

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 725/2015.

Vijay Vishwanath Kendre (Service No.544),
Aged about 27 years,
Occ-Service (Armed Police Constable),
State Reserve Police Force, %D+Company,
Group No.13, Wadsa (Desaiganj),
Distt. Gadchiroli. (Camp at Nagpur.)

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 001.
- 2) Shri N.Z. Kumre, Commandant,
State Reserve Police Force, Group No.13,
MIDC Area, Hingna Road, Nagpur.
- 3) Shri B.S. Chopade and Departmental
Enquiry Officer, %Admin.+Company Commander,
State Reserve Police Force, Group No.13,
Wadsa (Desaiganj), Distt. Gadchiroli.
(Camp at Nagpur.)

Respondents

ORIGINAL APPLICATION NO. 726/2015.

Santosh Dallu Sable, (Service No.548),
Aged about 24 years,
Occ-Service (Armed Police Constable),
State Reserve Police Force, %D+Company,
Group No.13, Wadsa (Desaiganj),
Distt. Gadchiroli. (Camp at Nagpur.)

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 001.
- 2) Shri N.Z. Kumre, Commandant,
State Reserve Police Force, Group No.13,
MIDC Area, Hingna Road, Nagpur.
- 3) Shri B.S. Chopade and Departmental
Enquiry Officer, %Admin.+Company Commander,
State Reserve Police Force, Group No.13,
Wadsa (Desaiganj), Distt. Gadchiroli.
(Camp at Nagpur.)

Respondents

ORIGINAL APPLICATION NO. 727/2015.

Baburao Madhukarrao Gutte, (Service No.534),
Aged about 26 years,
Occ-Service (Armed Police Constable),
State Reserve Police Force, %E+Company,
Group No.13, Wadsa (Desaiganj),
Distt. Gadchiroli. (Camp at Nagpur.)

Applicant.**Versus**

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 001.
- 2) Shri N.Z. Kumre, Commandant,
State Reserve Police Force, Group No.13,
MIDC Area, Hingna Road, Nagpur.
- 3) Shri B.S. Chopade and Departmental
Enquiry Officer, %Admin.+Company Commander,
State Reserve Police Force, Group No.13,
Wadsa (Desaiganj), Distt. Gadchiroli.
(Camp at Nagpur.)

Respondents

Shri Shashikant Borkar, Ld. Advocate for the applicant.
Shri A.M. Ghogre, learned P.O. for the respondents.

Coram:- Hon'ble Shri R.B. Malik, Member (J)

Dated: - 17th February 2017.

Oral order

These three O.As to be decided by this common judgment throw up for determination the issue as to whether a Constable of SRPF governed by Bombay State Reserve Police Force, 1951 (SRPF Act or said Act) can be placed under suspension Pre Departmental Enquiry (D.E.). Suspension by the Commandant of SRPF by invoking the provisions of Section 25 of Maharashtra Police Act, 1951 (as amended upto date) (Police Act) is at the heart of the matter. O.A. 725 of 2015 is the representative O.A. The Respondent State of Maharashtra in Home Department seek to locate this power under Section 19 of SRPF Act.

2. I have perused the record and proceedings and heard Shri Shashikant Borkar, the learned Advocate for the applicants and Shri A.M. Ghogre, the learned P.O. for the respondents. Mr. Borkar raised no issues other than the one indicated at the outset. He also informed that the applicants have since been reinstated but the period of suspension has not been regularized. I must, therefore, make it quite clear that I am not going to decide any issue other than the legal

issue indicated above and the other facts at issue including the factual merit of the controversy is left open and undecided. It is not even necessary to set out those facts. It would suffice to mention that the Commandant, SRPF vide his order dated 20.11.2015 placed the applicant under suspension.

3. Now, Section 19 of the SRPF Act reads as under:

~~19~~19. Except as specifically provided in the foregoing sections of this Act, every reserve police officer shall for all purposes be deemed to be a police officer as defined in the Bombay Police Act, 1951, and the provisions of that Act shall, except insofar as they are inconsistent with the provisions of this Act, apply to every of such reserve police officer. Sec. 2 (11) of Police Act.

