

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.721/2017

Shri Bhaurao Kewalram Mendhe,
Aged about 51 years, Occ. Farmer,
R/o Borgaon, Tah. Pawani, District Bhandara

..Applicant

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai 400032
- 2) Sub Divisional Officer,
Bhandara, District Bhandara

..Respondents

Shri C.N. Funde - Advocate for the Applicant

Shri V.A. Kulkarni – Presenting Officer for Respondents

Coram :- Hon'ble Shri A.D. Karanjkar, Member (J)

Dated :- 30th October 2018.

J U D G M E N T

Heard Shri C.N. Funde, learned Advocate for the Applicant and Shri V.A. Kulkarni, learned Presenting Officer for Respondents.

2. The applicant was appointed as Police Patil Borgaon, Tah. Pawani Dist.Bhandara, w.e.f. 7.10.1999 for 5 years. The services of the applicant were extended till completion of 10 years i.e.2024.

3. It is the grievance of the applicant that without conducting enquiry as contemplated by MCS Rules, respondent no.2 illegally terminated services of the applicant by order dated 4.9.2017, therefore, the order impugned is liable to be set aside.

4. It is submitted that there was one accident on 22.6.2017 as one truck dashed school going girl and consequently she died. There was uproar in the village Borgaon, Taluka Pawani, District Bhandara and mob was annoyed and set on fire to two trucks. After this accident the respondent no.2 issued show cause notice to the applicant on 7.7.2017 and called his explanation.

5. The applicant submitted his explanation and informed that after the knowledge about the accident he immediately rushed to the spot and telephoned the concerned police station officer Shri Tajne. The applicant also assisted the Police officers. The applicant also requested the members of the mob not to take law in their own hands but it was in vain. The applicant also gave intimation to another police station. It is grievance of the applicant that without considering his explanation and without conducting enquiry the respondent no.2 straight way terminated services of the applicant. It is submitted that service of the applicant was governed by the Maharashtra Village Police Act and the respondent no.2 had no authority to terminate his services without following the procedure in the MCS Rules.

6. The Ld. PO has submitted the reply on behalf of the respondent no.2 and justified the action. It is contended that the applicant was negligent and careless while discharging his duties as Police Patil and consequently due to negligence of the applicant the mob set on fire to three motor trucks and there were difficulties for the police to control the situation. It is submitted that termination of the applicant is proper and no illegality in the order.

7. In view of the above facts only two points arise for my determination:

(a) Whether the order of termination is legal?

(b) What order?

8. I have heard submissions on behalf of the applicant and the respondents. My attention is invited to Rule 9 A of the Maharashtra Village Police Act,1967. The Act is amended in the year 1985. After reading Section 9 A(1) it seems that there is mandate that, 'no penalty shall be imposed on a Police Patil under clause (a) or (f) of Section 9 of the Act, unless the procedure prescribed in rule 55 of the Civil Services (Classification, Control and Appeal) Rules is followed'. Sub-section (2) says that, 'no penalty shall be imposed on a Police Patil under any other clause of the said section 9, unless the procedure prescribed in rule 55A of the said rules is followed'. The Sub-clause (1) and sub-clause (2) are amended by 1985 amendment and in sub-clause (1), for the words, figures and brackets "rule 55 of the Civil Services (Classification, Control and Appeal) Rules," the words, figures and brackets "rule 8 and 9 of the

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979” were substituted.

9. Similarly in sub-clause (2) for the words, figures and letter “rule 55A of the said rules,”, the words, figures and brackets “rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979” were substituted.

10. In the order impugned dated 4.9.2017 the applicant’s services are terminated under clause 9E of Maharashtra Village Police Act, 1967. Therefore, as per amended Section 9A of the Act the respondent no.2 was bound to follow the procedure under Rule 10 of MCS (Discipline & Appeal) Rules, 1979. Rule 10 of the MCS (Discipline and Appeal) Rules, 1979 reads as under:

10. Procedure for imposing minor Penalties.

(1) Save as provided in sub-rule (3) of rule 9, no order imposing on a Government servant any of the minor penalties shall be made except after –

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

- (b) *holding an inquiry in the manner laid down in rule 8, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;*
 - (c) *taking into consideration the representation, if any, submitted by the Government servant under clause (a) of this rule and the record of inquiry, if any, held under clause (b) of this rule;*
 - (d) *recording a finding on each imputation of misconduct or misbehaviour; and*
 - (e) *consulting the Commission where such consultation is necessary.*
- (2) *Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government's servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period [or to impose any of the penalties specified in clauses (v) and (vi) of sub-rule (1) of the rule (5)], an inquiry shall be held in the manner laid down in sub-rule (3) to (27) of rule 8, before making any order of imposing on the Government servant any such penalty.*
- (3) *The record of the proceeding in such cases shall include-*

- (i) *a copy of the intimation to the Government servant of the proposal to take action against to him;*
- (ii) *a copy of the statement or imputations of misconduct or misbehaviour delivered to him;*
- (iii) *his representations, if any;*
- (iv) *the evidence produced during the inquiry;*
- (v) *the advice of the Commission, if any;*
- (vi) *the findings on each imputation of misconduct or misbehaviour; and*
- (vii) *the orders on the case together with the reasons therefore.”*

11. After reading rule 10 sub rule (1) clause (b) it seems that enquiry is necessary as laid down under rule 8, where the disciplinary authority is of the opinion that such enquiry is necessary.

12. Rule 10 sub rule (2) says that, “notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Governments servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period [or to impose any of the penalties specified in clauses (v) and (vi) of sub-rule (1) of the rule (5)], an inquiry shall be held in the manner laid down in sub- rule (3) to (27) of rule 8, before making any order of imposing on the Government servant any such penalty.”

13. Rule 10 sub-rule 3 says that, “the record of the proceeding in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against to him;
- (ii) a copy of the statement or imputations of misconduct or misbehaviour delivered to him;
- (iii) his representations, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefore.”

14. The conjoint reading of rule 10 sub-rule (1) clause (b) and rule 10 sub-rule (2) indicates that even for withholding increments of pay likely to affect the pension of the Government servant or withholding increment for a period 3 years or for withholding increment with cumulative effect, the disciplinary authority shall follow rule 8 of MCS (Discipline & Appeal) Rules, 1979.

15. In present matter as the disciplinary authority was intending to terminate services of the applicant. This was major effect more than mere withholding of increments and therefore, in my opinion it was duty of the disciplinary authority the respondent no.2 to follow the procedure laid down under rule 8 of MCS (Discipline & Appeal) Rules, 1979. In the present case

there is no dispute about the fact that the procedure laid down under Rule 8 of MCS (Discipline & Appeal) Rules, 1979 is not followed.

16. Secondly, what evidence was recorded by respondent no.2 is not produced before this Tribunal and after reading order impugned it is difficult to draw the inference that evidence was recorded by the respondent no.2, therefore, there is non-compliance of rule 10 (3). The order dated 4.9.2017 is silent. This order does not disclose on basis of which evidence the respondent no.2 came to the conclusion that the allegations made against the applicant were true and he was responsible. Thus, it seems that respondent no.2 did not consider the provisions under sub-rule (2) and sub rule (3) of rule 10 of MCS (Discipline & Appeal) Rules, 1979. Consequently, I hold that the impugned order terminating the services of the applicant is illegal and it cannot be sustained. In the result, I pass the following order.

ORDER

The Original Application is allowed. The impugned order dated 4.9.2017 is hereby set aside. No order as to costs.

(A.D. Karanjkar)
Member (J)