

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 901/ 2020 (S.B.)

Sarwar Khan S/o Sattar Khan Pathan,
Aged about 61 years,
Occupation Retired A.S.I., R/o Shadab Bag,
Bhosa Road, Yavatmal.

Applicant.

Versus

- 1) The Chief Secretary,
Department of Home,
State of Maharashtra,
Mantralaya, Mumbai- 32.
- 2) The Director General of Police,
Shahid Bhagatsingh Marg,
Colaba, Mumbai-01.
- 3) The Special Inspector General of Police,
Amravati Division,
Amravati.
- 4) The District Superintendent of Police,
S.P. Office, Yavatmal.

Respondents

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

Shri A.M.Khadatkar, Id. P.O. for the Respondents.

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

JUDGEMENT

Judgment is reserved on 10thJuly, 2023.

Judgment is pronounced on 17th July, 2023.

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

2. Facts leading to this O.A. are as follows. On the basis of default report the applicant, who was working as Assistant Sub Inspector, was placed under suspension. On 30.05.2017 he was served with a chargesheet (A-6). He was reinstated on 02.06.2017. He retired on superannuation on 31.07.2017. The enquiry in which following charge was laid against the applicant continued after his retirement:-

आपण पो.स्टे. पांढरकवडा येथे नेमणुकीस असतांना दिनांक २२.०६.२०१६ रोजी रात्री ०२.४५ वाजता पाटणबोरी जवळ अवैध जनावरे वाहतुक करणारे वाहन काही लोकांनी पकडले असता आपण कोणतीही ड्युटी नसतांना संशयास्पद स्थितीत वाहनाजवळ सेक्टर पेट्रोलिंग ड्युटीवर असलेले पोलीस अधिकारी व कर्मचारी यांना दिसून आले. तसेच यापुर्विही वरिष्ठांना हायवे क्रमांक ७ वर कोणतीही ड्युटी नसतांना संशयास्पद स्थितीत वाहन चेक करीत असतांना संदिग्ध परीस्थितीत मिळून आले आहेत.

आपली उपरोक्त वर्तणुक ही संदिग्ध स्वरूपाची आहे व अशाप्रकारचे हालचालीवरून बेल जनावरे वाहुन नेणारे ट्रकचालक/मालक यांचे सोबत हितसंबंध ठेवल्याचे दिसून येते. अशाप्रकारे आपले कर्तव्यातील वर्तन पोलीस खात्याची व जनमानसात प्रतीम मलीन करणारे आहे. आपण कर्तव्यात गंभीर गैरवर्तन करून कसूरी केलेली असून त्या बाबत पुरावा उपलब्ध आहे.

The Enquiry Officer, by his report dated 25.12.2017 (A-12) held the charge to be proved. The Disciplinary Authority, respondent no. 4, by order dated 17.05.2018 (A-3) imposed following punishment on the applicant:-

१. सफौ-६०३ सवरखाँ पठाण (सेनि दिनांक ३१.०७.२०१७) यांना उपरोक्त कसुरी प्रकरणी वित्तविभाग शा.नि.सेनिवे-१००१/१३०/सेवा-४, दिनांक ०२.०६.२००३ मधिल परिशिष्ट १ अनु.क्रमांक १० व म.ना.से. निवृत्तीवेतन नियम १९८२ मधील नियम क्रमांक २७

(9) च्या नियम तरतुदी नुसार निवृत्तीवेतनातुन रु. २०००/- दरमहा दोन वर्षा करिता कपातीची शिक्षा देण्यात येत आहे. तसेच निलंबन काळ दिनांक २४.०६.२०१६ ते दिनांक ०२.०६.२०१७ पावेतो हा जसाचे तसा करण्यात येत आहे.

Order of the Disciplinary Authority was maintained by the Appellate Authority, respondent no. 3 and the Revisional Authority, by their orders dated 06.09.2018 (A-2) and 23.12.2019 (A-1), respectively. Hence, this original application impugning the orders dated 17.05.2018, 06.09.2018 and 23.12.2019 (Annexures A-3, A-2 & A-1), respectively. The orders at Annexures A-1, A-2 & A-3 are impugned on the following grounds.

