

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 754 of 2015 (DB)****With Civil Application Nos.381 and 466 of 2016**

Baliram Pandusingh Rathod,  
Aged about 56 years,  
Occ. Service as ASI,  
Rajapeth Police Station, Amravati  
r/o Behind Bhakti Dham Mandir,  
Sainagar, Amravati, Dist. Amravati.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Home Department,  
Mantralaya, Mumbai.
- 2) The Director General of Police,  
Maharashtra State, Mumbai.
- 3) The Commissioner of Police,  
Amravati City, Amravati.

**Respondents.**

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**S/Shri V.A. Kothale, D.P. Dapurkar, Advocates for the applicant.**

**Shri S.A. Sainis, P.O. for the respondents.**

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

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**JUDGMENT**

**Per : Anand Karanjkar : Member (J).**

**(Delivered on this 5<sup>th</sup> day of March,2019)**

Heard Shri V.A. Kothale, learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. The applicant was appointed on 01/10/1978 in service as Police Constable. In the year 1994 the applicant was promoted as Police Head Constable. In the year 2000 the applicant passed the departmental examination for promotion on the post of Police Sub Inspector (PSI). In the year 2001 the applicant was nominated as PSI on ad-hoc basis and in the year 2004 he was regularly appointed as PSI.

3. On 20/10/2008 one Babarao was arrested for offence of criminal house trespass and theft, he was brought to the Police Station where the applicant was on duty. The investigation of that crime was with the applicant, in the night Babarao committed suicide while in the police custody. The matter was reported to the higher authorities, there was preliminary inquiry and after the preliminary inquiry the Disciplinary Authority came to the conclusion that the applicant committed lapses while arresting the deceased and did not seize the articles which were in possession of the deceased, consequently the deceased had opportunity to commit suicide by hanging him to the window by means of scarf, which was not seized by the applicant. The Charge sheet (Annex-A-10) was served on the applicant on 20/04/2008. Thereafter the departmental inquiry was

completed, witnesses were examined in the inquiry and on the basis of the evidence, the Inquiry Officer came to the conclusion that the applicant and other four Police Officers committed serious misconduct and the Inquiry Officer submitted the report to the Disciplinary Authority.

4. The Disciplinary Authority served 2<sup>nd</sup> show cause notice to the applicant vide Annex-A-12 along with the report of the Inquiry Officer. The applicant submitted reply to the show cause notice. It was submitted by the applicant that he was innocent, he honestly performed his duty, there was no evidence in the inquiry for holding him guilty of the misconduct and therefore requested, for his exoneration.

5. The Disciplinary Authority passed order at Annex-A-1 on 18/02/2013 and imposed punishment on all the delinquents including the applicant. The Disciplinary Authority directed that the applicant be reverted to the post of Assistant Police Sub Inspector for a period of two years. Being aggrieved by this order, departmental appeal was preferred by the applicant. The appeal was decided on 20/03/2015 by the Government and appeal came to be dismissed. As per order passed in the departmental inquiry and the order passed by the Disciplinary Authority vide order dated 31/10/2015 it was informed to

the applicant that he should join as Assistant Police Sub Inspector for implementation of the punishment.

6. It is contention of the applicant that in the meantime when the D.E. was pending, vide Annex-A-4 order dated 26/05/2011 the applicant came to be promoted as Assistant Police Inspector, but effect was not given to this order as the applicant was under suspension. In the present O.A. the applicant is challenging the departmental inquiry and punishment awarded to him on the following grounds.

7. The first submission of the applicant is that the Assistant Commissioner of Police (Administration), Amravati was appointed as Inquiry Officer and his appointment was illegal because the Appointing Authority of the applicant was above the rank of Assistant Commissioner of Police.

8. The second submission is that the Disciplinary Authority directed to conduct Joint disciplinary inquiry and it is in violation of the rules. It is contended that due to this joint inquiry, the applicant could not defend him properly and therefore miscarriage of justice is caused.

9. The third ground of attack is that the inquiry was not completed within period of six months as required by the Bombay

Police Manual and therefore the punishment awarded on the basis of the Inquiry Officer's report is illegal.

10. It is contention of the applicant that he was never promoted or posted as Assistant Police Sub Inspector throughout his career and therefore his reversion to that post is illegal which goes to the root of the matter.

11. The punishment is also attacked on the ground that the department has withdrawn the promotion order by which the applicant was promoted as Assistant Police Inspector on the basis of this ground it is contended that the inquiry is vitiated.

12. The inquiry is also challenged on the ground that the report of the Inquiry Officer is not based on any evidence, the charge against the applicant was that the applicant arrested deceased Babarao Namdeorao Bobade and brought him to the Police Station on 20/10/2008 at about 9.15 p.m., the applicant committed lapses, the applicant did not take personal search of deceased Babarao, it was alleged in the charge against the applicant that had applicant personally searched the person of deceased Babarao, then the scarf by which deceased Babarao committed suicide would not have gone in the lock up and Babarao would not got opportunity to commit the suicide. It is submitted that there was no evidence in the inquiry to

prove this charge and therefore the findings recorded by the Inquiry Officer cannot be sustained and the punishment awarded is illegal.

