

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 987/ 2018 (S.B.)

Rambhau Kisan Kharate,
Aged about 62 years,
Occ. Retired-Police Inspector,
R/o Asmita-2, Opp. Collector Residence,
Kantanagar, Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Ministry of Home Department,
Mantralaya, Mumbai- 32.
- 2) Director General of Police,
Maharashtra State,
Mumbai-03.
- 3) Additional Director General of Police,
(Administrative Office),
Maharashtra State,
Mumbai-03.
- 4) Commissioner of Police,
Amravati City,
Amravati.

Respondents

Shri P.N.Warjekar, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the Respondents.

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

JUDGEMENT

Judgment is reserved on 19th July, 2023.

Judgment is pronounced on 25th July, 2023.

Heard Shri P.N.Warjekar, Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant was holding the post of Police Sub Inspector and he was attached to Reader Branch of Amravati City. By order dated 04.08.2014 (A-4) he was placed under suspension. On 06.02.2015 following order (A-5) was passed against him:-

“पोलीस आयुक्त, अमरावती शहर यांचे रिडर म्हणुन नेमणुकीस असतांना आपण पोलीस आयुक्त साहेब यांच्या नावाच्या गैरवापर करून कर्तव्यामध्ये सी. पी. साहेबांच्या रिडर ची प्रतिमा मलीन केलेली असल्याचे दिसुन आले आहे तसेच आपण आयुक्तालयाचे हददीतील हॉटेल मध्ये जावुन तेथुन जेवणाचे पार्सल घेणे तसेच त्यांना पार्सलचे पैसे न देता निघुन जाणे अथवा हॉटेल मालकानी पैसे मागीतले असता त्यांना एटीएम हरविले असे कारण दाखवुन तेथुन निघुन गेला, तसेच ऑफीस सुटल्यावर जुन्या बायपासने जावुन मुला मुलीच्या गाड्या थांबवुन पकडत होते व रस्त्यामध्ये कोणतीही गाडी थांबवुन त्यास चेक करत असल्याचे निदर्शनास आले आहे.

आपण मा. सि.पी. साहेब यांचे रिडर या पदाचा फायदा घेवुन पोलीस स्टेशनचे ठाणेदार व इतर विभागाचे शाखा प्रमुख यांना फोन करून त्यांचे सोबत फोनवर बोलत असतांना त्यांचे हददीत अवैध धंदे सुरु आहे किंवा अवैध वाहतुक सुरु आहे याबाबत त्यांचे सोबत फोनवर बोलुन त्यांना त्रास देत असल्याचे दिसुन येत आहे व आपण रिडरला भेटावे परंतु कधी रिडरला भेटत नाहीत. अशात-हेने आपण सि.पी. साहेब यांचे रिडर या पदाचा दबाव निर्माण करून त्यांना गैरकायदेशीर आर्थिक फायदा होण्याकरिता असे वर्तन केल्याचे स्पष्ट होते. अशा रितीने आपणाकरीता देण्यात आलेल्या एम.एच.२७ एच

५१७० या वाहनाचा दुरुउपयोग केल्याचे चौकशी अंती सकृतपणे दिसुन येते.

अशाप्रकारे पोलीस आयुक्त यांचे रिडर असतांना दिनांक ०४.०९.२०१४ ये दैनिक पुण्यनगरी वृत्तपत्रामध्ये आपण दबाव तंत्राचा वापर केल्याची बातमी प्रसिद्ध झालेली आहे. अशारितीने अति महत्वाची पदाचा आपण दुरुपयोग केले ही बाब पोलीस खात्याच्या शिस्तीस न शोभणारी असुन जन माणसामध्ये पोलीसाची प्रतिमा मलीन झालेली आहे.

अंतिम आदेश

उपरोक्त कसुरीबाबत पोलीस उप निरीक्षक आर. के. खराटे, नेमणुक पोलीस मुख्यालय, अमरावती शहर यांना त्यांचा कसुरीबाबत मुंबई पोलीस (शिक्षा व अपील) नियम १९५६ नियम क्रमांक ३ (२) (iv) नुसार १०००/- दंडाची शिक्षा देण्यात येत आहे तसेच दिनांक ०४.०८.२०१४ से ११.११.२०१४ पर्यंतचा निलंबन कालावधी हा "जसाचे तसा" करण्यात येत आहे.

