

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.406/2016.

Omprakash Rikhdeosingh Thakur,
Aged about 51 years,
Occ-under suspension,
R/o MIDC Road, T Point Chowk,
Navegaon Complex, Gadchiroli.

Applicant

Versus

- 1) The State of Maharashtra,
Through its Addl. Chief Secretary,
Department of Home,
Mantralaya, Mumbai-440 001.
- 2) The Special Inspector General of Police,
Nagpur Range, Nagpur.
- 3) The Superintendent of Police,
Gadchiroli.

Respondents

ORIGINAL APPLICATION NO.407/2016.

Chandan Omprakash Thakur,
Aged about 27 years,
Occ-under suspension,
R/o MIDC Road, T Point Chowk,
Navegaon Complex, Gadchiroli.

Applicant

Versus

- 1) The State of Maharashtra,
Through its Addl. Chief Secretary,
Department of Home,
Mantralaya, Mumbai-440 001.

- 2) The Special Inspector General of Police,
Nagpur Range, Nagpur.
- 3) The Superintendent of Police,
Gadchiroli.

Respondents

Shri S.P. Palshikar, Advocate for the applicant.
Shri A.M. Khadatkhar, learned P.O. for the respondents.

**Coram:- Hon'ble Shri J.D. Kulkarni,
Member (Judicial)**

Dated: - 28th February 2017.

Order

Heard Shri S.P. Palshikar, the learned counsel for the applicants and Shri A.M. Khadatkhar, the learned P.O. for the respondents.

2. The applicant in O.A. No. 406/2016 Omprakash Rikhdeosingh Thakur is A.S.I. at Gadchiroli where the applicant in O.A. No. 407/2016 Chandan Omprakash Thakur is his son and is working as Police Constable at Gadchiroli.

3. The applicant Omprakash was appointed as Constable in 1985 and was promoted as Head Constable in 1993 and as A.S.I. in 2003, whereas the applicant in O.A. No. 407/2016 Chandan has been appointed as Havildar in 2008.

4. It is alleged that both the applicants have committed misconduct on 21.3.2013 and, therefore, they were kept under suspension vide order dated 2.8.2013. A criminal case as well as departmental enquiry were initiated against both the applicants. The Enquiry Report in the departmental enquiry was submitted on 15.5.2015 and on the basis of the said report, show cause notice was issued on 29.6.2015. Ultimately in the departmental enquiry, the applicants were dismissed on 10.7.2015. Both the applicants filed an appeal against the order of dismissal and the appellate authority was pleaded to quash and set aside the order of dismissal on 3.3.2016. On the basis of the said order, applicants were reinstated in service on 12.4.2016. However, they again came to be suspended on 4.6.2016. This suspension orders dated 4.6.2016 are the subject matter of these O.As.

5. On the basis of misconduct committed by the applicants on 21.3.2013, a crime has been registered against them and they are being tried for various criminal offences before the competent Court and the criminal case is still pending.

6. The applicants have prayed that the suspension orders dt. 4.6.2016 issued by respondent No.3 are illegal and bad in law and

it be quashed and the applicants be reinstated in service. They are also claiming that the direction given by respondent No.3 in its order dated 3.3.2016, whereby the respondent authority was given an opportunity to pass the suspension order in respect of the applicants, be quashed.

7. The respondent Nos. 1 to 3 filed their reply affidavit. It is admitted that the applicants were earlier suspended on 2.8.2013 and that the said order was subsequently quashed and the applicants were reinstated and thereafter they were again suspended vide impugned orders dated 4.6.2016.

8. According to the respondents, the applicant Omprakash was working at J.T.S.C. centre and was custodian of arms and ammunitions kept in the same centre. He has misused his power and committed criminal breach of trust and misappropriated the arms and ammunitions for his own gain and the applicant Chandan was in collusion with his father.

9. It is stated that as per the direction of the appellate authority, the respondents have conducted preliminary enquiry and in order to have fair enquiry, the applicants had been kept under suspension. The applicants, however, are not cooperating in the

enquiry. The respondents justified the suspension of both the applicants.

