IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.128 OF 2018

DISTRICT : MUMBAI

Shri Suresh Bhagawan Mane,)
Police Head Constable, Driver,)
Posted at R.C.F. Police Station, Chembur, Mumbai-71)..Applicant

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400032)

2. The Director General of Police,)
State of Maharashtra, S.B. Marg, Mumbai-32)

3. The Deputy Commissioner of Police,)
Zone VI, Chembur, Mumbai 400071)..Respondents

Shri A.R. Joshi – Advocate for the Applicant
Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
RESERVED ON : 1st August, 2019
PRONOUNCED ON : 6th August, 2019

J U D G M E N T

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

Brief facts of the case:

2. The applicant, a Police Head Constable, is aggrieved by the impugned order dated 2.11.2017 (Exhibit A page 21-23 of OA) passed by respondent no.1 (Home Department) which confirmed the order dated 3.9.2016 (Exhibit K page 100-104 of OA) passed by respondent no.2 (Director General of Police). The relevant portion of the impugned order dated 2.11.2017 reads as under:

> "२) वादी श्री. सुरेश भगवान माने, पोलिस हवालदार क्र.२५९६६ यांना शिस्तभंग प्राधिकारी यांनी दिलेली "दोन वर्ष वार्षिक वेतनवाढ स्थगिती (पुढील वेतनवाढीवर परिणाम होणारी) रोखण" ही शिक्षा कायम करण्यात येत आहे."
>
> (Quoted from page 23 of OA)

3. The charge against the applicant in the DE for administrative lapses included:

(i) The applicant left Mankhurd Police Station limit on 21.4.2011.

(ii) 80 liters of kerosene was recovered from the Maruti Omini vehicle in possession of the applicant, etc.

4. Following the arrest of the applicant, separately FIR was registered against him under the relevant provisions of Essential Commodities Act.

5. On 31.8.2013 the enquiry officer submitted his report (Exhibit F page 60-73 of OA). In his report the enquiry officer mentioned that charge no.4, that the applicant purchased kerosene from the Ration shop, could not be proved. However, charges no.1, 2, 3, 5, 6 & 7 have been proved with supporting evidence and recommended the punishment, "the applicant should be placed at basic salary of Head Constable for a period of three years".

6. The disciplinary authority provided personal hearing to the applicant and submitted its report dated 22.1.2014 (Exhibit G page 74-77 of OA). After following due procedure the disciplinary authority found that the applicant was responsible for administrative lapses and his behavior was unbecoming of a responsible officer in the disciplined police force. As the charges against him were proved with adequate material the disciplinary authority imposed the punishment of stoppage of two increments with cumulative effect.

7. The applicant moved respondent no.2 against the same and after following due procedure respondent no.2 decided the same on 3.9.2016 and confirmed the order issued by disciplinary authority. The applicant approached respondent no.1 for review against the same. Respondent no.1 provided him personal hearing and passed speaking order on 2.11.2017, confirming earlier order.

8. Separately in the Case No.222/PW/2012 (criminal) the learned Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai examined the material before him and issued the following order on 16.9.2015:

> *"18. Even in the case of seizure of Essential commodities and particularly blue kerosene then to ascertain whether it is with valid permission, it was*

for transport or not, in that case the best evidence is of Rationing officer of the said area but in the present case the prosecution neither bothered to record his statement or to adduce his evidence in any way. Considering the evidence on record in its totality, it cannot be said that prosecution had proved the guilt of the accused beyond reasonable doubts. The benefit of doubt has to be given to the accused, hence finding on point no.1 recorded as negative and I pass the following order.

1. As per sec.248(1) Cr. P.C. Accused Suresh Bhagwan Mane is acquitted of the offence punishable u/sec. 7 of the Essential Commodities Act r/w Maharashtra Kerosene Dealers Licensing order 1966 r/w sec. 3, 8 of Essential Commodities Act."

(Quoted from page 85-86 of OA)

9. The applicant has challenged the impugned order on the following grounds:

(i) There is no evidence as charge no.4 of purchasing kerosene from rationing authorities has not been proved.

(ii) In the criminal matter the applicant has been acquitted for want of evidence.

(iii) There was no Presenting Officer and hence it is violation of principles of natural justice.

(iv) The punishment is disproportionate as it will incur heavy pecuniary loss during service and after retirement.

10. The applicant, therefore, submits that the impugned order should be quashed and set aside as it is illegal, arbitrary and disproportionate to the alleged misconduct.

11. The Ld. Advocate for the applicant relied on the following judgments:

(i) Shri Sujat Ali Liyakat Ali Inamdar Vs. The State of Maharashtra & Ors. OA No.1543 of 2009 decided by this Tribunal on 6.2.2018, wherein it is held that applicant's acquittal is on merit and not on benefit of doubt.

