई यांना ‘‘देंय वार्षिक वेतनवाढ १(एक) वर्ष रोखणे (भविष्यातील वेतनवाढीवर परिणाम न होता)’’ या प्रस्तावित शिक्षेची कारणे दाखवा नोटीस याद्वारे देण्यात येत आहे.

तुम्ही, सदरची नोटीस मिळाल्याच्या दिनांकापासून १५ दिवसांचे आंत उत्तर सादर करणे आवश्यक आहे. विहित मुदतीत आपले उत्तर प्राप्त न झाल्यास आपणास याबाबत काहीही सांगावयाचे नाही असे गृहीत धरुन कारणे दाखवा नोटीस मध्ये प्रस्तावित केलेल्या शिक्षेचे अंतिम आदेश निर्गमित करण्यात येतील.

Reply dated 26.03.2022 (A-3) was submitted by the applicant. After considering the facts of the case and reply of the applicant, respondent no. 3 passed the impugned order dated 13.05.2022 (A-1) imposing the punishment of stoppage of one increment without cumulative effect. Hence, this Original Application.

3. Stand of respondent no. 4 is that the prescribed procedure was followed and appropriate punishment was imposed and hence interference by this Tribunal with the impugned order is not warranted.

4. On behalf of the applicant following grounds were raised:-

A. Detailed reply given by the applicant was not considered at all by respondent no. 3 while passing the impugned order as can be gathered from its perusal.

B. Considering facts of the case full fledged enquiry ought to have been conducted.

5. It is not in dispute that by the impugned order minor punishment was imposed under Rule 3 (2) (v) of the Bombay Police (Punishments and Appeals) Rules, 1956. Relevant part of Rule 3 reads as under :-

> "*3. (1) 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:-*****
>
> *(2) The following punishment may also be imposed upon any Police Officer if he is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which does not require his suspension or dismissal or removal:-*
>
> *(i)*****
>
> *(ii)*****
>
> *(iii)*****
>
> *(iv)*****
>
> *(v) Stoppage of increments.*

*(vi)*****"

Rule 4 which is also relevant reads as under:-

"4.(1) No punishment specified in clauses (a-2), (i), (i-a), (ii) and (iii) of sub-rule (1) of rule 3 shall be imposed on any Police Officer unless a departmental inquiry into his conduct is held and a note of the inquiry with the reasons for passing an under imposing the said punishment is made in writing under his signature.

(2) Without prejudice to the foregoing provisions, no order imposing the penalty specified in clauses (i), (ii), (iv), (v) and (vi) of sub-rule (2) of rule 3 on any Police Officer shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation, if any, has been taken into consideration before the order is passed:

Provided that, the requirements of this sub-rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and where they can be waived without injustice to the officer concerned.

Note:-The full procedure prescribed for holding departmental enquiry before passing an order of removal need not be followed in the case of a probationer discharged in the circumstances described in paragraph (4) of the Explanation to rule 3. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against his discharge after being apprised of the grounds on which it is proposed to discharge him and his reply (if any) is duly considered before orders are passed."

6. In the instant case show cause notice was issued to the applicant. He submitted a reply. The impugned order shows that contents of reply of the applicant were duly taken into account. Aforequoted provisions empowered respondent no. 3 to impose the punishment of stoppage of increment without conducting full fledged enquiry. Rule 4 (2) mandates giving an opportunity of making a representation/ opportunity of hearing which the applicant availed by submitting a reply.

7. The applicant has relied on:-

A. N.Mohammad, Jag Danics Project Vs. Union of India & Ors. 2007 (3) SLJ 1 CAT. In this case it is held:-

"48. A mere negligence, which is not culpable and has no repercussion, which is not violative of any statutory rules, is not a misconduct as per the decision of the Apex Court in Union of India v. J. Ahmed"

B. **Harish S/o Gajanan Agrawal vs. Bank of Maharashtra & Ors. 2006 (3) BomCR 491**. In this case punishment of withholding of increment with cumulative effect was passed. It was held that since such punishment was a major punishment regular enquiry was mandatory.

C. **Central Administrative Tribunal-Hyderabad Shri Ch. Hari S/o Late Ch. Vs. The Senior Superintendent of Post judgement dated 17.08.2007**. In this case fraud of huge amount was alleged. Recovery of said amount from the salary of the delinquent was ordered. In this case it was held that it was necessary to conduct regular enquiry rather than proceeding in a summary manner and hence matter was remanded back to the Disciplinary Authority for conducting regular enquiry.

Facts of the above referred cases are distinguishable. In the instant case there is no procedural lapse nor is the punishment imposed on the applicant disproportionate to the proven act of misconduct.

Hence, no interference is warranted in exercise of clearly circumscribed powers of judicial review. The **O.A. is accordingly dismissed with no order as to costs.**

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

Dated :- 31/03/2023.
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 and pronounced on	:	31/03/2023.
Uploaded on	:	03/04/2023.