IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.587 OF 2015

DISTRICT : SOLAPUR

Shri Ganesh Laxman Jadhav,)
Aged 26 years, R/o at Bhandgaon, Tal. Paranda,)
District Osmanabad, Occ. Nil [Ex. Police Constable],)
SRPF Group X, Solapur)..Applicant

Versus

1. The Commandant,)
   SRPF Group 10, Solapur)

2. The Special Inspector General of Police,)
   SRPF, Ramtekadi, Pune-1)

3. The Additional Director General of Police,)
   (Administration), Old Council Hall,)
   S.B. Marg, Mumbai 400039)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant
Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)

RESERVED ON : 7th February, 2019

PRONOUNCED ON : 14th February, 2019

PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

Facts of the case:

2. The Applicant was working as Constable in the office of Respondent no.1 - Commandant, SRPF, Solapur. On 28.9.2012 after the Morning Parade was over, the Applicant assaulted the Platoon Commander by using abusive and filthy language and threatened him with dire consequences. Charge sheet dated 2.2.2013 (Exhibit D page 26-29) was issued for following charge:

> "तुम्ही कसूरदार सपोशि/९० जी.एल. जाधव नेमणूक ई कंपनी, दिनांक २८/९/२०१२ रोजी सकाळी ८.३० वाजता प्लाटुनची फालीम सुटल्यानंतर पोउनि/एम.जी. गायकवाड प्लाटुन कमांडर यांचे अंगावर धावुन गेले व हुज्जत घालुन अरेरावीची भाषा केलेने तसेच कंट्रोलरुमसारख्या संवेदनशील व रहदारीच्या ठिकाणी ड्रेसवर मारण्याच्या हेतुने धावुन आलेले आहात. तसेच पोउनि/एम.जी. गायकवाड यांना तु गेटच्या बाहेर केव्हाही व कधीही ये मी तुला बघतो, साप्ताहीक सुट्टीवर कसा जातो ते मी बघतो रेल्वे स्टेशन किंवा रस्त्यामध्ये तुला मी बघतो तु मला ओळखत नाही असे म्हणुन धमकी दिलेली आहे."
>
> (Quoted from page 26-29 of OA)

3. Enquiry officer was appointed and Departmental Enquiry (DE) was initiated against the Applicant for the charges leveled against him. Though the Applicant was provided an opportunity he did not cross-examine the Government witnesses and mentioned that he would submit his say only in "अंतिम निवेदन". Though he was provided an opportunity to cross-examine and other several opportunities for defending himself, he preferred not to avail the same. The enquiry officer submitted his report dated 16.3.2013 to the Respondent no.1 holding the charges leveled against the Applicant

to be proved. Show cause notice dated 17.4.2013 along with copy of report of the enquiry officer was issued to the Applicant to which the Applicant filed his reply dated 30.4.2013. In conclusion Respondent no.1 issued the impugned order of removal from service on 17.6.2013 (Exhibit A page 16-17). The appeal preferred by the Applicant against the said order came to be dismissed by Respondent no.2 by order dated 30.10.2013 (Exhibit B page 18-19). The above orders were confirmed in the revision by Respondent no.3 by order dated 27.5.2015 (Exhibit C page 20-25).

Prayers:

4. The Applicant has, therefore, filed this OA seeking following relief:

> *"9(a) By a suitable order, this Hon'ble Tribunal may be pleased to set aside the order dated 17.6.2013 passed by the Respondent no.1 (Exhibit A), under which he removed the petitioner from service by way of punishment, so also the orders dated 30.10.2013 (Exhibit B) and 27.5.2015 (Exhibit C) passed by the Respondents. No.2 and 3 in an appeal and Revision confirming the order dated 17.6.2013 and accordingly the petitioner be granted all the consequential service benefits, as if the impugned order had not been passed."*
>
> (Quoted from page 13 of OA)

Grounds:

5. In support of the prayer, the Applicant has furnished following grounds:

> *"6.6 ……..*
> *The holding of full-fledged/regular Departmental Enquiry against the petitioner by the Respondent no.1 was totally unjust, illegal and bad in law, since according to the petitioner such type of the alleged*

misconduct should have been dealt with by way of summary procedure for imposing of minor penalty.

