

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1135 OF 2018

DISTRICT : KOLHAPUR

Shri Firoj Babasaheb Mulla,)
Age 42 years, occ. Police Constable,)
R/o 1382, E Ward, Shahu Nagar, Datta Galli,)
Rajarampuri, 13th Galli (Lane), Kolhapur)..Applicant

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai 32)
2. The Superintendent of Police, Kolhapur)
3. The Inspector General of Police,)
Kolhapur Range, Kolhapur)
4. The Director General of Police,)
Shahid Bhagat Singh Road, Fort, Mumbai-1)..Respondents

Shri R.M. Kolge – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

DATE : 26th July, 2019 (Delivered in open Court)

J U D G M E N T

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

Brief Facts:-

2. The grievance of the applicant is that he was proceeded against in a Departmental Enquiry (DE). On completion of DE, the impugned order dated 30.6.2017 (Exhibit L page 166-168 of OA) has been issued by respondent no.1. Relevant portion of the same reads as under:

“2) वादी श्री. फिरोज बाबासो मुल्ला यांना शिस्तभंग प्राधिकरी यांनी दिलेली “शासकीय सेवेतून सक्तीने सेवानिवृ-त” ही शिक्षा रद्द करून त्यांना सेवेत पुनःस्थापित करण्यात यावे. त्याचप्रमाणे त्यांना “मुळ वेतनावर ३ वर्ष ठेवण” ही शिक्षा देण्यात येत आहे.”

(Quoted from page 168 of OA)

Submission by Applicant:

3. The Ld. Advocate for the applicant submits that he has not made any pleadings alleging violation of principles of natural justice. He submits that there is no violation of procedural part in completing the DE. He also submits that the punishment inflicted on him by respondent no.1 does not in any way constitute disproportionate to the charges leveled against him. The Ld. Advocate for the applicant submits that the charge no.3 against the applicant is not proved. The charge no.3 read as under:

“3. दिनांक 4/9/2011 चे दैनिक लोकमत प्रसिध्द झालेल्या बातमीमध्ये पोलीस रेकॉर्डवरील हददपार असलेले मटका व्यवसायीक विजय पाटील यास आपले मोटार सायकलीवरून राजारामपुरीतील राजर्षि शाहू महाराज गणेश उत्सव मंडळाचे आरतीस आणून आरती करून परत त्यास मोटारसायकलवरून नेल्याची छापून आले होते. हददपार मटका व्यवसायीक विजय पाटील हा अवैध मटका व्यवसायाशी संबंधित असलेचे माहित असताना त्यास कायदेशीर अटक करून नजीकच्या पोलीस ठाणेस हजर करणे आवश्यक असताना तसे न करता त्यांच्याशी घनिष्ठ संबंध प्रस्थापीत करून जनमानसात पोलीसांची प्रतिमा मलीन करण्याचे अशोभनीय कृत्य केले त्यांचे चारि«य व सचोटी ही अत्यंत संशयास्पद आहे.”

(Quoted from page 15 of OA)

4. In this connection he draws attention to the conclusion drawn by respondent no.1 in the impugned order. The same reads as under:

“त्यावरून दिनांक ३/९/२०११ रोजी मटका किंग विजय पाटील यास स्वतःचे मोटार सायकलवरून बसवून आणलेबाबत किंवा किंवा त्यांनी आरती केल्याबाबत फोटो किंवा सी.सी.टी.व्ही. कॅमेरे त्यावेळी उपलब्ध नसल्याने तसेच तत्कालिन बीटमार्शल यांनी अशी घटना घडलेली नसल्याबाबत जबाब दिल्याने सदरची बाब सिध्द होवू शकत नाही.”

(Quoted from page 168 of OA)

5. Ld. Advocate for the applicant further submits that the applicant was proceeded against on two other charges. The same are mentioned as under:

“1. दि.3/8/2011 ते दिनांक 29/8/2011 रोजी पर्यंत पोलीस मुख्यालय कोल्हापूर येथे उजळणी पाठयक्रम कोर्ससाठी हजर असताना त्यांना कोर्स संपल्याने पोलीस मुख्यालय येथून दिनांक 30/8/2011 रोजी सकाळी 08.00 वाजता मोकळीक करण्यात आले होते. पोलीस मुख्यालयातून मोकळीक केलेनंतर. नेसरी पोलीस ठाणेस दिनांक 30.8.2011 रोजी हजर होणे आवश्यक होते. नेसरी पोलीस ठाणेस हजर न झालेने स पो नि नेसरी पोलीस ठाणे यांनी मुल्ला यांचे मोबाईल नं 9823589090 वर संपर्क केला असता आपणास अदयाप उजळणी पाठयक्रम मधून सोडले नसेलेचे व गणेश उत्सव बंदोबस्त कामी इकडेच नेमणार असल्याचे खोटे सांगितले.

2. पोशि/215 मुल्ला यांना दिनांक 30/8/2011 रोजी सकाळी 08.00 वाजता पोलीस मुख्यालय येथून कोर्समधून मोकळीक केलेनंतर नेसरी पोलीस ठाणेस हजर न होता दिनांक 31/8/2011 ते 3/9/2011 या कालावधीत आपली तब्वेत बिघडल्याने डॉ प्रल्हाद तुपे कोल्हापूर यांचेकडे औषधोपचार घेतलेचे वैदयकीय प्रमाणपत्र सादर केलेले आहे. आपले आजारपणाबाबत ते राहात असलेले शेजारील पोलीस ठाणेकडून सिक मेमो घेतला नाही अगर नेमणूकीस असलेले पोलीस ठाणेचे प्रभारी अधिकारी अथवा पोलीस ठाणेस लेखी अथवा तोंडी कळविले नाही.”

