

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1085/2021(D.B.)

1. Pankaj S/o Sureshrao Bahekar,
Aged about 41 years, Occupation: Service
(Head Constable), R/o New Quarter No.6/6,
SRPF Camp, Wadali, Amravati, Tah.
& Dist. Amravati.

2. Swapnil Umeshrao Shegaokar, aged
About 35 years, Occupation: Service
(Police Naik), R/o New Quarter No.37/,
SRPF Camp, Wadali, Amravati, Tah. &
Dist. Amravati.

3. Lomesh Subhashrao Alone, aged
About 36 years, Occupation: Service
(Head Constable), R/o New Quarter No.
37/10, SRPF Camp, Wadali, Amravati,
Tah. & Dist. Amravati.

4. Rajesh Pandurang Bhatarkar, aged
About 34 years, Occupation: Service
(Police Constable), R/o New Quarter No.65/1,
SRPF Camp, Wadali, Amravati, Tah. & Dist.
Amravati

Applicants.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.
- 2) The Director General of Police
(M.S.), Near Regal Cinema, Mumbai.

- 3) The Commandant, State Reserve
Police Force, Group-IX, Wadali
Camp, Amravati.

Respondents

Shri S.N.Gaikwad, Ld. Counsel for the applicants.
Shri M.I.Khan, Ld. P.O. for the respondents.

**Coram:-Hon'ble Shri Shree Bhagwan, Vice-Chairman and
Hon'ble Shri M.A.Lovekar, Member (J).**

Dated: - 25th August 2022.

JUDGMENT

Per :Member (J).

Judgment is reserved on 5th August, 2022.

Judgment is pronounced on 25th August, 2022.

Heard Shri S.N.Gaikwad, learned counsel for the applicants and
Shri M.I.Khan, learned P.O. for the respondents.

2. In this Original Application charge sheet dated 02.08.2021
(Annexure A-6) and show cause notices dated 26.11.2021 (Annexure
A-9) issued by respondents 3 and 4, respectively are impugned.

3. Facts leading to this application are as follows.

Respondent no.3, by passing an order, assigned the duty of
guarding the premises of Gas Godown to the applicants from 05.00
pm of 24.06.2021 to 05.00 pm of 25.06.2021. Team of the applicants
took charge as reflected in Annexure A-1 from the team which was

assigned this duty for the previous 24 hours. During the duty period of the applicants, four Officers deputed by respondent no.3 visited the duty site and wrote remarks (Annexure A-2) in the visiting book that nothing untoward was noticed. At 05.00 pm on 25.06.2021 team of the applicants gave charge to, and was relieved by, the team headed by one Shri Waghmare (Annexure A-3). At 06.40 pm one Shri Gondale from the in-charge team informed the concerned officer that branches of two Sandal trees were noticed to have been cut off near the Gas Godown. At 07.30 pm Shri Waghmare reported the incident to respondent no.3. Respondent no.3 then issued show cause notices (Annexure A-4) to the applicants but later on withdrew the same (Annexure A-5) since Departmental Enquiry was contemplated against the applicants. Applicant no.4 filed explanation (Annexure A-7) to the chargesheet and so did applicants 1 to 3. One Shri M.B.Neware was appointed as the Enquiry Officer. During the enquiry Police witnesses Shri Chafle and Shri Palaspagar gave statements (Annexure A-8) showing that the applicants could not be charged for the incident. The Enquiry Officer held the charge against the applicants to be proved though the evidence was to the contrary. By issuing show cause notices (Annexure A-9) respondent no.3 proposed punishment against the applicants as follows-

Applicant no.1- तरी आपणास एक सुधारण्याची संधी म्हणून आपणास उपरोक्त कसुरीबाबत “पोलीस हवालदार या पदावरून पोलीस नाईक या पदावर दोन वर्षांकरिता पदावनत का करण्यात येऊ नये” याबाबतची शिक्षा प्रस्तावीत करण्याचे ठरविले असूनही कारणे दाखवा नोटीस देण्यात येत आहे.

Applicant no.2- उपरोक्त कसुरीबाबत “सेवेतून कमी” “(Removal From Service)” याबाबतची शिक्षा प्रस्तावीत करण्याचे ठरविले असूनही कारणे दाखवा नोटीस देण्यात येत आहे.