6.7 That from the very nature of the alleged misconduct, it is clear that the same contained totally vague and unspecific allegations against the petitioner. This has resulted in denial of reasonable opportunity and consequent violation of the principles of natural justice and therefore the entire Departmental Enquiry and the consequent punishment orders passed by the Respondents must be held to have stood vitiated.

6.8 Thus the petitioner has reason to believe that there was deliberate, calculated and malafide attempt on the part of the Respondent no.1 in collusion with his other subordinate officer by name Shri Gaikwad to see that the petitioner does not remain in Department and therefore by hook or crook his services should be dispensed with permanently at any cost/by hook or crook. Thus, the Respondent no.1 totally misused his powers as Appointing/Disciplinary Authority.

6.10 That the impugned orders passed by the Respondents and more particularly of the Respondents no.1 and 2 are totally vague, laconic, cryptic, unreasoned and non-speaking and as such the same are contrary to the principles of natural justice and therefore the same are bad in law.

6.12 That even if the alleged misconduct is considered to have been proved against the petitioner, that the imposition of major punishment in the form of removal of the petitioner from services is highly disproportionate punishment since the facts did not warrant such severe punishment. Thus the petitioner should have been given opportunity to improve in future. That, however, the Respondents failed to show such sympathetic approach."

(Quoted from page 5-8 of OA)

6. In support of his claim, the learned Advocate for the Applicant has relied on following judgments:

1) S. Muthu Kumaran Vs. Union of India & Ors. (2017) 2 SCC (L&S) 123 : (2017) 4 SCC 609. Head Note B reads as under:

"B. Armed Forces – Penalty/Punishment – Interference with, on grounds of disproportionality – Discharge in lieu of dismissal – Long unblemished service record – Appellant discharging his services for 17 years with no adverse remarks in his service books except instant one of involvement in fraudulent recruitment."

2) Roop Singh Negi Vs. Punjab National Bank & Ors., (2009) 1 SCC (L&S) 398. Head Note E reads as under:

"E. Departmental enquiry – Duty to record reasons – Held, orders of disciplinary authority and appellate authority entails civil consequences – Hence, the orders must be based on recorded reasons."

3) Unique Co-ordinators Vs. Union of India & Ors., Writ Petition No.242 of 2004 decided on 9.2.2004 by Hon'ble Bombay High Court [2004(2) Mh.L.J. 532]. The Hon'ble High Court observed as under:

"6. It is needless to mention that the Appellate Authority is expected to deal with each and every contention of the appellant, in short if the order is an order of confirmation of the order passed by the authorities below. In the case of order of confirmation, it is not necessary to pass a detailed order, but at least it must demonstrate application of mind on the part of the authority, especially when the order can be a subject matter of challenge before the higher forum. Recording of reasons is necessary in order to enable the litigant to know the reasons which weighed in the mind of the Court or authority in determining the question and also enable the higher Court to know the reasons. See (V.V. Shroff v. New Education Institute) 2, A.I.R. 1986 S.C. 2105. The reasons act as a live link between the evidence on record and the findings recorded on the

basis of such evidence. It inspires the confidence of the litigant in the institution of courts."

4) Smt. Ulka Sachin Salunkhe Vs. The Joint Director, Vocational Education & Training, Pune & Anr., OA No.98 of 2010 decided by this Tribunal on 1.7.2014.

7. The Respondent no.1 in his affidavit has stated as under:

"2.2 That on 28.9.2012 at 8.30 a.m. the Applicant was on duty, he alleged have behaved improperly with his Platoon Commander by name Shri M.G. Gaikwad, against this misbehavior Primary and Departmental Enquiry was conducted.

2.3 That the enough chances were made available to the said Applicant to defend himself and submit evidence for his defense during the enquiry and even before issuing final order. After completing enquiry said Applicant was removed from service as the charges were proved on order dated 17.6.2013."

(Quoted from page 66 of OA)

8. The Respondent no.3 in his affidavit has stated as under:

"4.4 The decisions taken by all the respondents are free of any mala fides, vindictiveness and also not violation of any statutory rules or settled position of law and hence the averments raised by the applicant are denied.

8. With reference to para no. 6.2, it is submitted that the in fact, it is admission by the applicant on oath now also that he was on duty when the alleged misconduct had occurred by him and the alleged misconduct has been proved on the theory of preponderance of probabilities in the D.E. held against the applicant.