10. Shri S.P. Palshikar, the learned counsel for the applicants submits that the earlier orders of suspension in respect of both the applicants have been quashed and set aside and the applicants have been reinstated in service. However, while passing such orders, the appellate authority has made observations in the operative order and the said observations / directions are not legal and proper. The operative order of the appellate authority reads as under:

“आंया वध पुहा नयाने ाथमक चौकशीची कारवाई करयात यावी व या आधारावर वभागीय चौकशीची कारवाई कन अमलाथ यांचे कसुराचे संदभास योय ती कारवाई करावी. सेवेत पुनःथापत केयानंतर ाथमक चौकशीची कारवाई सु असतांना अमलाथ यांना पुनः जलंखत करावे अगर कसे याबदल पोलस अधी क गडाचरोल यांनी योय जणख यावा.”

11. Perusal of the aforesaid order clearly shows that the appellate authority was pleased to quash and set aside the suspension of the applicants as per observations made in earlier paras. However, it was observed that fair enquiry is required to be conducted and, therefore, direction was given to the effect that fresh preliminary enquiry shall be held against the applicants and in case it was found necessary to keep the applicants under suspension, the same action

shall be taken. This clearly shows that discretion was given to the competent authority to consider as to whether the applicants shall be kept under suspension or not, considering the circumstances. Shri S.P. Palshikar, the learned counsel for the applicants submits that the appellate authority has exceeded its limit while issuing aforesaid directions. It is material to note that the applicants have approached the appellate authority and have challenged the order of dismissal and, therefore, it was necessary for the appellate authority to consider as to whether in the given circumstance dismissal was legal and proper and there was absolutely no reason for the appellate authority to direct fresh enquiry. Thus the order seems to be prima facie beyond the jurisdiction of the appellate authority.

12. Shri S.P. Palshikar, the learned counsel for the applicants also pointed out the observations made by the appellate authority in the order dated 3.3.2016 and particularly the observations in para Nos. 4,8,9 and 12 which are as under:-

“४. आपलाथ यांचे अपील जनवेदन यावरल्ल पोलस अधी क, गडघरोल यांचे अभ्याय आपलाथान आपणकृत कालत नमूद केल्ल हककृत आपलाथ यांचे वृध घेयात आलेया व्रभागीय चौकशीतील कागदपणे समारोप अहवाल इयाद सव आपलेख काळजीपूर्वक अयासला, त्तुत व्रभागीय चौकशी मधील आपलाथ / कसुरदार यांचेवर ठेवयात आलेया दोषारोपाचे वप अयांत गंभीर आहे. यांया तायात

सुरात रखवालासाठ ठेवयात आलेला शासकय दागोळा, फोटक पदाथ व इतर अनुषंगक साहयाचा अपहार कन आपला गुहा उघडकस येऊ नये हणून या संबंधातील पुरावा नट केयाचा यांचेवर आरोप आहे. याच संदभात्त दोह अपीलाथ यांचे वध पो. टे. गडाचरोल येथे अप. मांक ९२/२०१३ दाखल करयात येऊन राससर तपासांअंती यायालयात दोषारोपप सुधा दाखल करयात आले आहे. अशा कारचे गंभीर वपाचे दोषारोपाखाल वभागीय चौकशीची कारवाई करतांना पोलस अधीक, गडाचरोल व वभागीय चौकशी अधिकार (ऊप- वभागीय पोलस अधिकार चामोशा) यांनी जी संवेदनशीलता दाखवणे अपे त होते ती न दाखवता आतशय यांकपणे व कुठे वबुधीचा वापर न करता ह वभागीय चौकशी हाताळल आहे असे खेदाने नमूद करावे लागते.

८. एक्दर स गुयाया तपासातील सदोष दताएवज थामक चौकशी मये सदोष पधत्तने वापरयात आलेला आहे. यामुळे एक्दर थामक चौकशीच सदोष पधतीने झाल असयाने व अशा सदोष थामक चौकशीया आधारावर वभागीय चौकशीची कारवाई करयात आल असयाने आपलाथ यांचेवर ठेवयात आलेला दोषारोप सध करयासाठ कुठलाह पुरावा वभागीय चौकशीची मये समोर आलेला नाह

९. वभागीय चौकशीची कारवाई सु असतांना या सव बाबी वभागीय चौकशी अधिकारयाया ल त येणी अपे त होते परंतु यापूर्व नमूद केले या वभागीय चौकशी चालवतांना वभागीय चौकशी अधिकारयाने आतशय यांक पधतीने ह वभागीय चौकशी हाताळल आहे व आपलाथ यांचेवरल दोषारोप सध झालेला आहे अशा नकष काढून अयंत थातुरमातुर वपाचा समारोप अहवाल सदर केला आहे.

