

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.925 OF 2018**

DISTRICT : MUMBAI

Shri Vilas Madhukar Patil,)
Age 40 years, Police Constable,)
R/at Daxta Police CHS, C/2, Room No.35,)
Ramabai Nagar, Ghatkopar (East), Mumbai 400075)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary, Home Department,)
Mantralaya, Mumbai)
2. The Joint Commissioner of Police,)
Economic Office Wing, Near Crawford Market,)
Mumbai 400001)
3. The Deputy Commissioner of Police,)
Economic Office Wing, Near Crawford Market,)
Mumbai 400001)..Respondents

Shri G.J. Patil – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
RESERVED ON : 6th January, 2020
PRONOUNCED ON : 8th January, 2020

J U D G M E N T

1. Heard Shri G.J. Patil, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.
2. The applicant has approached this Tribunal against the punishment awarded to him by impugned order dated 22.3.2018 under Rule 3 of the Bombay Police (Punishment & Appeal) Rules, 1956.

Brief facts:

3. On 16.10.2015 the applicant, who was working as Constable, was directed along with one Head Constable Shri Sherkhan Sarvarkhan Pathan to take out the accused in Crime No.57/15 from the police custody. It was alleged that photograph of the accused along with copy of order to take accused outside was photographed and the same were released on whatsapp from mobile phone belonging to the applicant. Respondent no.3 issued him show cause notice on 30.11.2015 asking him why his increment should not be stopped for a period of 2 years without impacting future increments.
4. The applicant submitted his reply on 14.12.2015. In the same he contended that there is no evidence with the respondents in support of the charges leveled against him. He, therefore, denied the charges. After considering his reply and finding it unsatisfactory, order was passed on 23.3.2017 by the respondent no.2 stopping his increments for a period of two years without impacting future increments.

5. The applicant preferred an appeal against the same before the appellate authority namely respondent no.1 (Home Department) on 6.4.2017. The appellate authority heard him in person and passed order on 22.3.2018 rejecting his appeal and confirmed the order passed by respondent no.2. The applicant has prayed to set aside the impugned order dated 22.3.2018.

6. In support of the same the Ld. Advocate for the applicant has submitted that:

(1) The punishment has been imposed on him without conducting DE. Hence, it is bad in law.

(2) The punishment imposed is harsh.

(3) While the order mentions name of the accused who was to be taken out from police custody as Uday Suresh Samani, the affidavit in sur-rejoinder filed by respondents no.1 to 3 has stated, "inadvertently the name of the accused as Uday Suresh Samani instead of Uday Surve".

7. Ld. Advocate for the applicant mentions that in view of this factual error the order is vitiated and hence should be quashed and set aside.

Submissions by the respondents:

8. The respondents no.2 & 3 have filed affidavit and submitted as under:

“2. While conducting the preliminary enquiry and taking action against the applicant under the Bombay Police (Punishments and Appeals) Rules, 1956, the Respondents strictly observed the due process of law as per section 26 of the Bombay Police Act, 1951 and had given sufficient opportunity of showing cause, against, action proposed to be taken against the applicant. The applicant while performing his duty had not strictly followed the secrecy.

7. With reference to Paragraph nos. 5.5 to 5.7 of the application, without prejudice to the rights of the Respondents, the Respondent No.3 denies the allegations made by the applicant and further, the Respondent no.3 states that, the Respondent No.3 conducted preliminary enquiry against the applicant, as per the Mumbai Police (Punishment & Appeal) Rules 1956. As per the direction, the Senior Inspector of Police, Housing Unit-1 Mr. Jaiwant Shinde, had carried out inquiry and investigation and accordingly, he had recorded the statements of three witnesses on 09/01/2017 (1) Santosh Sampat Tare, Assistant Police Inspector, EOW (2) Vikrant Shankar Shirsat, Assistant Police Inspector, EOW Housing-1, (3) Sher Khan Sarwarkhan Pathan, Police Constable and also collected the copy of Photograph of accused.

8. With reference to para no. 5.8, I deny that the said notice dated 30/11/2015 was issued by the Respondent No. 3, but the same was issued by the D.C.P., Mr. Pravin Padwal. The Respondent submits that the action was taken against the applicant was under Rule 3 of Mumbai Police (Punishment & Appeal) Rule 1956 & Mumbai Police Act 1956 and the said action was not a department Enquiry.

14. With reference to para no. 6.1, the Respondents submits that, the order passed by the Respondent No.1 is not bad-in-law, malafide, not perverse and not arbitrary and not in contravention of the rules and existing statutory law. The Respondents submits that the action and punishment awarded to the applicant was as per, The Bombay Police (Punishment &

Appeals) Rules, 1956. There is no infirmity, illegality in the order passed by the Respondent No.1.”