11. With reference to para no.6.6, it is submitted that although the averments raised by the Applicant in this para relate to the Respondent no. 1, it is submitted that the charges leveled against the

applicant are of a grave in nature as it was pertaining a gross misconduct of undisciplined and in-subordination and it was required to be dealt with firmly for keeping the discipline of the S.R.P.F. Force, which is like para-military force and Special Force for the Police Department. Accordingly, a regular departmental enquiry was conducted and then after following due procedure of law, a proportionate punishment has been inflicted against the applicant.

15. *With reference to para no.6.10, ... it is not case of the applicant that he was not given the legal opportunities to defend his side and the same is also not disputed by him during the D.E. and the Respondent Nos.01 and 02 have adhered to the rules of natural justice and the prevalent rules of departmental enquiry and then only have passed the orders in respect of the applicant.*

17. *With reference to para no. 6.12, it is submitted that the averments raised by the applicant are not tenable and denied. It is submitted that punishment has been inflicted against the Applicant after holding a regular Departmental Enquiry and the charges leveled against the Applicant were of grave nature, i.e. undisciplined and have been proved on the basis of theory of preponderance of probability and the punishment inflicted by the disciplinary authority was also not found to be dis-proportionate to that of charges leveled against the Applicant. Such disciplinary action was also found to be free of any malafide or vindictiveness or also not taken in colorable exercise of power or violation of any statutory Rules. It is submitted the charges of misconduct which were leveled against the applicant are such grave of nature, are required to be dealt with firmly in order to keep the discipline of the S.R.P.F., which like a para military force of the State Police Department and discipline in the said Force is most important. Hence, also the punishment given to him is not at all disproportionate to that of the charges leveled against him.*

18. *With reference to para no. 6.13, it is submitted that the conduct and behavior of the Applicant (who had completed hardly 3 years in the service) towards the Superior Officer was very arrogant and unbecoming of the disciplined force, the same was proved in the Departmental Enquiry and hence the Disciplinary Authority rightly inflicted the punishment of Removal from Service as per law and Rules. It is submitted that such totally grave misconduct of undisciplined conduct of the police personnel is required to be dealt*

with firmly, to keep the discipline of the Force intact and thus the conduct of the applicant itself was grave, which had required to be dealt with firmly and that has been properly dealt with the Respondent No.1 and hence also the same has been confirmed by the Appellate and Revision Authority by passing a detailed orders.

22. *With reference to para no. 6.17, it is submitted that the punishment inflicted by the Disciplinary Authority and confirmed by the Appellate Authority was major punishment and hence this office had given the personal hearing to the Applicant on 16.09.2014. The Applicant submitted his oral submission before the Competent Authority. The same was given due consideration by this office and after going though the evidence available in the Departmental Enquiry, came to the conclusion that there is no need to interfere in the order passed by the Disciplinary Authority and confirmed by the Appellate Authority and hence this office vide order dated 27.05.2015 rejected the Revision Application filed by the Applicant.*

23. *With reference to para no.6.18, it is submitted that the averments raised by the applicant are not tenable, as perusal of Final summing report shows that the applicant refused to avail an opportunity of cross of examining the Govt. witness and also not producing his defence witnesses in the D.E. Apart from that on the basis of the examination of as many as 8 witnesses in the D.E. by the Departmental Enquiry officer, all the charges leveled against the applicant have been found to be proved. The applicant himself has enclosed the Final Summing up report to the O.A. It is submitted that despite of the said factual, as to how the applicant has averred that the findings of the Enquiry Officer are perverse and based on no evidence or contrary to the evidence is really matter of great concerned, and in fact, making such baseless statement by the applicant is nothing but a deliberate attempt by the applicant to mislead this Hon'ble Tribunal is the submissions. Hence, on this basis the averments are denied.*

25. *With reference to para no. 6.21, it is submitted that the averments raised by the Applicant in this para are baseless and without any strict proof. Moreover, it is submitted that the charges leveled against the Applicant have been proved on the basis of theory of preponderance of probability. It is also submitted that the averments are not tenable, as the applicant has not made Respondent either to Shri Gaikwad or Shri Chenigund in this matter, although he has*

made allegations against them and hence the averments raised by the applicant cannot be taken into consideration on the Principal of "Non joinder' of necessary party to them by name. Apart from that, the applicant was not refrained to avail the opportunity of cross examining them in the D.E., which he has not opted for the reasons best known to him and now making wild allegations/ averments as have been made by the applicant in para nos.6.18 and 6.19 of the O.A., which is not legally tenable and it is requested that a judicial note of making such incorrect averments may kindly be taken by this Hon'ble Tribunal.