आपण जर सदर शिक्षेने व्यथित होत असतील तर आपण सदर आदेश मिळाल्याच्या दिनांकापासून ६० दिवसाचे आत आमचे मार्फतीने अपर मुख्य सचिव, गृहविभाग, मंत्रालय, मुंबई यांचेकडे दोन प्रतीत अपील अर्ज सादर करू शकतात"

By order dated 30.09.2016 (A-6) order dated 06.02.2016

was modified as follows:-

"श्री आर.के.खराटे, स.पो.नि. यांना वरील कसुर प्रकरणी निलंबित करून त्यांचे विरुद्धचे प्राथमिक चौकशीअंति उपरोक्त संदर्भ क्रमांक १ मध्ये नमुद केल्या प्रमाणे दि. ६.२.२०१६ अन्वये १०००/- रुपये आर्थीक दंडाची अंतिम शिक्षा करण्यात येवून निलंबित कालावधी दिनांक ४.८.२०१४ ते ११.११.२०१४ पावेतोचा जसाचे तसा गणण्यात

आला होता. त्यावर त्यांनी अपिल अर्ज केल्याने, सदर अपिल शासन स्तरावर प्रलंबित आहे. उपरोक्त संदर्भ क्रमांक २ वरील नमुद शासन पत्रास व सपोनि खराटे यांच्या विनंती अर्जास अनुसरून त्यांच्या भविष्याचा विचार करता, उपरोक्त नमुद निलंबित कालावधी यापूर्वी जसाचे तसा मंजूर करण्यात आला होता. सदर निर्णयात अंशतः बदल करून त्याऐवजी सदर निलंबित कालावधी दिनांक ४.८.२०१४ ते ११.११.२०१४ पावेतोचा महाराष्ट्र नागरी सेवा नियम १९८१ मधील नियम ७२ (१) (वी) (७) च्या तरतुदीनुसार सेवा निवृत्ती विषयक लाभासाठी कर्तव्यकाळ म्हणून गणण्यात येत आहे. निलंबन काळातील मिळणारे वेतन व भत्ते यावरील थकबाकीच्या ५०% रक्कम त्यांना मंजूर करण्यात येत आहे”

On 26.04.2018 following order (A-11) was passed:-

“यावरून आपण पो.स्टे. राजापेठ येथे कोणतेही कागदपत्रे न देता स्वमर्जीने कर्तव्यावर अनुपस्थित राहिलेत असे दिसून येते. आपण खालील नमुद कालावधीत खरोखर आजारी होते याबाबत आमची खात्री होत नाही. त्यामुळे खालील नमुद रजेशिवाय असलेल्या अनुपस्थितीचा कालावधी ही महाराष्ट्र नागरी सेवा (रजा) नियम १९८१ मधील नियम ६३ मधील ६ अन्वये असाधारण रजा मंजूर करण्यांत येत आहे.

अ.क्र.	अनुपस्थितचा कालावधी	एकुण कालावधी	मंजूर करण्यात आलेली रजा
१	दिनांक ०८/०९/२०१७ ते १२/०९/२०१७	०५ दिवस	असाधारण रजा
२	दिनांक १७/०९/२०१७ ते २०/०९/२०१७	१३ दिवस	असाधारण रजा
३	दिनांक ३०/११/२०१७ ते ०७/१२/२०१७	०८ दिवस	असाधारण रजा
४	दिनांक ०६/०१/२०१८ ते २२/०१/२०१८	१७ दिवस	असाधारण रजा

५	दिनांक २७/०१/२०१८ ते ०५/०२/२०१८	१० दिवस	असाधारण रजा
६	दिनांक १२/०२/२०१८ ते १८/०२/२०१८	०७ दिवस	असाधारण रजा
७	दिनांक २८/०३/२०१८ ते १२/०४/२०१८	१६ दिवस	असाधारण रजा
		एकुण ६७ दिवस	