(ii) Roop Singh Negi Vs. Punjab National Bank, Civil Appeal No.7431 of 2008 decided on 19.12.2008 by the Hon'ble Supreme Court. The relevant portion reads as under:

> *"17. ..... The order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration."*

(iii) Kuldeep Singh Vs. Commissioner of Police, Civil Appeal No.6359 & 6361 of 1998 decided by the Hon'ble Supreme Court on 17.12.1998. The relevant portion reads as under:

> *"3. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.*

> *5. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with."*

12. According to the Ld. Advocate for the applicant this is a matter of no evidence and is based only on surmises and conjunctures and guess work. He submits that the punishment is imposed without applying mind. According to him the conclusion drawn against the applicant is arbitrary and the punishment is harsh and excessive. He admits that charge no.1 is proved but argues that the punishment for the same is disproportionate.

Submissions of the Respondents:

13. The respondents no.1 and 2 have filed their affidavits and contested the contentions raised by the applicant. The relevant portion of the same reads as under:

> *"5(vii) I say and submit that, these concrete reasons were enough to confirm the punishment order dated 22.1.2014 given by the Disciplinary Authority respondent no.3 i.e. the Deputy Commissioner of Police, Chembur, Mumbai. Hence, taking into consideration the facts of the case, the punishment was confirmed by appellate authority vide order dated 2.11.2017 is just and proper.*

15. I say and submit that while deciding the appeal of the applicant by the appellate authority all the facts were considered. The appeal application of the applicant and also the papers on record were perused.

15.1 It is submitted that the disciplinary authority had conducted the DE against the applicant. The charges leveled against him were serious in nature. It was found that the DE had conducted as per the rules. It was found that the six charges were proved out of seven charges leveled against the applicant in DE.

15.2 I say and submit that as mentioned in reply to para 3(d) herein above, the appellate authority after taking into consideration all the material on record and reasons behind the punishment before him i.e. the applicant had given the statement on dated 28.6.2011 and the observation in the judgment dated 16th September 2015 regarding his acquittal on the benefit of doubt by the Hon'ble Additional Chief Metropolitan Magistrate, Kurla these are the concrete reasons and enough to confirm the punishment given by the disciplinary authority. The applicant held guilty of delinquency in duty and responsibility and hence the order dated 22.1.2014 has been passed by respondent no.3 i.e. the Deputy Commissioner of Police, Chembur, Mumbai which is confirmed by the appellate authority in appeal vide order dated 2.11.2017 is legal and valid. There is no force in the contention of the applicant, it may be dismissed.

15.3 It is further submitted that the applicant had violated the law despite he having the knowledge of the law. It is the duty of Police Department to maintain law and order in society. In Police Department, it is very essential to maintain the discipline. The State Police Department is a very disciplined. To maintain the discipline in police department, it is very important to impose punishment to the delinquent police personnel. In the light of the facts and circumstances mentioned herein above, the action taken is just and

proper. Hence, I say that the application filed by the applicant is without any foundation and devoid of any merit and the same deserves to be dismissed."

(Quoted from page 111-114)

14. The relevant portion of the affidavit of respondent no.2 reads as under:

"10. ……. The disciplinary enquiries against the police personnel from the rank of Police Constables to Police Inspectors are governed under Section 25 of Maharashtra Police Act, 1951, the Maharashtra Police (Punishment & Appeals) Rules, 1956. This rule does not provide appointment of Presenting Officer unlike in the provisions of the MCS (Discipline & Appeal) Rules, 1956. Hence, it is submitted that there has been no violation of any of the statutory provisions, as are applicable in the case of the applicant. The charges leveled against the applicant in the DE are not similar to that of the charges that were leveled against him under the Essential Commodities Act, as he has been clarified hereinabove and there has been no illegality caused on this count also and hence also the averments are denied.

11. It is submitted that the averments raised by the applicant are denied, being incorrect. As to how the charges leveled against the applicant in the DE except charge no.4 has been proved on the basis of the "theory or preponderance of probability" have been clarified hereinabove and on that basis the averments are denied. It is submitted that the averments raised by the applicant that no sanction under Section 197 Cr.P.C. was obtained for prosecuting him is also totally irrelevant to the subject matter as the charges leveled in the DE are for the "commissions and omissions" of the applicant and not as such that he had committed any offence under the Essential Commodities Act. Apart from that perusal of the Exhibit H i.e. the copy of the order and judgment of the Hon'ble Additional Chief Metropolitan Magistrate, Kurla, Mumbai shows that 1) The P.W.1 Sandeep Bhujbal and

P.W.3 Tanajio Thombare have deposed and tied to establish fact as accused found with contraband Kerosene, 2) the Hon'ble Court in para no.18 has observed that-

> *"Considering the evidence on record in its totality, it cannot be said that prosecution had proved the guilt of the accused behind reasonable doubts. The benefit of doubt has to be given to the accused".*

Thus, the acquittal of the applicant is also not "Honourable and clean" and hence on this count also the averments raised by the applicant are denied.