(Quoted from page 15 of OA)

6. As far as the above charges are concerned the impugned order mentions as under:

“वादी यांच्या इतर कसू-या विभागीय चौकशीमध्ये सिध्द झालेल्या आहेत असे दिसून येते.”

(Quoted from page 168 of OA)

7. According to the Ld. Advocate for the applicant as charge no.3, which is substantial charge, has not been proved, any action being taken against him for charge no.1 and 2 also should be considered as not relevant and the punishment awarded for the same should be quashed. Ld. Advocate for the applicant submits that the punishment imposed on him needs to be reduced as the charges, according to him, are not serious. Ld. Advocate for the applicant, therefore, reiterates that the impugned order be quashed and set aside.

Submission by Respondents:

8. Ld. PO has filed affidavits in reply on behalf of respondents no.2, 3 & 4. Respondent no.4 in affidavit at para 8 submits that the charges no.1, 2 & 3 are serious. Ld. PO draws attention to the relevant portion by respondent no.2 & 3 as far as charge no.1 and 2 are concerned. The relevant portion of the affidavit reads as under:

“11. With reference to ground no.6.14, I say and submit that all the contents in this para are not admitted by this respondent as per the letter dated 30.8.2011 the Reserve Police Inspector (RPI) released the applicant from the refresher course and informed to the In charge of Nesari Police Station. It was the duty of applicant to resume on duty at Nesari Police Station but applicant by stating that he was deputed for Ganesh Festival bandobast not joined duty to Nesari Police Station. The submission of the applicant is incorrect one. It is to be noted that if the submission of applicant taken as true that he was deputed for Ganesh Festival bandobast then during the period 31.8.2011 to 3.9.2011 he must have reported to the in charge bandobast officer that he was not feeling well and he is under the treatment of Dr. Tupe but same was not done and also not inform to the Nesari Police Station about the illness. In this backdrop the charge no.1 levelled against the applicant is proved in the DE that may kindly be noted.”

11.1 Secondly, the applicant submitted that he was under treatment of Dr. Tupe from 31.8.2011 to 3.9.2011. The enquiry officer examined Dr. Tupe in his cross examination taken by the friend of applicant. It was asked to Dr. Tupe that by what disease the applicant was suffering the answer of concern doctor was the applicant was suffering by unknown viral infection and fever it means the concern doctor opined specifically about the disease of the applicant. Hence, both the charges leveled against the applicant were proved in the DE kindly may be noted.

12. With reference to para no.6.15 I say and submit that the contents in this para are not admitted by this respondent. The applicant though submitted that he was ill during the period 31.8.2011 to 3.9.2011 no cogent evidence was adduced before the enquiry officer also not produced any documents about what medicine and treatment was taken during the above mentioned period. The submission of the applicant that the charge no.3 was not proved is also not correct. The charge no.1 and 2 are proved beyond reasonable doubt hence the order passed by my predecessor is legal and proper one the same is dated 31.12.2012 so also further orders passed by respondent no.3 & 4 are also legal and proper one.

13. With reference to paragraph no.6.16, I say and submit that the contents of this para are not admitted by this respondent and the same are denied. The charge no.1 and 2 were having gravity therefore detail enquiry was conducted, both the charges were proved in the DE. The applicant submitted explanation against the charges but the same was not trustworthy hence the respondent no.2 discarded the same. This fact was considered by respondent no.3 and 4 while passing the respective orders in connection with present applicant.”

(Quoted from page 184-185 of OA)

9. Ld. PO therefore submits that the OA is without any foundation and devoid of any merits and hence same needs to be dismissed.

10. The applicant has filed rejoinder and submitted that the charges no.1 and 2 were not proved.

11. Issues for consideration:

- (i) Whether there is any violation of principles of natural justice?
- (ii) Whether there are any procedural lapses in the DE?
- (iii) Whether the punishment imposed is disproportionate to the charges leveled against the applicant?
- (iv) Whether non-proving of charge no.3 can negate the charges no.1 and 2 which are considered as proved?

Discussion and findings:

12. I have perused the documents made available in the OA as well as by the respondents. The impugned order issued by respondent no.1 is a speaking order and has taken into account the submissions made by the applicant as well as respondents. The impugned order mentions that as there was no CCTV footage or any other independent evidence, charge no.3 is considered as not proved. The impugned order, however, states that the charges no.1 and 2, as stated in the DE, are proved. Taking into account that the charge no.3 is not proved, respondent no.1 has reduced the earlier punishment of compulsory retirement and awarded lenient punishment by keeping him on basic salary for a period of 3 years.

13. The arguments made by the Ld. Advocate for the applicant that charges no.1 and 2 were not serious, is contested by the respondents. Looking at the fact that the applicant belongs to uniformed force, his

submission that he presumed he might be deployed for Bandobast or he was taking only outdoor treatment from the doctor and hence did not report to the particular Police Station appears to be evasive and unbecoming of an officer in uniformed force. As observed by various judicial pronouncements, this Tribunal is expected to examine whether there is any violation of the principles of natural justice, whether there were lapses in the DE and whether the punishment awarded is grossly disproportionate to the charges leveled against the applicant. As mentioned by the Ld. Advocate for the applicant the findings for all the three above are negative. As far as the quantum of punishment awarded to the applicant in the form of reducing salary to the basic for 3 years is the discretion of the reviewing authority and the same cannot be commented upon unless there is evidence to prove that it was grossly disproportionate. I do not agree that charges 1 & 2 are not serious.

14. In view of the above, the applicant as well as the Ld. Advocate for the applicant has failed to demonstrate that the impugned order is vitiated by any illegality. As a result, the prayer made by the applicant to quash and set aside the impugned order is rejected.

15. The Original Application is, therefore, dismissed. No order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
26.7.2019

Dictation taken by: S.G. Jawalkar.