(मा. पोलीस आयुक्त, यांचे आदेशान्वये)”

The applicant retired on superannuation on 30.04.2018 honourably (A-3). On that day he made a representation (A-13) that period of his absence be not treated as extra ordinary leave. To this representation he had attached medical certificates. Said representation was rejected by order dated 30.05.2018 (A-12) by observing as follows:-

“त्याअनुषंगाने आपण आपला असाधारण मंजुर झालेली रजा अर्धवेतनी रजा मंजुर होणेस केलेला पो.स्टे. राजापेठ येथील जा.क्र.१५४५/२०१८, दिनांक ३०/०४/२०१८ अन्वये विनंती अर्ज ह्या कार्यालयास प्राप्त झाला आहे. आपण सादर केलेल्या सादर विनंती अर्जाचे आम्ही बारकाईने व काळजीपूर्वक अवलोकन केले असता त्यात नमुद केलेले कारण आम्हास संयुक्तीक वाटत नाही. आपण रुग्णनिवेदनावर जाताना वैद्यकीय प्रमाणपत्र नमुना ३ (नियम ४० नुसार) सादर करण्याची आपली जबाबदारी असतांना सुध्दा आपण त्याप्रमाणे कोणतेही नियमानुसार आवश्यक उपचाराबाबतची वैद्यकीय कागदपत्र सादर सादर केलेले नाहीत.

त्यामुळे या कार्यालयाचे आदेश क्रमांक:मोआअ/पशा-१/रुग्ण कालावधी/पोनि. खराटे/४२६१/२०१८, दिनांक २६/०४/२०१८ अन्वये आपला कर्तव्यावर अनुपस्थित असल्याचा उपरोक्त नमुद कालावधी हा असाधारण रजा मंजुर करणेबाबत घेतलेला निर्णय हा योग्य

असल्याने सदर आदेश कायम ठेवण्यात येत असून आपण आपल्या दिनांक ३०/०४/२०१८ अन्वये लेखी अर्जाव्दारे केलेली विनंती याव्दारे अमान्य करण्यांत येत आहे”

By order dated 04.10.2018 (A-9) order dated 26.04.2018 (A-11) was maintained. According to the applicant, for suspension period he was entitled to full salary and allowances and since leave was standing to his account period of his absence could not have been treated as extraordinary leave. Hence, this original application.

3. Stand of the respondent is as follows:-

“The respondent no. 4 had passed the final order in Departmental Enquiry on 06.02.2015 and imposed the fine of Rs. 1000/- as per the rule 3(2)(iv) of Mumbai Police (Punishment and Appeal) Rules, 1956, and also ordered that the suspension period of the applicant from 04.08.2014 to 11.11.2014 shall be treated as such. The respondent no. 4 thereafter revised the above order partly on 30.09.2016 and specifically mentioned that as per Rule 72(1)(b)(7) of MCS Rules 1981, the suspension period shall be treated as duty period only for the purpose of pensionary benefits after retirement and the arrears of Pay and Allowances of suspension period were granted to the tune of 50%. This order is just and proper and as per the law. The applicant did not submit any document justifying his sickness for obvious reasons, thus his request was rejected. Had it been the case that he had submitted the medical certificate from the recognised doctors the things would have been different.”

4. Firstly, I will deal with grievance of the applicant that for period of suspension he was entitled to get full salary and allowances and hence the same ought not to have been scaled down to 50%. By order dated 06.02.2016 (A-5) punishment of fine of Rs. 1000/- was imposed on the applicant and period of suspension was ordered to be treated as such. By order dated 30.09.2016 period of suspension was ordered to be treated as duty period but only for pension purpose and it was further ordered that for period of suspension the applicant would get 50% salary and allowances. The punishment as aforesaid was imposed on conclusion of enquiry in which allegations against the applicant were as follows:-