13. The respondents have filed reply which is at page no.133 of the P.B. It is contention of the respondents that it was duty of the applicant to search the person of the deceased after his arrest and record the panchanam, Secondly it was also duty of the applicant to seize the objectionable material which was in possession of the deceased. It is contended had the applicant seized the scarf which was in possession of the deceased. The deceased would not have got the opportunity to commit the suicide. It is submitted that the conduct of the applicant while performing the duty as Police Sub Inspector was reckless, he did not discharge his duty as per the provisions in law and due to failure of the applicant to follow the legal procedure one precious life has gone. It is submitted that there is no substance in the contentions raised by the applicant challenging the appointment of the Inquiry Officer and the evidence recorded by the Inquiry Officer. It is submitted that considering the nature of the charge and the evidence the Disciplinary Authority rightly imposed the punishment. It is submission of the respondents that though the promotion order was issued on 26/05/2011 and the applicant was promoted as API, but in the said order it was specifically mentioned that the order should not be given effect if any Police Officer was

under suspension or facing criminal trial. It is submitted that as the applicant was facing the departmental inquiry, he was under suspension the respondents revoked the suspension order.

14. So far as the punishment is concerned, it is contended by the respondents that the Disciplinary Authority has reverted the applicant to the post of ASI. This post is above the rank of Police Head Constable. In fact much relief is given to the applicant by the Disciplinary Authority and therefore the applicant cannot make capital of the fact that he never worked as ASI. On the basis of this it is contended that the application is devoid of any substance it is liable to be dismissed.

15. We have perused the inquiry report which is at page no.70 of the P.B. On perusal of the inquiry report it appears that the Inquiry Officer framed the points for determination and also recorded the reasons how he came to the conclusion that those points were proved. At the stage of the argument the learned counsel for the applicant invited our attention to the statement of witness Nasir shah Harun Shah which is at Annex-A-11. It appears from this statement of the witnesses recorded by the Inquiry Officer that question no.5 was asked whether the witness and deceased Babarao were searched before they were locked up in the custody and it was also asked whether at the relevant time Police Inspector Ingle and the applicant

were present. The witness has replied in question affirmative. On the basis of this material, it is attempted to argue that the person of Babarao was searched before he was put in lock up and therefore there is no substance in the charge that the applicant did not search the person of deceased Babarao.

16. It is important to note that it has brought on record by the applicant himself in the cross examination that the applicant and Police Inspector Ingle were present when deceased Babarao was put up in the lock up. The question arises why applicant did not take the scarf in his custody. The question no.24 was asked to the witness whether belongings of this witness and belongings of deceased Babarao were taken in possession from them and these articles were kept out of the lock up in front of the lock up. The witness has replied this question in affirmative.

17. In fact this evidence was sufficient to show that there were serious lapses on the part of the applicant in not taking the scarf in the custody and further question arises when the scarf was outside the lock up, how the deceased came in possession with the scarf. As a matter of fact for the sake of argument, if it is accepted that the belongings of the witness Nasir Shah and belongings of deceased were outside the lock up, it was not duty of the applicant to record its seizure memo and took those articles in his custody. In the inquiry



the applicant did not produce before the Inquiry Officer the seizure panchnama or search panchnama. The applicant acted carelessly and due to failure of the applicant to take scarf in custody the deceased had got opportunity to acquire it, latter by using that scarf the deceased committed suicide.

18. In addition, we would like to consider the facts stated by the applicant in Annex-A-13, it is statement of the applicant in his defence. Before the Inquiry Officer it was submitted by the applicant that on 20/10/2008 at about 9.15 p.m. deceased Babarao Namderao Bobade was brought to the Police Station and he was arrested. Search of the person of deceased was taken at that time the applicant was present. The applicant took personal search of the deceased and the scarf was kept outside the lock up. As a matter of fact this evidence increased the liability on the applicant to explain why he did not produce the seizure panchanama and why he did not take the scarf in his possession after recording seizure panchanama, no attempt was made by the applicant to explain this controversy.

19. It is settled legal position that the Court or Tribunal shall not interfere in the findings recorded by the Inquiry Officer in disciplinary inquiry, unless there is no evidence in support of the conclusions drawn by the Inquiry Officer or the conclusions drawn are perverse or contrary to law. In the present case there is no such

material pointed by the applicant and consequently we do not see any merit in the contention that in absence of evidence the Inquiry Officer reached to the conclusion that the charge against the applicant was proved.