12. It is submitted that the averments raised by the applicant that the enquiry officer has perversely concluded that the charge nos.1, 2, 3, 5, 6 and 7 have proved are denied. As already clarified above these charges have been proved on the basis of the depositions of the government witnesses, i.e. on the basis of "theory of preponderances of probabilities"."

(Quoted from page 121-122 of OA)

15. Ld. CPO relied on the judgment of the Hon'ble Supreme Court in Civil Appeal No.6183 of 2010 Union of India & Ors. Vs. Sitaram Mishra & Anr decided on 11.7.2019. The relevant portion of the same reads as under:

> *"13. It is undoubtedly correct that the charge in the criminal trial arose from the death of a co-employee in the course of the incident resulting from the firing of a bullet which took place from the weapon which was assigned to the first respondent as a member of the Force. But the charge of misconduct is on the ground of the negligence of the first respondent in handling his weapon and his failure to comply with the departmental instructions in regard to the manner in which the weapon should be handled. Consequently, the acquittal in the criminal case was not a ground for setting aside the penalty which was imposed in the course of the*

disciplinary enquiry. Hence, having regard to the parameters that govern the exercise of judicial review in disciplinary matters, we are of the view that the judgment of the Division Bench of the High Court is unsustainable."

16. The Ld. CPO submits that acquittal in a criminal case cannot be a ground for setting aside the penalty imposed in the course of disciplinary enquiry. Hence, she submits that OA is devoid of any merit and needs to be dismissed.

17. Issue for determination:

(1) Whether the punishment imposed by the disciplinary authority is arbitrary, perverse and illegal in view of the acquittal in the criminal case?

Discussion and findings:

18. I have perused the relevant papers of the DE as well as copy of the original record in the DE tendered by the respondents. The applicant was posted in Mankhurd Police Station. However, he was noticed in the limits of Trombay Police Station which was not the jurisdiction of his assignment. The vehicle in his possession shows that he was in possession of 80 liters of kerosene. He was prosecuted under the Essential Commodities Act in a criminal case. The Ld. Court acquitted him as the material furnished was found inadequate under the Essential Commodities Act. Separately the applicant has been proceeded against in DE for administrative lapses including the charge of finding him in the jurisdiction of another police station and possessing 80 liters of kerosene. The concerned authorities including disciplinary authority/appellate authority/reviewing authority have passed speaking orders covering all the grounds mentioned by the applicant.

19. The argument advanced by the applicant that there was no Presenting Officer and hence it is in violation of the principles of natural justice is unsustainable as the applicant belongs to uniformed police force and is governed under the Maharashtra Police Act. Hence, there is no violation of any of the principles of natural justice.

20. As far as the contention of the applicant that this is a case of conjuncture and no evidence, I find there is enough material which indicates that he was in possession of kerosene which is unbecoming of a uniformed officer. The acquittal is on the point that whether it was from the rationing office or otherwise. Hence, the applicant was given benefit of doubt under the Essential Commodities Act. This is no way negates the misconduct indulged in by the applicant for which the DE was held and the charges have been proved on the basis of relevant witnesses.

21. I have perused the judgments relied on by the Ld. Advocate for the applicant. The facts mentioned in the judgments are different and therefore these are not relevant in the present case.

22. The Hon'ble Supreme Court in *Sitaram Mishra* (supra) has observed that, "the acquittal in the criminal case was not a ground for setting aside the penalty which was imposed in the course of the disciplinary enquiry."

23. For the reasons stated above, I find that the applicant has failed to demonstrate any grounds to prove that the charges as well as punishment for the same imposed on the applicant are arbitrary or illegal. As far as the quantum of punishment is concerned, it is the discretion of the competent disciplinary authority and there should be no interference in the same by the Tribunal unless it is shown that it is grossly disproportionate. Looking at the punishment imposed in the present case,

nothing has been shown to indicate that the punishment imposed by the impugned orders can be termed as grossly disproportionate as it is a minor punishment of withholding two increments with cumulative effect.

24. For the reasons stated above, OA is devoid of any merits and hence dismissed with no order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
6.8.2019

Dictation taken by: S.G. Jawalkar.

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