१२. आपलाथ यांची कसुर गंभीर वपाची आहे यामुळे यांयावर कारवाई होणे आयंतक आवयक आहे. सबब या सव करणात नयाने थामक

चौकशी कऱून ँया आधारावर नऱयाने दोषारोप तयार कऱून ँवभागीय चौकशीची कारवाई पुऱुहा करणे गरजेचे आहे.”

13. From the aforesaid observations, it will be clear that the appellate authority came to the conclusion that there was absolutely no material against the applicants so as to place them under suspension and to dismiss them.

14. Even accepting for the argument sake that the appellate authority has rightly directed the competent authority to initiate fresh enquiry, still it will have to be seen as to what additional material the respondent No.3 brought on record to place the applicants under suspension.

15. The impugned order of suspension after directions from the appellate authority is dated 4.6.2016. Perusal of the said order shows that except the description of charges levelled against the applicants in criminal offence, no material has been placed on record to prove even, prima facie, such charges. There is even no mention of the result of preliminary enquiry as directed by the appellate authority in the said suspension order. It can be understood if the applicants were kept under suspension after initiating preliminary enquiry as directed by the appellate authority, because some additional material was found against the applicants.

16. The learned P.O. submits that the applicants are not co-operating in conduction of additional preliminary enquiry, after the matter was remanded back by the appellate authority and, therefore, no progress was made. If this is accepted as true, then admittedly no additional material is available with the respondents so as to keep the applicants under suspension.

17. The learned P.O. submits that the offences registered against the applicants are serious in nature and suspension is no punishment. He further submits that the applicantsq claim can be considered for revocation before the competent committee. He also placed reliance on the judgment reported in **(2002) 10 SCC 293 Hiran Mayee BhattacharyaV/s Secretary, S.M. School for Girls and others.** I have carefully gone through the said case. He has also placed reliance on a case **(1996) 3 SCC 157 Secretary to Government, Prohibition and Excise Department V/s L. Srinivasan** and submitted that quashing of suspension and charges at this stage when the criminal case is pending, may not be proper. In my opinion, the applicants have been kept under suspension (i) for the reason that the charges against them are serious in nature, (ii) criminal case filed against the applicants is pending and (iii) the competent authority has initiated preliminary

enquiry for which it is necessary to keep away the applicants from the enquiry.

18. As against the submission made by the learned P.O., the learned counsel for the applicants placed reliance on the judgment reported by the Hon'ble Apex Court in case of **Ajay Kumar Choudhari V/s Union of India through its Secretary and another, 2015 (2) SCALE 432.** The Apex Court have held in the said case as under:

Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental / disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.+

19. I have carefully gone through the citations on which the respective counsel have placed reliance. In the present case, admittedly the dismissal of the applicants have been set aside by the

competent appellate authority, as the appellate authority found no prima facie evidence against the applicants. The appellate authority directed fresh preliminary enquiry beyond its jurisdiction and no additional material has been placed on record against the applicants in the said additional enquiry also and, therefore, the fact remains that there is no evidence against the applicant to keep them under suspension. It is stated that the criminal case against the applicants is at its last stage. The said case is for recording statements of accused persons (applicants) U/s 313 of Cr.P.C. If the said trial ends in conviction of the applicants, the competent authority may take action against the applicants. Since reinstatement till fresh impugned suspension order was issued, the applicants were already in service and, therefore, I do not find any reason to place them again under suspension. Hence, the following order:-

(i) The O.As are allowed.

(ii) The impugned order dated 4.6.2016 passed by respondent No.3 is quashed and set aside.

(iii) The respondent No.3 is directed to reinstate the applicants in service, with immediate effect.

(iv) The order dated 3.3.2016 passed by respondent No.2 so far as it relates to direction to initiate fresh preliminary enquiry is quashed and set aside.

(v) No order as to costs.

(J.D.Kulkarni)
Member (J)

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