“श्री आर.के. खराटे, सहाय्यक पोलीस निरीक्षक, हे सन २०१४ या वर्षात पोलीस आयुक्त, अमरावती शहर यांचे रिडर म्हणुन नेमणुकीस असतांना त्यांचा कसुर असा की. त्यांनी पोलीस आयुक्त यांचे नावाचा गैरवापर करून वाचक पदाची प्रतिमा मलीन करत पोलीस आयुक्तालयाचे हददीतील हॉटेल मध्ये जावुन व त्या ठिकाणाहुन जेवणाचे पार्सल घेवुन पार्सलचे पैसे न देणे. हॉटेल मालकानी पैसे मागीतल्यास एटीएम हरविले असे म्हणुन तेथुन निघुन जाणे. तसेच ऑफीस सुटल्यावर जुन्या बायपासने जावुन मुला-मुलीच्या गाडया थांबवुन पकडणे, रस्त्यामध्ये कोणतीही गाडी थांबवुन त्यास चेक करणे, तसेच पो.स्टे. ठाणेदार व इतर विभागाचे शाखा प्रमुख यांना फोन करून त्यांचे सोबत फोनवर बोलत असतांना, त्यांचे हददीत अवैध धंदे सुरु आहे किवा अवैध वाहतुक सुरु आहे याबाबत फोनवर बोलुन रिडरला भेटायला सांगणे. अश्या तऱ्हेने त्यांचा आर्थीक फायदा होण्याकरिता वाचक फौजदार पदाचा गैरफायदा घेतला. तसेच ताब्यातील शासकीय वाहनाचा दुरुपयोग केला. या त्यांच्या गैरवर्तनाचे वृत्त दैनिक

पुण्यनगरी या वृत्तपत्रामध्ये प्रकाशित झाल्याने, जनमानसात-पोलीसांची प्रतिमा मलीन झाली होती.”

5. Rule 72 of the The Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 reads as under:-

“72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty.

(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation. as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 68, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period

to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being, the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended, as the

competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1), before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

(a) extraordinary leave in excess of three months in the case of a temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent Government servant.

(8) The payment of allowances under sub-rules (2), (3) or (5), shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or (5), shall not be less than the subsistence allowance and other allowances admissible under Rule 68.”

A conjoint consideration of various sub rules quoted above shows that this was not a case where it could be said that suspension of the applicant was wholly unjustified and hence the order scaling down salary and allowances for suspension period to 50% cannot be faulted.

6. Second grievance of the applicant relates to the orders dated 26.04.2018 (A-11) and 04.10.2018 (A-9). It is the contention of the applicant that various leaves were standing to his credit and hence period of his absence ought not to have been treated as extra ordinary leave in view of rule 63 (1) of the Maharashtra Civil Services (Leave) Rules, 1981. Said rule reads as under:-

“63 Extraordinary Leave:-

1.Extraordinary leave may be granted to a Government servant in special circumstances-

A.When no other leave is admissible.

B. When other leave is admissible but the Government servant applies in writing for the grant of extraordinary leave.”

7. It was submitted by Shri Warjekar, Id. Counsel for the applicant that after the order dated 26.04.2018 (A-11) was passed but before the orders dated 30.05.2018 (A-12) and 04.10.2018 (A-9) were passed, the applicant had, with covering letter dated 30.04.2018 (A-13) produced medical papers as well as details of leave standing to his account, but the same were not considered before passing the orders dated 30.05.2018 and 04.10.2018. This submission is fully supported by record. Orders dated 30.05.2018 and 04.10.2018 incorrectly state that the applicant had not produced medical papers as the same were already filed on 30.04.2018.

8. It was submitted by Shri Sainis, Id. P.O. that medical papers produced by the applicant do not inspire confidence as would be apparent from their perusal. Respondent no. 4, before passing the orders dated 30.05.2018 and 04.10.2018 ought to have taken into account medical papers produced by the applicant. This was not done. In these facts respondent no. 4 will have to be directed to reconsider orders dated 26.04.2018, 30.05.2018 and 04.10.2018. Respondent no. 4 shall take into account medical papers submitted by the applicant and decide afresh the question of period of absence of the applicant in accordance with Law – within two months from today. The decision shall be communicated to

the applicant forthwith. **The O.A. is allowed in the aforesaid terms.** No order as to costs.

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

Dated :- 25/07/2023.
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 : 25/07/2023.
and pronounced on

Uploaded on : 26/07/2023.