(Quoted from page 37-42)

9. The respondent no.1 has also filed affidavit and the relevant paras reads as under:

“4. With reference to contents of paragraph No. 4, I say and submit that, trial perplexity of the said order dated 23.03.3017 passed by the Respondent no.02 the applicant had filed an appeal before respondent no.01. The respondent no.01 after hearing of both sides and by following principles of natural justice passed order for dated 22-02-2018 thereby deny to interfere in the said order. Subsequently the applicant has assailed the order dated 22-03-2018 passed by Respondent no.1 before the Hon’ble Tribunal.

5. With reference to contents of paragraph No. 5, I say as follows:

5.1 The applicant had binding obligation to maintain secrecy and confidentiality whilst discharge his duties as police constable. Considering the vital aspect and gross negligence the punishment imposed by respondent no.1 and 2 are just and reasoned. There is no need of any interference. To justify action of Respondent no.01 and 02 I may fruitfully refer section 25(1-A) of the Mumbai Police Act, 1951. It reads as under:

25(1-A) The State Government or any officer authorized under sub-section (2) in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which, in the opinion of the state Government or of such authorized officer, is not of such nature as to call for imposition of any of the punishment referred to in sub-section (1) , any one or more of the following punishments, namely:-

- (a) *Warning;*
- (b) *A reprimand (to be entered in his service book);*
- (c) *Extra drill;*
- (d) *Fine not exceeding one month's pay;*
- (e) *Stoppage of increments;*

Provided that, the punishment specified,-

- (i) *In clause (C), shall not be imposed upon any personnel above the rank of constable;*
- (ii) *In clause (d), shall not be imposed upon an Inspector.*

6. *With reference to contents of paragraph No. 6, I say and submit that, it is abundantly clear that punishment awarded to the applicant was as per the Mumbai Police Act and the Bombay Police (punishment and appeals) Rule, 1956. There is no infirmity in the order passed by Respondent nos. 01 and 02.*

7. *With reference to contents of paragraph No. 7, I say and submit that, it is manifestly clear that the applicant had committed gross negligence and acts of indiscipline. He had breached norms of security and confidentiality while discharging his duty as a police constable. His overall conduct with regard to obligation of duties regarding sending of internal communication references and photos of accused on social media vis-à-vis whatsapp does not show effluent and unblemished performance.”*

(Quoted from pages 46-49)

10. The respondents have therefore submitted that the OA is without any merits and be dismissed.

11. Issue for consideration:

- (i) Whether proper procedure has been followed in the matter and whether the punishment is proportionate to the charges leveled against the applicant?

Observations and findings:

12. I have perused the charges leveled against the applicant, order issued by respondent no.2, appeal made by the applicant to the appellate authority and the order passed by the appellate authority. I have also seen the statements enclosed by the respondents in support of the concise enquiry by the relevant witnesses.

13. The concise enquiry was held against the applicant, who is a member of the Police Force. Section 25(1-A) of the Bombay Police Act reads as under:

25(1-A) The State Government or any officer authorized under sub-section (2) in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which, in the opinion of the state Government or of such authorized officer, is not of such nature as to call for imposition of any of the punishment referred to in sub-section (1) , any one or more of the following punishments, namely:-

- (a) Warning;*
- (b) A reprimand (to be entered in his service book);*
- (c) Extra drill;*
- (d) Fine not exceeding one month's pay;*
- (e) Stoppage of increments:*

Provided that, the punishment specified,-

(i) *In clause (C), shall not be imposed upon any personnel above the rank of constable;*

(ii) *In clause (d), shall not be imposed upon an Inspector.*

(Quoted from pages 47-48)

14. The respondents have accordingly conducted the enquiry and awarded the punishment as per Bombay Police Act and Bombay Police (Punishment & Appeal) Rules, 1956. As is clear from the reading of the above, it was not necessary to conduct DE for imposing the punishment of fine. Hence, there is no illegality or infirmity in the impugned order.

15. By his act of gross negligence and breach in norms of security and confidentiality in discharging his duties as Police Constable, the applicant has failed to observe expected high sense of integrity. The statements of the witnesses in the concise enquiry confirm the default made by the applicant. Hence, I do not find that the punishment imposed in the form of stoppage of increment for a period of 2 years without impacting the future increments can be treated as harsh or disproportionate. The respondents themselves have submitted that there was an inadvertent error in the name of the accused, who was taken out from the custody. I find this is an error which need not be given much importance as the charge that photograph of the accused was taken and released through social media by the applicant is proved. This act itself is objectionable and cannot be neglected because of error in the name of the person taken out from police custody.

16. For the reasons stated above, I am of the firm opinion that proper procedure has been followed in conducting concise enquiry by the respondents including the appellate authority. The punishment imposed

upon the applicant has been given after adequate consideration and is proportionate. I see no reason for interference in the impugned order.

17. Hence, Original Application is dismissed. No order as to costs.

(P.N. Dixit)
Vice-Chairman (A)
8.1.2020

Dictation taken by: S.G. Jawalkar.

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