

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 389/2021 (S.B.)

Tejram s/o Sadashiv Waghmare,
Aged about 52 years,
Occupation : Service,
R/o Nehru Ward, Warthi,
Tah. & District Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai - 32.
- 2) Special Inspector General of Police,
Nagpur Region, Nagpur.
- 3) Superintendent of Police,
Bhandara, District Bhandara.
- 4) Sub Divisional Police Officer,
Tumsar, Tah. Tumsar,
District Bhandara.

Respondents

Shri M.R.Khan, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

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

Dated:- 24th March 2023.

JUDGMENT

Judgment is reserved on 20th March, 2023.

Judgment is pronounced on 24th March, 2023.

Heard Shri M.R.Khan, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. On 08.10.2020 notice (Annexure A-4) was issued to the applicant calling upon him to show cause why his three increments be not withheld without cumulative effect for the acts of delinquency set out therein. On 12.10.2020 the applicant submitted his reply (Annexure A-5) to the show cause notice. After considering the same respondent no.3 imposed the proposed punishment by order dated 19.11.2020 (Annexure A-1). The applicant challenged it before respondent no.2 who, by order dated 24.05.2022 (Annexure A-8) dismissed the appeal. Orders at Annexure A-1 and A-8 are impugned in this O.A.

3. In replies at pp.33 to 43 and 48 to 50 the respondents have averred that nature of delinquency of the applicant was serious, show cause notice was issued to him, he submitted his reply, it was duly considered and thereafter, respondent no.3 passed the order dated 19.11.2020. It is further averred that the Appellate Authority, respondent no.2, too, considered the matter in its entirety and

proceeded to pass the order dated 24.11.2020. It is further averred that imposition of punishment was preceded by a preliminary inquiry in which conduct of the applicant was found to be blameworthy.

4. Following allegations were levelled against the applicant –

आपण पो.स्टे. गोबरवाही येथे नेमणूकीस असतांना क्राईमचे काम करीत होते. आपण रस्त्यावर गाडी अडवून गाडी चालकांना त्रास देत असल्याचे तसेच नौसाद पठाण यांचा गोबरवाही येथील दवाखाना चौकात ढाबा असून त्या ठिकाणी तो चोरून अवैधरित्या दारू विकतो याची आपणास कल्पना असतांना व सदर इसमावर पो. स्टे. गोबरवाही चे अभिलेखावर विनयभंग, दुखापत, अनुसुचित जाती जमाती अत्याचार प्रति. कायदा व दारूबंदी कायदा या हेडनुसार ०३ गुन्हे दाखल असून तो ईसम गुंड प्रवृत्तीचा असून गावात गोबरवाही पोलीस माझे सोबत आहेत मी कोणाला घाबरत नाही असे सांगत असतो. अशा गुंड प्रवृत्ती असलेल्या ईसमाचे ढाब्यावर आपण पोशि/ ११६९ प्रविण खोत यांचेसह मटनाचे जेवन पाटर्न्य करीत असल्याचे निर्देशनास आले आहे. तसेच आपण ठाणेदार यांचेशी उध्दटपणे बोलून दिलेले काम वेळेवर करीत नसून दिलेल्या आदेशाचे पालन करीत नाही. आपल्याकडे क्राईमचे काम देण्यात आले असून पो. स्टे. गोबरवाही येथील क्राईम अभिलेखाची तपासणी करण्यात आली असता प्रथम खबरी गुन्ह्याचे क्राईम रजिस्टर, VCR २, ३, VCR रेकार्ड न्यायालयाने आरोपींना ठोठावलेली शिक्षा / दोषमुक्त यासबंधाने अभिलेखावर अद्वावत नोंदी घेणे गरजेचे आहे याची आपणास जाणीव असून सुध्दा सदर बाबीकडे आपण हेतुपुरस्पर दुर्लक्ष करून शासकीय कामात निष्काळजीपणा व बेजबाबदारपणाचे वर्तन केलेले आहे. आपण नौसाद पठाण सारख्या गुंड प्रवृत्तीच्या ईसमास हस्तक ठेवून त्यांचेमार्फत लोकांना १०००००/- लाख रुपये ५ टक्के व्याजाने वाटप करीत असता व सदर इसम हा गुंडागर्दी करून पोलीसाचे नांव सांगून वसुल करतो. आपण शिस्तप्रिय पोलीस विभागात काम करीत

असतांना पैशाचा गैरकायदेशिर व्यवहार करणे हे चुकीचे आहे याबाबत आपणास जाणीव असतांना सुध्दा पैशाचा गैरकायदेशिर व्यवहार केलेला आहे असे चौकशीत आढळून आले आहे.