20. So far as the appointment of the Assistant Commissioner of Police, Amravati as Inquiry Officer is concerned, we would like to point out that the Disciplinary Authority was empowered to appoint any Officer subordinate to it for conducting the departmental inquiry. The only rider was that the Inquiry Officer shall be superior in rank than the delinquent. In the present matter the applicant was PSI when the inquiry officer was appointed and the inquiry officer was Assistant Commissioner of Police, therefore, we do not see any merit in this contention.

21. It is contention of the applicant that by the impugned order passed by the Disciplinary Authority reverting him as ASI much prejudice is caused to him. It is submitted that the Disciplinary Authority did not consider that during suspension of the applicant he was already promoted as API, therefore, the Disciplinary Authority should have reverted the applicant at least to the post of PSI and not to the post lower than it. It is submitted that the applicant is deprived of his promotion as API and also he is brought one more stage down on the post of ASI and this is illegality. In this regard we have gone

through at Annex-A-4 the promotion order. In this order in para-4.1 it is mentioned that the promoted officers if under suspension or against whom court case is pending or undergoing punishment, then such officers should not be permitted to join on the promotional post and such matters be reported immediately to the Director General of Police, M.S. ,Mumbai. The learned P.O. has invited our attention to Exh-1 dated 02/02/2019. This is letter addressed by the Special Inspector General of Police (Establishment) on behalf of the Director General of Police,M.S. ,Mumbai. In this letter, it is mentioned that in the departmental inquiry the applicant was punished and he was undergoing sentence, therefore, his request to permit him to join on the promotional post was rejected vide order dated 7/8/2013. Thereafter also request was made by the applicant to appoint him on the post of API, but vide order dated 7/10/2016 that request was turned down.

22. It appears that though the name of the applicant was in promotion list, but as he was under suspension the promotion order was never acted upon and consequently the applicant was never permitted to join the post on promotion. Under these circumstances, the applicant was on the post of PSI when the punishment was awarded and the Disciplinary Authority by the order of reversion,

reverted the applicant to the post of Assistant Police Sub Inspector, therefore, we do not see any merit in this contention.

23. It is contended by the applicant that he never worked on the post of ASI, but he was reverted on that post, therefore, it is illegal. It is true that the applicant never worked as ASI, the applicant was promoted from the post of Police Head Constable to the post of PSI. The post of Police Head Constable is lower in rank than the post of ASI. If the situation is examined in these circumstances, the inference is to be drawn that in fact instead of reverting the applicant to the post of Police Head Constable the Disciplinary Authority has reverted the applicant to one stage higher than the post of Police Head Constable and this was advantage and benefit for the applicant, therefore, we do not see any substance in this contention.

24. So far as the contention of the applicant that the departmental inquiry was not completed within six months, therefore, the inquiry is vitiated, in our view there is no substance in such contention because the applicant participated in the inquiry, he never challenged the inquiry on such ground till the final order passed by the Disciplinary Authority and dismissal of this appeal by the government. As the inquiry is completed and it appears that opportunity of hearing was given by the Inquiry Officer to the applicant and as findings recorded by the Inquiry Officer are based

on reasonable evidence, therefore, we do not see any reason to interfere in this matter.

25. The applicant has challenged the disciplinary on the ground that it was joint departmental inquiry, therefore, grave prejudice was caused to the applicant. In this regard we would like to point out that the applicant during the inquiry never informed the disciplinary authority or the enquiry officer that his inquiry be held separately otherwise prejudice would cause to him. On the other hand the applicant participated in the inquiry, the applicant and the other delinquents submitted their joint defence statement before the enquiry officer. This conduct of the applicant was sufficient to show that he never objected the joint disciplinary enquiry, therefore, now the applicant stopped from challenging the inquiry on this ground.

26. In addition we would like to point out that it is not shown by the applicant what prejudice was caused to him due to this joint enquiry. In absence of this material we do not see any substance in this ground raised by the applicant.

27. So far as the punishment part is concerned, we would like to point out that being PSI and Investing Officer it was duty of the applicant to be punctual while performing the duty. The applicant disregarded the various legal provisions in the Code of Criminal Procedure, he recklessly kept the scarf outside the lock up, he did not

take that scarf in his own custody after recording seizure panchnama. Had it was done by the applicant then there was no possibility of deceased acquiring possession of the scarf for committing the suicide, therefore, the seriousness of the misconduct of the applicant was more grave than the seriousness of the misconduct of the other Police Officers who are also punished. It seems that considering this misconduct of the applicant and the misconduct of other delinquents the Disciplinary Authority has awarded different punishments to them. In view of this evidence we do not see any merit in the contention that disparity is shown and discrimination is made by the Disciplinary Authority by awarding harsh punishment to the applicant alone. In the result, we are of the view that there is no substance in this application. Hence, the following order –

**ORDER**

- (i) The original application stands dismissed with no order as to costs.
- (ii) Both the C.As. stand disposed of accordingly.

**(Anand Karanjkar)**  
**Member(J).**

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

**Dated :- 05/03/2019.**