4. The perusal of Section 19 of the SRPF Act above quoted would make it quite clear that the police officer appointed under the SRPF Act by way of a deeming provision would be police officers as defined in the Police Act. That definition is to be found in Section 2 (11) of the Police Act to mean any member of the police force appointed or deemed to be appointed under the Police Act and the special or additional police officers appointed under section 21 or 22 thereof would be included in the said definition.

5. The submission of the learned P.O. is that the words, "for all purposes" would include the disciplinary matters including Pre D.E. suspensions. Mr. Borkar, the learned Advocate for the applicants, however, argued that neither the provisions of Bombay Police Act nor for that matter the provisions of Bombay Police (Punishment and Appeal) Rules, 1956 (to be hereinafter called Rules) would apply in case of a SRPF personnel. He invited particular reference to the fact that while under the Police Act, rules have been framed, there is a provision in Section 21 of the SRPF Act empowering the State Government to make rules, though they should not be inconsistent with the said Act for carrying out, "the purpose of this Act". Section 21 (2) makes it clear that without prejudice to the generality to the foregoing provisions, such rules might provide for all matters therein mentioned and sub-clause (c) provides "recruitment, organization, classification and discipline of a member of subordinate ranks". Mr. Borkar, Ld. Advocate for the applicants contended that, it was open to the State Government to make rules for the service conditions of the discipline of SRPF. But they have not done so and according to him as already mentioned above neither the Police Act nor the Rules are applicable to the SRPF constables and, therefore, the impugned order is bad at its inception. In order to rule upon the present controversy, it would be necessary to take a close look at the SRPF Act.

6. From the above discussion, it must have become clear that the central question of importance is as to whether the provisions of Section 19 reproduced herein above would, for all purposes+including those of discipline would place SRPF personnel exactly on par with the police personnel.

7. Reading the SRPF Act, I find that the legislature found it expedient to provide for constitution and regulation of an Armed Reserved Police Force in the then State of Bombay. Therefore, it is clear that the SRPF Act is for constitution and regulation of a certain reserved force to be called reserve police force+. Section 2 thereof is the dictionary clause. Section 2 (a) (i) defines the words, active duty+as follows:

in this Act, unless there is anything repugnant in the subject or context,

(a) active duty+means-

(i) the duty to [prevent or] investigate offences involving a breach of peace or danger to life or property and to search for and apprehend persons concerned in such offence or who are so desperate and dangerous as to render their being at large hazardous to the community...+

8. A bare perusal of the said definition would in my view make it clear that the nature of duties to be performed is not something which is in stark contrast with the duties performed by a police personnel.

9. Section 2 (i) (b) defines the words, Commandant and Assistant Commandant to those as to those offices to mean which are described in Section 5 of the SRPF Act. At this stage itself, I think I had better reproduced Section 5 itself.

5 (1) The State Government may appoint for each group a Commandant who shall be a person eligible to hold the post of (a Superintendent) and an Assistant Commandant (and an Adjutant who shall be persons) eligible to hold the post of an Assistant or Deputy Superintendent.

(2) Notwithstanding anything contained in subsection (1), the State Government may appoint such Military Officer as it deems fit to be a Commandant or Assistant Commandant (or Adjutant).

(3) The Commandant, the Assistant Commandant (the Adjutant) and every other officer so appointed shall have and may exercise such powers and authority as may be provided by or under this Act.+

10. The learned P.O., while advancing his arguments at the bar before me contended that the very language of the said section would make it clear that the Commandant could be a person eligible to hold the post of a Superintendent and Assistant Commandant eligible to hold the post of Deputy Superintendent. As I proceed further, it would become clear that the police officers manning higher posts have power of some kind of control over the higher officers, appointed under the SRPF Act also. Of course, the Government also has plenary powers which is beyond doubt. Therefore, although Section 5 (2) of the SRPF Act provides by way of non obstante clause that even Military Officers could be appointed to the post of Commandant or Assistant Commandant and that would place an interpreter of the provisions on a watch. But in the totality of circumstances, I do not think that the submissions of learned P.O. are entirely without substance. This aspect of the matter would become clearer as I proceed further.