पोलीस विभागात नोकरी करतांना लोकसेवक अत्यंत प्रामाणिक व वरिष्ठांचे कायदेशिर आदेशाचे पालन करून शासकीय काम करणे पोलीस नियमावली भाग ०३ नियम क्र. ३८ पान क्र. १६ अन्वये पो. स्टे. ची गोपनीय माहिती लोकांना न पुरविणे, आदेशाचे पालन करणे व कायद्याच्या चौकटीत राहून कर्तव्य बजावणे तसेच पो. स्टे. हद्दीतील कोणत्याही गैरकायदेशिर अवैधरित्या काम करणाऱ्या गुंड प्रवृत्तीच्या इसमासोबत मित्रत्वाचा संबंध न ठेवणे हे आवश्यक असतांना सुध्दा आपण पोलीस नियमावली व कायद्याची पायमल्ली करून गुंड प्रवृत्तीचा ईसम नौशाद पठाण यांचेसह मित्रत्वाचे संबंध प्रस्थापीत करून समाजात पोलीस विभागाची प्रतिमा मलिन करणारे बेजबाबदारपणाचे वर्तन केलेले असल्याचे चौकशीत निष्पन्न झाले आहे.

5. It was submitted by Shri M.R.Khan, learned Advocate for the applicant that in the order of punishment there was no reference to the relevant Rule under which it was imposed. This order was passed in terms of Rule 3(2) (v) of the Bombay Police [Punishments & Appeals] Rules, 1956. Relevant part of Rule 3 reads as under –

3. (1) Without prejudice to the provisions of any law for the time being in force, the following punishments may be imposed upon any Police Officer, namely:-

(a-1) [* * *]

(a-2) * * *

(i) * * *

(i-a) * * *

(ii) * * *

(iii) * * *

(1-A) (i) * * *

(ii) * * *

(iii) * * *

(2) The following punishment may also be imposed upon any Police Officer if he is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which does not require his suspension or dismissal or removal:-

(i) * * *

(ii) * * *

(iii) * * *

(iv) * * *

(v) Stoppage of increments.

[(vi) * * *

Provided that- * * *

Explanation.- For the purposes of this rule, -

(1) * * *

(2) * * *

(3) * * *

(4) * * *

Rule 4(2) of Rules of 1956 reads as under –

4. [(1) * * *

[(2) Without prejudice to the foregoing provisions, no order imposing the penalty specified in clauses (i), (ii), (iv), (v) and (vi) of sub-rule (2) of rule 3 on any Police Officer shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation, if any, has been taken into consideration before the order is passed:

Provided that- * * *

6. In the instant case opportunity was given to the applicant to put forth his defence which he availed by submitting reply to the show cause notice. Thus, there was no procedural defect in imposing punishment. Mere failure to mention Rule 3(2)(v) of Rules of 1956 will not be sufficient to hold to the contrary.

7. It is not in dispute that the impugned punishment was a minor penalty.

8. The applicant has relied on **Kulwant Singh Gill Vs. The State of Punjab (Judgment of Hon'ble Supreme Court dated 13.09.1990 in Civil Appeal No.2960/1987)** and **Harish son of Gajanan Agrawal Vs. Bank of Maharashtra and Others (Judgment of Hon'ble Bombay High Court dated 31.08.2005)**. In these cases it is held that withholding of increment with cumulative effect is a major penalty and therefore, procedure laid down therefor, must be followed whereas withholding of increment without cumulative effect is a minor penalty. As mentioned earlier, it is not in dispute that the impugned punishment is a minor penalty. Therefore, aforesaid rulings will not assist the applicant. Absolutely no ground is made out to interfere with the impugned orders in exercise of powers of judicial review which are clearly circumscribed. For all these reasons the O.A. is dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 24/03/2023
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) .
Judgment signed on : 24/03/2023.
and pronounced on