IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.51 OF 2019

DISTRICT : MUMBAI

Shri Pralhad Rajaram Parit,)
Age 38 years, Police Constable, Buckle No.01839,)
Local Arms-1, Naigaon, Mumbai and residing at)
Worli BDD Chawl No.70, Room No.70, Bhagoji)
Waghmare Marg, Worli, Mumbai 400018)..Applicant

Versus

1. The Government of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai 32)

2. Director General of Police,)
M.S., Old Council Hall, Colaba, Mumbai)

3. Dy. Commissioner of Police,)
Armed Police, Naigaon, Mumbai)

4. Commissioner of Police,)
Crawford Market, Fort, Mumbai 400001)

5. Deputy Commissioner of Police, Zone-II,)
Nagpada, Mumbai 400008)..Respondents

Shri M.D. Lonkar – Advocate for the Applicant
Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
DATE : 31st July, 2019

J U D G M E N T

1. Heard Shri M.D. Lonkar, 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 the applicant was proceeded against in the DE for absence from duty and on conclusion of the same respondent no.3 issued following order dated 1.6.2017:

> "मी संजय पाटील, पोलीस उप आयुक्त, सशस्त्र पोलीस, नायगांव, मुंबई असे आदेश दितो की अपचारी पो.शि.क्र. ०१६३९/ प्रल्हाद राजाराम परिट, सशस्त्र पोलीस, नायगांव, मुंबई, यांच्या उक्कत कसुरी प्रकरणी "देय वार्षिक वेतनवाढ ३ वर्ष रोखणे" (पुढील वेतनवाढ परिणाम न होता) ही शिक्षा देण्यात येत आहे. तसेच दि.१३/११/२०१४ ते दि.१४/१२/२०१५ पर्यंतचा निलंबन कालावधी हा सर्वार्थाने निलंबन काळ म्हणून नियमित करण्यात येत आहे."
>
> (Quoted from page 76 of OA)

3. The said order was challenged by the applicant before the appellate authority and the appeal was decided on 26.12.2018. The said order reads as under:

> "२. वर नमूद प्रमाणे प्राप्त झालेली कागदपत्रे व अपिल अर्जाचे अवलोकन केल असता असे दिसून येते की, अपिलार्थी यांना प्रस्तूत शिक्षेविरुध्द अपिल अनुज्ञेय असून त्यांनी विहित कालावधीत या कार्यालयाकडे अपिल न करता दि.३१/०५/२०१८ च्या अर्जान्वये **अंदाजे ९ महिने इतक्या विलंबाने** अपिल अर्ज सादर केला आहे.

३. महाराष्ट्र पोलीस (शिक्षा व अपिले) नियम, १९५६ मधील नियम ११ नुसार शिक्षेचे आदेश अपचा-यास प्राप्त झाल्या तारखेपासून त्या शिक्षा आदेशाविरुध्द दोन महिन्याच्या आत अपिल करणे अनुज्ञेय आहे. तसेच या नियमाच्या पंरतुकानुसार अपिलीय प्राधिकारी सबळ कारणास्तव अपिल करण्याचा कालावाधीत फक्त सहा महिन्यापर्यंत वाढ करु शकतील. तथापि, सदरील अपिल अर्ज, हा ९ महिने इतक्या विलंबाने केलेला आहे. यास्तव प्रस्तुत अपिल अर्ज वरील तरतूदीनुसार आता विचारात घेणे शक्य नाही"

(Quoted from page 80 of OA)

4. Aggrieved by the above impugned order, the applicant has made following prayer:

"15(a) This Hon'ble Tribunal be pleased to hold and declare that the impugned orders dated 1.6.2017 issued by respondent no.3 as well as order dated 26.12.2018 issued by respondent no.2, as illegal and bad in law and the same be quashed and set aside with all consequential service benefits in favour of the present petitioner."

(Quoted from page 11-12 of OA)

Submissions by Applicant:

5. The relevant grounds on which the applicant is challenging the impugned order is as under:

"6.6 The petitioner states that pursuant to representation as aforesaid submitted by the petitioner, respondent no.5 directed Assistant Commissioner of Police, Gamdevi Division, to hold preliminary enqiry. Accordingly, preliminary enquiry was held, in which the petitioner submitted his statement and also furnished copies of relevant documents in the form of medical certificates. The petitioner states that the aforesaid preliminary enquiry was concluded vide report dated 20.1.2015 holding that the petitioner is really suffering from serious illness. Enquiry Officer therefore recommended transfer of the petitioner to Naigaon Head Quarter as well as to get the petitioner medically examined from Government Hospital.

7.4 The petitioner submits that the order dated 1.6.2017 is clearly unconstitutional, illegal and in fact void ab initio in view of the following:

(a) Enquiry Officer has clearly held that the charges are not proved and in fact directed cancellation of the charge sheet;

(b) Enquiry Officer clearly held that the petitioner was in fact sick and the sickness is supported by documentary evidence;

(c) Disciplinary authority did not disagree with the findings recorded by the Enquiry Officer;

(d) Neither disagreement is recorded with the findings recorded by the Enquiry Officer nor any opportunity for hearing was rendered to the petitioner and hence it was impossible for the petitioner to read the mind of the disciplinary authority;

(e) It is not open for respondent no.3 to treat the period of suspension as such without following the rules of natural justice as well as statutory provisions.