11. Section 2 (c) of the SRPF Act defines the words, "Commissioner of Police and Deputy Commissioner of Police" as those appointed under the Police Act. Section 2 (f) of the SRPF Act (to be hereinafter called as the said Act) defines the words, "Police Officers" to mean every Police Officer as defined by the Police Act, 1861 or

1951. I have already in this connection referred to the definition of the said words under section 2 (ii) of the Maharashtra Police Act. Section 2 (j) lays down *inter alia* that the words and expressions used in the said Act but defined but have been defined in the Indian Penal Code, the Code of Criminal Procedure, 1898 and the Bombay Police Act, 1951. In case they have been defined in the said Act would have the meaning assigned thereto by those enactments. The discussion thus far might make it clear that the total dichotomy or diversion between the personnel under the said Act and the Police Act canvassed so assiduously by Mr. Borkar is something that cannot be accepted. But I proceed further.

12. Section 3 of the said Act lays down that the State Government may establish and maintain ~~an~~ an Armed Reserve Police Force known as the State Reserve Police Force+. Therefore, what has been established under the said Act is nothing but an Armed Police Force to be known as ~~State~~ State Reserve Police Force+. But the police force it nevertheless is and that in my opinion is a matter of great significance and I may recall here a little emphasis that I put on the definition of the words ~~an~~ active duty+ under section 2 (i) (a) of the said Act. These two provisions read together to my mind should make it very clear that when one construes section 19 of the said Act, these

various provisions of the said Act would provide useful tools to put a construction thereon. Section 3 (4) of the Act empowers the State Government or an officer duly empowered in that behalf to divide the SRPF in groups, the each group can further be sub-divided into companies and each company into platoons. The State Government would determine the place of their postings etc. The crux of the matter is that just like regular police force, even police personnel under the said Act will be functioning in accordance with the divisions envisaged by the said provision.

13. Section 4 of the said Act makes it clear that the SRPF shall be under the control and will be administered by the State Government in accordance with the provisions of the said Act and rules, if any, made thereunder through the said officers as State Government may from time to time appoint in this behalf. No doubt, power of the State Government over the SRPF is, therefore, clearly spelt out by the provisions of Section 4 of the said Act.

14. I have already discussed Section 5 of the said Act. Section 5 (A) was not discussed at that time. It lays down that subject to the general or special orders of the State Government, the Inspector General of Police shall appoint the company Commandant and the Commandant of Headquarters Wing. In my opinion, this is a

significant pointer to the effect that the Commandants of Headquarters Wing are appointees of the Inspector General of Police. There is nothing in the Act or for that matter even in the Police Act to indicate that the post appointment, the Inspector General of Police has no control over the Commandant. In fact, as I shall be presently pointing out if anything, there are provisions that show that the higher police officers have undoubted control over the officers appointed under the Act. This aspect of the matter will become clear still further as I proceed further.

15. The said Act lays down that any person before his appointment to the SRPF and before joining his appointment, would have to make a declaration in the form in Schedule-A and get read over to him and if he so desired, be explained to him. Pertinently that would be in the presence of the Commandant or the Assistant Commandant or a Police Officer not lower in rank than the Superintendent of Police or Dy. Commissioner of Police. Although the matter of such declaration otherwise would not have much significance in the present controversy, but it still has some significance to indicate that whatever could be done in the presence of the Commandant or the Assistant Commandant could also be done in

presence of the Police Officer of the rank of Superintendent of Police and above.

16. Section 7 of the said Act provides transfer and in my opinion it is a significant provision for my present purpose and I would therefore quote it herein below:

~~%~~ (1) Notwithstanding anything contained in this Act or the Bombay Police Act, 1951, it shall be competent to the State Government to transfer members of the Police Force appointed under the Bombay Police Act, 1951, to the State Reserve Police Force established under this Act and *vice versa*;

Provided that the State Government may delegate its power under sub-section (1) insofar as it relates to the transfer of members of the subordinate ranks of the respective Police Force to the Inspector-General.

(2) On the transfer of a member of the Police Force appointed under the Bombay Police Act, 1951, to the State Reserve Police Force established under this Act or *vice versa*, he shall be deemed to be a member of the Police Force to which he is transferred and in the performance of his functions, he shall, subject to such orders as the State Government may make, be deemed to be vested with the powers and privileges, and be subject to the liabilities, of a member of such grade in the Police Force to which he has been transferred as may be specified in the orders.+

17. Inasmuch as the entire section has been reproduced, there is really no necessity to add anything of my own sum and save and except that insofar as the present controversy is concerned and insofar as proper construction of Section 19 is concerned, it would go a long way to suggest that the argument that the provisions of Police Act, despite the phraseology of Section 19 would be inapplicable to the SRPF personnel, is hard to accept.

