

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.221/2023(D.B.)

Rajmohan Singh,
(Rajmohan Shivilsingh Thakur),
Age: 54 yrs., Occ.-Service, ASI,
R/O- Chas Colony, Near Tripude Hospital,
Nagpur, Tah+Dist: Nagpur,
Maharashtra-440026.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary,
Home Ministry, Government of Maharashtra,
Mantralaya, Mumbai-32.
- 2) Deputy Commissioner of Police (HQ),
Office Address: Office of the Commissioner of Police,
Civil Lines Nagpur-40001.
- 3) Manish Bansod,
Police Inspector, Traffic Zone MIDC,
Nagpur City, Nagpur.

Respondents

Shri Y.Y.Humne, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

**Coram:- Hon'ble Shri M.A.Lovekar, Member (J).&
Hon'ble Shri Vinay Kargaonkar, Member (A).
Dated: - 26th February, 2024.**

JUDGMENT

Judgment is reserved on 17th January, 2024.

Judgment is pronounced on 26th February, 2024.

[Per:-Member (J)]

Heard Shri Y.Y.Humne, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. In this O.A. order of suspension dated 20.09.2022 (Annexure A-2), and subsequent initiation of departmental enquiry by charge-sheet dated 22/23.02.2023 (Annexure A-10) are impugned primarily on the ground that respondent no.2 had no authority to issue the same. Both these orders are also assailed on the ground of malafides. By order dated 28.06.2021 the applicant was transferred from Traffic Police, Sitaburdi, Nagpur to Police Head Quarter, Nagpur. This Bench set aside said order by Judgment dated 20.10.2022 in O.A.No.559/2021 on the ground that it was not preceded by preliminary enquiry as mandated by Circular dated 08.11.2017. In O.A.No.1186/2022 the applicant challenged order of his suspension dated 20.09.2022. This Bench, by Judgment dated 23.02.2023 revoked suspension of the applicant on the ground that it had exceeded 90 days,

and directed his reinstatement. By charge-sheet dated 22/23.02.2023 departmental enquiry was initiated against the applicant. According to the applicant aforesaid chronology will suffice to establish malafides of the respondents.

3. Reply of respondent no.3 refers to order of transfer of the applicant dated 28.06.2021 which was held to be unsustainable by this Bench by Judgment dated 20.10.2022 in O.A.No.559/2021, the applicant thereafter remaining absent unauthorisedly, initiation of departmental enquiry on charge of unauthorised absence, and repeated unsuccessful attempts made by the department to secure presence of the applicant in the enquiry.

4. The orders of suspension and initiation of departmental enquiry impugned herein were passed by respondent no.2. However, respondent no.2 has not filed reply to contest the O.A.. The only reply on record is that of respondent no.3 whose role was confined to attempts made by him to secure presence of the applicant in departmental enquiry as per orders issued by his superior i.e. respondent no.2. Thus, pleading of the applicant regarding respondent no.2 having no authority or competence to pass orders of suspension and initiation of departmental enquiry by issuing charge-sheet, has not been effectively traversed.

5. The applicant has relied on Notification dated 12.01.2011 issued by Home Department, Government of Maharashtra. Its relevant parts reads as under-

"NOTIFICATION

*Home Department,
Mantralaya, Mumbai 400 032.
Dated 12th January, 2011.*

No.MIS/1910/CR 185/POL 6A-In exercise of the powers under section 25 read with section 5(b) of Bombay Police Act, 1951 and powers conferred by clause (i) of sub-rule (1-A) of rule 3 of the Bombay Police (Punishment and Appeals) Rules, 1956, the Government of Maharashtra hereby empowers both of the authorities specified in column (2) of the Schedule below to place under suspension police officers respectively mentioned against such authority in column (3) of the Schedule."

SCHEDULE

Sr.No. (1)	Authorities (2)	Officers who can be placed under suspension (3)
1.	X X X	X XX
2	All Commissioners of Police including Railway Police Commissioner) in their respective Commissionerate Special Inspector General of	Police Officers of and below the rank of Police Inspectors.
3.	X X X	X XX

4.	X X X	X X X
5.	X X X	X X X
6.	X X X	X X X
7.	X X X	X X X

The applicant is holding the post of Assistant Sub-Inspector. This being so order of his suspension, either by way of punishment or in contemplation of initiation of departmental enquiry, could not have been passed by respondent no.2. It could have been passed only by the concerned Commissioner.

6. The applicant has also relied on common Judgment of this Bench dated 12.07.2023 in O.A.Nos.141 & 145 of 2022 wherein it is held-

5. The learned counsel for applicant has pointed out the Notification of Government of Maharashtra dated 12/01/2011. As per this Notification, Deputy Commissioner of Police is not the Disciplinary Authority. The Deputy Commissioner of Police was not authorized to suspend the applicant as per this Notification. The Officers who are empowered to suspend the police personnel is given in Column-2 of the Notification, the Deputy Commissioner of Police is not mentioned.

7. Under Section 25 of the Maharashtra Police Act, 1951 punitive powers of various Police authorities are given. Section 25(2)(a) which is relevant, reads as under-

25. Punishment of the members of the subordinate ranks of the Police Force departmentally for neglect of duty, etc.

[(2) a) The Director General and Inspector General including Additional Director General, Special Inspector General, Commissioner including Joint Commissioner, Additional Commissioner and Deputy Inspector-General shall have authority to punish an Inspector or any member of the subordinate rank under sub-section (1) or (1A). A Superintendent shall have the like authority in respect of any police officer subordinate to him below the grade of Inspector and shall have powers to suspend an Inspector who is subordinate to him pending enquiry into a complaint against such Inspector and until an order of the Director-General and Inspector-General or Additional Director-General and Inspector-General and including the Director of Police Wireless and Deputy Inspector-General of Police can be obtained.]

This provision does not mention Deputy Commissioner of Police as one of the competent authorities.

8. In the instant case order of suspension dated 20.09.2022 (Annexure A-2) was passed by respondent no.2. Departmental enquiry was also initiated by respondent no.2 by issuing charge-sheet dated

22/23.02.2023 (Annexure A-10). Respondent no.2 i.e. Deputy Commissioner of Police had no authority to issue either of these orders. This flaw invalidates both the impugned orders. Hence, the order.

ORDER

- 1) The O.A. is allowed.
- 2) Order of suspension dated 20.09.2022 (Annexure A-2) and charge sheet dated 22/23.02.2023 (Annexure A-10) are quashed and set aside.
- 3) No order as to costs.

(V.Kargaonkar)
Member(A)

(M.A.Lovekar)
Member(J)

Dated – 26/02/2024
rsm.

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 Member (J)
&Hon'ble Member (A).
Judgment signed on : 26/02/2024.
and pronounced on
Uploaded on : 29/02/2024.