7.5 The petitioner submits that no doubt there was marginal delay in preferring the appeal before respondent no.2, however in the interest of justice opportunity ought to have been granted to the petitioner either to submit the application seeking condonation of delay or at least an opportunity of personal hearing so as to enable the petitioner to demonstrate sufficient case in preferring the appeal after the period of limitation. At any rate, technical approach cannot be said to be in public interest as well as in the interest of justice. That the rule of law is bedrock of democracy and hardly require in restoration. Accordingly, this is a fit case in which judicial intervention is warranted."

(Quoted from page 4-10 of OA)

6. In this connection the Ld. Advocate for the applicant has relied on the judgment of the Hon'ble Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra & Anr., 1999 SCC (L&S) 1385. Relevant portion of Head note D reads as under:

> *"D. Departmental Enquiry – Enquiry Report – Disciplinary Authority before forming its final opinion, has to convey to charged employee its tentative reasons for disagreeing with the findings of the Enquiry Officer – Show-cause notice issued in the present case to appellant with regard to proposed punishment, held, did not meet requirement of the law because final decision to disagree with the Enquiry Officer had already been taken before issuing show-cause notice."*
>
> (Quoted from page 82 of OA)

Submission by the Respondents:

7. The relevant portion of the affidavit filed on behalf of respondent no.3 reads as under:

> *"6. With reference to para 6.6, I say and submit that the contents of this paragraphs are admitted by the respondent to the extent of preliminary inquiry held by the ACP and submitted the inquiry report."*
>
> (Quoted from page 108 of OA)

8. Ld. PO submits that no reasons were furnished to disagree with the preliminary enquiry report and the DE was initiated. Para 10 of the affidavit in reply reads as under:

> *"10. With reference to para no.6.10, I say and submit that upon receiving the show cause notice on 22.11.2016 from the office of the competent authority, the onus of replying to it and submitting his defense was on the*

petitioner which he failed to do in the requisite time limit i.e. within 15 days of receiving the show cause notice. In this case it was assumed that the petitioner had nothing to say about the matter and the proposed punishment was acceptable to him. He replied to the SCN only on 13.2.2017."

(Quoted from page 108-109 of OA)

9. Affidavit filed by respondent no.3 further mentions in para 18 as under:

"18. With reference to ground no.7.4, I say and submit that the contents of this para are denied by the respondent no.3. The order made by the respondent dated 1.6.2017 is legal. Order is made after perusing the documents on record. The petitioner had preferred the appeal after expiry of period of limitation and without the application for condonation of delay. He had committed legal mistake in preferring the appeal, therefore, he is not entitled to claim any kind of relief from the Tribunal."

(Quoted from page 111 of OA)

10. The respondents have, therefore, submitted that the OA may be dismissed as it is without any foundation.

11. Ld. PO submits that the applicant did not give any application for condoning the delay before the appellate authority and, therefore, the action taken by respondent no.2 is valid.

12. The issues for consideration are:

(i) Whether the impugned order passed by respondent no.3 without furnishing necessary reasons to agree with the preliminary enquiry report and conclusions by EO in DE was appropriate?

(ii) Whether the quantum of punishment as mentioned in the impugned order of stopping his increment for a period of three years can be considered as legal and valid?

(iii) Whether treating the suspension period from 13.11.2014 to 14.2.2015 as suspension period is legal and valid?

(iv) Whether rejection by Appellate Authority is on merits of the case?

Discussion and findings:

13. I have perused the record furnished by the applicant. It shows that the preliminary enquiry report had come to the conclusion that the applicant was not well and taking treatment in the police hospital and private hospital. While on duty he fell down from motorcycle and as a result there were complications in the spinal cord. In addition, he was also suffering from diabetes and taking treatment in police hospital. The preliminary enquiry report further mentions that even during the preliminary enquiry he appeared with the help of walker. All these, supported by necessary medical reports made available at pages 18 to 38 of OA, indicate that there was no suppression of material facts regarding his serious illness which necessitated his absence from duty. In spite of this, respondent no.3 (Deputy Commissioner of Police, Armed Police) has disagreed with the findings of Enquiry Officer in the DE and imposed the punishment of stopping his increment for a period of three years and treating the suspension period as such. DE officer in his enquiry report admits that the applicant was genuinely ill and taking treatment in the hospital during the relevant period. The DE officer, therefore, recommended that the DE against the applicant should be cancelled. In spite of it, disciplinary authority did not agree with the recommendations

and passed the impugned order. The order does not provide any reasons for disagreement.

14. The action by respondent no.3 appears to be prejudiced and predetermined to impose the punishment without applying his mind to the facts as well as enquiry report by the DE officer.

15. The respondent no.2 instead of going into the details and facts of the case have resorted to technicalities regarding delay in submitting the appeal. The appellate authority was expected to find out the reasons why there is a delay and whether the principles of natural justice have been followed. I find that respondent no.2 has not applied mind to the facts of the case and has passed the impugned order stating appeal is rejected due to delay of few months.

16. In view of the above, without adjudicating various issues raised, respondent no.2 is directed to reconsider the case of the applicant on merits, as if the impugned order has not been issued. The appellate authority is directed to consider the case without getting influenced by this order, as if it is a fresh enquiry. The matter should be decided after hearing the applicant within a period of four weeks from the date of this order is issued.

17. The Original Application is partly allowed in the above terms with no order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
31.7.2019

Dictation taken by: S.G. Jawalkar.