18. Section 8 of the said Act lays down that a Company Commandant, Commander of Headquarters Wing or Platoon Commander, shall, on appointment receive from the Inspector General of Police a certificate of appointment containing particulars of his name, age religion and his previous service, if any, as mentioned therein. The undoubted role of Inspector General of Police makes it quite clear that this provisions read along side, the other provisions of the said Act would also point to the conclusion that the argument of the applicant may not be acceptable.

19. Section 9 of the said Act provides *inter alia* that subject to the orders of the Inspector General of Police, the Commandant would direct and regulate all matters of arms, drill etc. as therein mentioned. Here also, the functioning of the Commandant is

subject to the orders of the Inspector General of Police. Section 10 (1) of the said Act lays down that every ~~%~~ Reserve Police Officers+ would be deemed to be on duty always and there also it is subsequently made subject to directions of the State Government or the Inspector General of Police and those directions as per sub-rule (2) would be issued and would be deemed as active duty for the purpose of this Act. Here again, I must repeat that the significance of the Inspector General of Police is highlighted and the explanation makes it quite explicitly clear that the directions of the State Government or the Inspector General of Police shall be final. Section 11 (1) lays down that when on active duty at any place as per Section 10 (A) of the said Act, a senior SRPF officer being not below the rank of Naik would be deemed to be an officer in-charge of the police station. It is again a pointer to what I have been emphasizing thus far. In sections 12 onwards, several acts of omission and commission are mentioned which would bring in its wake penal liability. But Mr. Borkar, learned Advocate for the applicant was in my view correct in contending that because of the word, ~~%~~ conviction+, the determination would be of the competent Court of criminal jurisdiction. These sections, therefore, need not detain me much. I have already discussed Sections 19 & 21. Section 20 is a protective clause granting protection to certain acts therein mentioned. The above discussion, therefore, must have made

it quite clear that it is not as if from nowhere, the phraseology of Section 19 has been derived. The entire Act has to be read in harmony with each and every section and if that was done, in my opinion it would become quite clear that the personnel of SRPF would have to be deemed to be police officers as defined in Bombay Police Act. Nobody was able to point out any inconsistencies as such between the two enactments. I have to work on the basis of the legal position such as it is today. I cannot surmise on what would be the state of affairs if and when in exercise of power under Rule 21 of the said Act, rules would be framed. I must repeat that I have to take the law and rules as they are and interpret and effectuate them.

20. Section 25 of the Police Act provides for the punishment of the member of the rank of Inspector or of any member of subordinate rank. Section 25 (1) (b) refers to the word, ~~%au~~suspension+. It seems that it is a substantive section and the word ~~%au~~suspension+ has been used as a punishment. However, under Rule 3 (1-A) (i) of 1956 Rules clearly provides that the appointing authority or any authority to which it was subordinate or any other duly empowered authority may place a police officer under suspension where an enquiry was in contemplation or was pending and there are certain other

factors which I am not concerned herein. But suspension pending contemplated enquiry is very much envisaged.

21. The above observation must conclude the discussion. In effect it has. There are some provisions which were discussed at the time of the debate which was made quite educative by Mr. Borkar, the learned Advocate for the applicant and the learned P.O. A point crept up that whenever the legislature wanted to include and by implication to exclude certain enactments to be brought within the sweep of the words, 'police officer etc.' that enactment has been named while the SRPF Act has not been specifically mentioned. Now in my opinion, at best of times this would be a matter of incidental sustenance and it cannot prevail over the fall out of a detailed discussion of the various provisions of the said Act in the light of the provisions of the Police Act.

22. I would, therefore, hold disagreeing with Mr. Borkar, the learned Advocate for the applicant that the orders of suspension were competently issued by the officers legally competent to do so. The reliance on the provisions of the Police Act for the applicant was quite apposite and correct. I must however make it clear that this determination of the issue does not mean that the order of reinstatement of the applicant should be in any manner altered or

changed. I have already made it clear that I have decided this O.A. on a short point formulated at the outset.

23. These three O.As with these observations stand hereby dismissed with no order as to costs.

(R.B.Malik)
Member (J)

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