(Quoted from pages 74-81 of OA)

9. Thus, the Respondents have mentioned that there is no truth in the grounds mentioned by the Applicant and the OA may therefore be dismissed.

10. In his rejoinder the Applicant has reiterated the above points and the same may be summarized as under:

(1) The appellate authority has not applied his mind to the merits of the case and restricted it only to the quantum of punishment.

(2) The Respondent no.3 has exceeded his power as revisional authority.

(3) Not holding DE against the Platoon Commander is discriminatory.

(4) The Applicant did not get an opportunity to deny his misconduct as the DE was initiated against him in violation of principles of natural justice.

(5) No reasons have been mentioned why Applicant deserves the major punishment of removal from service.

(6) The Applicant did not do cross-examination as he had no faith in the witnesses.

(7) The enquiry officer was not impartial since he was appointed by the disciplinary authority.

(8) The quantum of punishment is in breach of Rule 449(3) of the BPM Vol. I which states that the best method to correct the police man is to increase their intensity step by step.

Issues:

11. The issues for consideration are as under:

(i) Whether the Respondents have conducted the DE as per the procedure?

(ii) Whether the misconduct of the Applicant was grave?

(iii) Whether the punishment imposed upon the Applicant is harsh?

Discussion and findings:

12. We have perused the available record. It is seen that the Applicant did indulge in the alleged act of assault as well as using threatening words in an abusive manner on the Parade Ground in front of several of his colleagues against the Platoon Commander. Following the same, DE was held and the same has been held as per the rules. Several opportunities were made available to the Applicant to furnish his say as well as to cross-examine the witnesses. He has on his own preferred not to avail the opportunities made available to him. During revision of the impugned order the Respondent no.3 has provided him the opportunity of personal hearing. While admitting the charge against him the Applicant has alleged that the Platoon Commander misbehaved with him on the earlier occasion on the day prior to the incident. This allegation by the Applicant appears to be an afterthought to justify his misbehavior which is admitted by him as there is no documentary proof to support the same.

13. The Applicant was working in State Paramilitary Force where discipline is expected to be of higher order. Any act of indiscipline on the Parade Ground is likely to result into a chaotic situation diminishing the morale of the Force. A person working as a Member of the Force and particularly the Applicant, who is a graduate, cannot take plea of assaulting and threatening his senior because he had allegedly misbehaved with him earlier. Even if the alleged misbehavior had taken place on the earlier day, nothing had prevented the Applicant from reporting the same to senior functionaries. The record does not confirm that he made any attempt to do so. Keeping the grudge in mind, assaulting and threatening the Platoon Commander on the Parade Ground in the presence of his colleagues was certainly in breach of all established norms in the disciplined force.

14. The conduct of the Applicant being so grave, the Respondents completed the DE and with mercy on him have punished him with removal from service. The Respondents could have been harsher if they had imposed the punishment of dismissal. Looking at his age the punishment of removal from service instead of dismissal cannot be termed as harsher.

15. In view of the above, the Applicant has not furnished any material to justify interference in the impugned orders as well as in the quantum of punishment. Moreover, once the charges are proved, it is the prerogative of the disciplinary authority to impose suitable punishment.

16. The judgments referred to by the Ld. Advocate for the Applicant have been considered and found to be not relevant in view of the facts in the present case.

17. The punishment inflicted on the Applicant in the form of removal from service cannot be considered as shockingly disproportionate to the charges proved against him. The Respondent is noticed to have conducted enquiry after providing him enough opportunity to submit written, oral as well as personal submissions. As observed by the Hon'ble Supreme Court in **District Forest Officer Vs. R. Rajamanickam & Anr. (2000) 9 SCC 284,** the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over functions of the disciplinary authority. We, therefore, do not find it necessary to comment on the other contentious issues raised by the Ld. Advocate for the Applicant. We, therefore, are of the opinion that no interference is required by this Tribunal in the impugned order issued by the Respondents.

18. In the result, there is no merit in the OA and the same is dismissed with no order as to costs.

(P.N. Dixit)
Member (A)
14.2.2019

(A.H. Joshi, J.)
Chairman
14.2.2019

Dictation taken by: S.G. Jawalkar.

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