

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABA**

ORIGINAL APPLICATION NO. 353 OF 2016

DISTRICT: OSMANABAD

Shri Ladappa S/o Annarao Chikale,
Age: 38 years, Occu. : Service,
R/o Police Station Osmanabad,
Tq. & Dist. Osmanabad.

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APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**
Though Secretary,
Home Department,
Mantralaya, Mumbai.
- 2) **The Director General of Police,**
Maharashtra State, Mumbai.
- 3) **The Special Inspector General of
Police Cantonment,**
Aurangabad, Tq. & Dist. Aurangabad.
- 4) **The Superintendent Of Police,**
S.P. Office Osmanabad,
Tq. & Dist. Osmanabad.
- 5) **The Sub-Divisional Police,**
Officer Bhum and Divisional,
Inquiry Officer, Bhum Dist. Osmanabad.

.. RESPONDENTS

APPEARANCE : Shri Amol G. Vasmatkar, learned Advocate
Holding for Shri U.B. Bilollikar, learned
Advocate for the Applicant.

: Shri N.U. Yadav, Learned Presenting Officer
for the Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J).

O R A L O R D E R

(Delivered on this 1st day of September, 2017.)

1. Heard Shri Amol G. Vasmatkar, learned Advocate holding for Shri U.B. Bilolikar, learned Advocate for the applicant and Shri N.U. Yadav, learned Advocate for the respondents.
2. Learned Presenting Officer has filed affidavit in reply on behalf of respondent Nos. 4 & 5. Same is taken on record and the copy thereof has been served upon the learned Advocate for the applicant.
3. The applicant has challenged the order dated 18.03.2016 passed by the respondent No. 2 rejecting his appeal challenging the order dated 31.01.2015 passed by the Special Inspector General of Police, Aurangabad, challenging the order passed by the Superintendent of Police, Osmanabad by the disciplinary authority on 12/15-11-2014 holding him guilty of misconduct and imposing punishment

of withholding of his annual increments for three years and treating his suspension period as it is.

4. It is contention of the applicant that the Disciplinary Authority, Appellate Authority and Revisionary Authority had not considered the provisions of Maharashtra Civil Services and they have held the applicant guilty of the misconduct. It is his contention that the Enquiry Officer has not recorded findings against each of the charges framed against him and therefore, the order passed by the Disciplinary Authority on the basis of Enquiry is not legal one. Consequently, the orders passed by the Appellate Authority and Revisionary Authority are also not legal one and therefore, he prayed to quash the orders passed by the disciplinary authority, revisionary authority and appellate authority in the Departmental Enquiry.

5. The respondents have supported the order passed by the Disciplinary Authority holding the applicant guilty and imposing punishment on him. They have contended that on the basis of Enquiry report submitted by the Enquiry Officer, the Disciplinary Authority has issued show cause notice to

the applicant and after giving opportunity to the applicant, they passed the order imposing punishment accordingly. It is their contention that the appellate authority has also considered the legal aspect and decided the appeal accordingly. The decision of the disciplinary authority and appellate authority, have been maintained in the revision and there is no illegality in the entire process conducted in the Departmental Enquiry.

6. The respondent Nos. 4 and 5 have filed their affidavit in reply and contended that the Enquiry Officer has not recorded findings as regards charges framed against the applicant and there was irregularity on the part of the Enquiry Officer in view of the provisions of Rule No. 448(22) of Maharashtra Police Manual Vol. 1. They have submitted that as the findings had not been recorded by the Enquiry Officer, it is just and proper to remand the matter to the enquiry Officer for deciding the enquiry by ordering *de novo* afresh enquiry from the stage of argument.

7. In view of the short affidavit filed by the respondent Nos. 4 and 5, the applicant has no objection to

remand the matter for recording findings of the enquiry officer on merit on each of the charges leveled against the applicant by giving opportunity to the applicant to be heard.

8. On going through the record it reveals that the Sub Divisional Police Officer, Bhoom has been appointed as an Enquiry Officer in the matter and he conducted enquiry. He recorded statement of the witnesses. He submitted his report in the Enquiry, which is at paper book page nos. 21 to 26. He has mentioned the charges leveled against the applicant and discussed the statements of the witnesses, but he had not marshaled the evidence and recorded his finding on each of the charges leveled against the applicant. The Enquiry Officer simply submitted his report without recording his findings against each of the charges. He has not specifically mentioned whether charges against the applicant has been proved or not on appreciating the evidence of witnesses. The said report is not a final report as provided under Rule 448 of Maharashtra Police Manual No. 1. Rule 448 of Police Manual provides procedure for conducting Departmental Enquiry. Rule 448(2) provides that the Enquiry Officer has to record his finding against the

charges framed against the delinquent. In the instant case, the Enquiry Officer had not recorded any findings against the charges leveled against the applicant/delinquent. Therefore, on the basis of his incomplete report submitted by the disciplinary authority i.e. the S.P. Osmanabad has imposed penalty against the applicant, which is not legal one. Therefore, the order passed by the Disciplinary Authority is not legal one. The Appellate Authority, as well as, revisionary authority had not considered the said aspect and therefore, the orders passed by them are also not legal one. Therefore, in these circumstances, the orders passed by the Disciplinary Authority, which is maintained in the appeal and revision require to be quashed and set aside. Therefore, in my opinion, in the interest of justice, it is just and proper to quash the order passed by disciplinary authority, appellate authority and revisionary authority to remand the matter to the Disciplinary Authority to appoint another Enquiry Officer to conduct the enquiry afresh by giving an opportunity of hearing to the applicant and record the findings on the charges leveled against the applicant and submit his report to the Disciplinary Authority afresh. On receiving the report

from the Enquiry Officer, the Disciplinary Authority has to take decision on it on merit.

9. In the view of the above circumstances, the O.A. is allowed. The order passed by the disciplinary authority dated 12/15.11.2014, order passed by appellate authority i.e. Special Inspector General of Police, Aurangabad on 31.01.2015 and order passed by the Director General of Police, i.e. the respondent No. 2 on 18.03.2016, are quashed and set aside and the Departmental Enquiry is remanded back to the Enquiry Office to decide the enquiry afresh on considering the evidence already recorded and after giving an opportunity to the applicant-delinquent of being heard. Enquiry Officer is directed to decide the Departmental Enquiry in view of the provisions of Rule 448(2) of Police Manual and to submit his report to Disciplinary Authority. The Disciplinary Authority to take decision on the report submitted by the Enquiry Officer within one month from the date of its receipt on merit.

There shall be no order as to costs.

(B.P. PATIL)
MEMBER (J)