Applicant no.3- तरी आपणास एक सुधारण्याची संधी म्हणून आपणास उपरोक्त कसुरीबाबत “पोलीस नाईक या पदावरून पोलीस शिपाई या पदावर दोन वर्षांकरिता पदावनत का करण्यात येऊ नये” याबाबतची शिक्षा प्रस्तावीत करण्याचे ठरविले असूनही कारणे दाखवा नोटीस देण्यात येत आहे.

Applicant no.4- तरी आपणास एक सुधारण्याची संधी म्हणून आपणास उपरोक्त कसुरीबाबत “पुढील वेतन वाढीवर परिणामकारक ठरणारी वार्षिक वेतन वाढ तीन वर्षांकरिता रोखण्याची शिक्षा” याबाबतची शिक्षा प्रस्तावीत करण्याचे ठरविले असूनही कारणे दाखवा नोटीस देण्यात येत आहे.

Hence, this application.

4. Reply of respondent no.3 is at pp.51 to 62. He has resisted the application on the following grounds-

(1) *Such illegal activity is not expected as guards/applicants were specially posted for protection of that area and if in their presence illegal activity like stealing*

of Chandan/Sandalwood tree could take place within a limit of 25 meters then in future there remains no safety even after posting of guards there. This act of applicants is deemed to be punishable as it a serious offence under Section 14 (g) of State Reserve Police Force Act. The applicants are also found guilty and negligent in discharging their duty, by breaching the conduct and discipline rules as laid down in the Mumbai police Manual 1999 Vol-I. After checking out the previous record of punishments awarded to these applicants the respondent no.3 decided to initiate departmental enquiry against these applicants.

(2) The respondent no.3 being competent authority is authorised to initiate departmental enquiry against applicants for having committed such serious natured offence which has tarnished the image of Police Department. During enquiry it was proved that till 1.30 PM on 25.06.2021 no illegal activity had taken place. It is quite clear that the trees must have been cut down between 2.00 to 5.00 PM as at 5.00 PM next team of 4 members took the charge and at that time there were 8 members so it would

not be possible for anyone to steal the Chandan/Sandalwood tree especially at that time. So, it can be easily inferred that there must be collusion between these applicants/guards and the actual thieves as without it would not have been possible for thieves to cut down the tree situated just 25 meters away from the guards post.

(3) Consequently, the respondent no.3 on the basis of previous punishment / disciplinary record, enquiry report and suspicion of collusion, issued show cause notices to the applicants proposing imposition of different punishments. The reasons behind awarding them different punishments have been specifically mentioned in the show cause notices dated 26.11.2021.

(4) The law on the issue can be summarised to the effect that charge sheet and show cause notice cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge sheet and show cause notice be quashed at an initial stage as it would be a

premature stage to deal with said issues. The chargesheet and departmental enquiry proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period.

5. We have adverted to the fact that in this O.A. the applicants prayed that the charge sheet dated 02.08.2021 (Annexure A-6) and show cause notices (Annexure A-9) be quashed and set aside. On 03.12.2021 this Tribunal, while passing an interim order, directed as follows-

4. The respondents would be at liberty to pass the final order since the inquiry has been concluded, but only after considering explanation furnished by the applicants. In case such order is passed it shall not take effect till reply is filed to this application by the respondents.

6. On 02.03.2022 following order was passed-

5. In the background of order passed by this Tribunal on 3/12/2021 in para-3 & 4 if any order has been passed in the D.E. that should not be made effective till next date.

7. It is submitted before us that so far final order has not been passed in the Departmental Enquiry. Considering the scope of judicial

review, we find that at this stage no case is made out to quash and set aside the charge sheet and show cause notices. We direct that the Disciplinary Authority shall pass the final order in the Departmental Enquiry within six weeks from the date of this order. While doing so explanation/s given by the applicants shall be duly considered. In case the applicants are aggrieved by the order of the Disciplinary Authority, they shall be at liberty to challenge the same in accordance with law. The O.A. is allowed in the aforesaid terms with no order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 25/08/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman &
Court of Hon'ble Member (J) .
Judgment signed on : 25/08/2022.
and pronounced on
Uploaded on : 25/08/2022.