- A. The applicant was kept under suspension for nearly 11 months.
- B. The Enquiry Officer did not take into account explanation given by the applicant.
- C. Punishment of recovery of Rs. 2,000/- per month for a period of two years was imposed by order dated 17.05.2018 i.e. after the applicant had retired on 31.07.2017.
- D. By not appointing a Presenting Officer Rule 8 (5) (c) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 was breached.

E. Charge laid against the applicant was vague.

F. Who were possibly the eye witnesses to the alleged incident were not examined and who were examined had not witnessed the alleged incident.

G. Rules 38 (1) (b) and 38 (1) (g) of Maharashtra Police Rules, 1999 read as under:-

३८. हवालदाराची कर्तव्ये :-

(ब) हवालदारांनी त्यांच्या प्रभारात घडणारे सर्व गुन्हे आणि दखलपात्र अपराध घडणार असल्यासंबंधीची कोणतीही संभवनीयता त्यांच्या फौजदारांना कळवणे आवश्यक असते, परंतु अपराध्यांना शोधून त्यांना पकडण्यासाठी आवश्यक ती चौकशी सुरु करण्यापूर्वी त्यांनी आदेश मिळण्यासाठी थांबून रहाता कामा नये.

(ग) हवालदार हे फौजदाराचे सहायक असतात. आणि त्यांनी फौजदाराला शिपायाची कवायत घेण्याच्या व त्यांना शिकवण्याच्या कामात व नाक्यांवर वारंवार गस्त घालण्याच्या कामात सहाय्य

करावे. शिपायांनी केलेली कोणतीही हयगय फौजदारास ताबडतोब कळवण्यात यावी आणि त्यांच्या प्रशंसनीय कृती त्यांच्या निदर्शनास आणून द्याव्यात.

3. So far as ground no. 4 raised by the applicant is concerned, it was submitted by the Id. P.O. that in Bombay Police (Punishments and Appeals) Rules, 1956 there is no provision analogous to Rule 8 (5) (c) of The Maharashtra Civil Services (Discipline and Appeals) Rules, 1979 and hence, this contention will not help the applicant unless prejudice is shown to have been caused thereby to the applicant. There is merit in this submission.

4. So far as ground no. 5 raised by the applicant is concerned, it cannot be accepted. I have quoted the charge. It is not at all vague.

5. So far as ground no. 1 raised by the applicant is concerned, suspension for a period of about 11 months when initiation of departmental enquiry was contemplated will not have any adverse impact either on the merits of the case or the procedure adopted by the respondents while dealing with the applicant departmentally.

6. So far as grounds 2 & 6 raised by the applicant are concerned, they clearly fall beyond the limited scope of Judicial Review. The charge in this case was not vague. Record of the case shows that this

was not a case of "No evidence". No procedural lapse vitiating the enquiry was pointed out on behalf of the applicant. The impugned punishment was imposed as per Rule 27 (1) of the Maharashtra Civil Services (Pension) Rules, 1982. In exercise of powers of Judicial Review punishment cannot be interfered with unless it is shown to be shockingly disproportionate.

7. The applicant has relied on **Upendra Prasad Vs. The State of Bihar through the Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna, 2021 (5) SLR 84 (Patna)**. In this case one of the grounds was that the charge against the delinquent was vague. The High Court found merit in this contention. Here, I have held that charge against the applicant was not vague. Hence, this ruling will not help the applicant.

8. The applicant has also relied on Judgement of this Tribunal dated 03.04.2018 in O.A. No. 18/2018. In this case order of suspension was quashed on the ground that it was passed by authority who was lower in rank to the Appointing Authority. In the instant case legality of departmental enquiry is impugned and not the legality of order of suspension.

9. The applicant has further relied on Judgement of this Tribunal dated 17.11.2017 in O.A. No. 122/2017. In this case, on facts,

arrest and suspension of the applicant both were found to be wholly unjustified. As mentioned earlier, in the instant case what is impugned is procedure of departmental enquiry and punishment imposed therein and not the order of suspension.

10. Thus none of the rulings cited by the applicant will assist him.

11. For the reasons stated hereinabove no interference with the impugned orders is called for. **The O.A. is, therefore, dismissed with no order as to costs.**

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

Dated :- 17/07/2023.
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 : 17/07/2023.
and pronounced on

Uploaded on : 18/07/2023.