

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.207 OF 2016

DISTRICT : THANE

Shri Prakash Ramnath Nakil,)
Age 48 years, occ. Nil (worked as Police Naik attached)
to Railway Police Head Quarter in the office of below)
named Respondent no.1.)
R/o “Mouli” Niwas, Badlapur (West), District Thane)..Applicant

Versus

1. The Commissioner of Police (Railways),)
Wadibundar, Mumbai)
2. The State of Maharashtra,)
Through Principal Secretary, Home Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Shri B.P. Patil, Member (J)
Shri P.N. Dixit, Member (A)
RESERVED ON : 31st January, 2019
PRONOUNCED ON : 12th 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.

Brief facts:

2. The Applicant was working as Police Naik in the office of Respondent no.1. Aggrieved by the impugned orders dated 27.5.2014 and 26.10.2015, he has made the following prayers:

“9(a) By a suitable order, this Hon’ble Tribunal may be pleased to set aside the order dated 27.5.2014 passed by the Respondent no.1 under which he imposed upon the petitioner, the punishment of compulsory retirement from service, so also the order dated 26.10.2015 passed by the Respondent no.2 where under he dismissed the appeal of the petitioner.”

(Quoted from page 16 of OA)

3. In support of the same he states that a departmental enquiry was initiated against him vide order dated 1.12.2013 for the following charges:

“(१) सक्षम अधिकारी वपोनि/बांद्रा याच्या आदेशाने दि. ०४/०१/१२ रोजी पोना/२६७८ प्रकाश रामनाथ नाकील यांना ०९.०० ते २१.०० वा. पर्यंत बांद्रा टर्मिनस सबवे रिश्का स्टॅण्ड येथे कर्तव्यार्थ नेमले असून, ते नेमलेल्या कर्तव्याचे ठिकाणाहून वरीष्ठांना कोणत्याही प्रकारे न कळविता किंवा त्यांची परवानगी न घेता तसेच कोणतीही पर्यायी व्यवस्था न करता आपअधिकारात एक अनोळखी इसम तथा तक्रारदार नामे दिपककुमार चंद्र तिरुवा रा. वसई व आरोपी यांचेसह लोहमार्ग हद्दीबाहेरील निर्मलनगर पो. ठाणेकरीता निघून गेले.

(२) स.पो.आयुक्त बांद्रा विभाग लोह. मुंबई श्री. सिडाम दि. १९/०१/१२ रोजी पो.पोना/२६७८ प्रकाश रामीनाथ नाकील यांना त्यांच्या अडीअडचणीसंदर्भात त्यांनी मा.पो.आयुक्त लो.मुंबई यांचा आज्ञांकीत कक्ष मिळणेबाबत केलेल्या अर्जासंदर्भातील प्रकरणाची-माहिती व तिचे निराकरण

करणेकामी बोलवले असता, त्यांचेविरुद्ध साधारण ०३ महिन्याचे कालावधीउपरांत तक्रारी स्वरूपाचा अर्ज करून त्यांची प्रतिमा मलीन करण्याचा प्रयत्न केला आहे.

(३) दि.२१/८/१२ रोजी करण्यात आलेल्या म.न.से. मोर्चा बंदोबस्त संदर्भात ठाणे दैनंदिनी नोंदीबाबत प्रभारी अधिकारी बांद्रा लोह.पो.ठाणे श्री.धोपावकर यांचेशी त्यांच्या कक्षाबाहेर उभ्या असलेल्या अंमलदारांसमोर अरेरावीची वार्ता करून उद्धटपणाचे गैरवर्तन केले.

(४) जनरल ड्युटी अंमलदार व पो.अधिकारी हे गैरमार्गाने स्वतःचा अर्थिक फायदा व भ्रष्टाचारी करीत असलेबाबत, कोणतेही ठोस पुरावे नसताना मोघम स्वरूपाचे आरोप करून त्यांची प्रतिमा मलीन करित आहेत.

(५) मा. गृहमंत्रालय महाराष्ट्र राज्य, मुंबई यांचेकडे दि. ११/७/१२ व दि.०१/११/१२ अन्वये दोन स्वतंत्र अर्ज सादर करून. म.ना.से. (वर्तूक) नियम १९७९ चे कमल २३ चें उल्लंघन केले आहे.

(Quoted from Exhibit C page 26 of OA)

4. Another charge sheet was served on him on 11.9.2013 vide order dated 11.9.2013 for the following charges:

“(१) पो. ना/२६७८ प्रकाश रा. नाकील यांनी त्यांचेकडे भ्रष्टाचाराच्या आरोपासंदर्भात पुरक असे कोणत्याही प्रकाराचे पुरावे नसताना, स.पो.आयुक्त बांद्रा विभाग, लोह. मुंबई श्री. सिडाम यांनी इसम नामे (१) लोकेंदरसिंह दशरथसिंह नरुका रा. अमरोली सुरत, जि. राजस्थान व (२) अजयकुमार सिंह रा. असवारा, जि. जौनपुर, उत्तरप्रदेश यांचे ताब्यातील बॅगमधुन ४० लाख अमेरिकन डॉलर किमतीचे हि-याचे एकूण ०७ पाकीटे व एक एफ.जी.१७४६६ आयओएफ नंबरचे रिहॉल्वर व ५ जीवंत काडतुसे असा मुद्देमाल कारवाईसाठी बोरीवली लोह.पो.ठाणेत आणला असता त्यांनी नमुद आरोपीतांकडे कोणताही परवाना नसतानासुद्धा मोठया प्रमाणात रक्कम आरोपी व त्यांचे बॉस यांच्यावर कोणत्याही प्रकारची कारवाई न करता त्यांना सोडून दिलेबाबतचा खोटा, बिनबुडाचा, तथ्यहीन असा तक्रारी अर्ज दि. २०/५/१३ अन्वये मा.पो. महासंचालक, म.रा. मुंबई यांना उद्देशुन केला आहे.

(२) त्याचप्रमाणे सदरचा तक्रारी अर्ज हा योग्य त्यामर्फतीने सादर करणे आवश्यक असताना तो योग्य त्या मार्फतीने सादर केलेला नाही.”

(Quoted from Exhibit G page 37 of OA)

5. According to the Applicant, the impugned orders need to be set aside as the punishment inflicted on him in the form of compulsory retirement is, “highly disproportionate to the alleged misconduct” when he has put in 21 years of good service (para 6.10 page 8 of OA). He further contends that the Respondents should have gradually increased the punishment so as to give him an opportunity to show the improvement as per the guidelines contained in the B.P.M. Volume I and circular dated 26.12.1988 issued by the Respondent no.2 (para 6.11 page 8 of OA). The Applicant further mentions in OA as under:

“6.12 That in fact the nature of the allegation leveled against the petitioner would show that he wanted to be very honest with his post and the duties and the responsibilities attached to the said post and therefore in all fairness and bonafide he felt that what was considered by him to be a serious misconduct of his other colleagues and the officers in Mumbai Railways, that the same would be considered as such even by his higher authorities and the appropriate disciplinary action would be taken against them. That, however, unfortunately the same did not happen and on the contrary the petitioner became the victim of the system where all those who were found involved in such a serious misconduct had joined hands with common interest so as to teach a lesson to the petitioner for fighting against them for truth.

6.16 The whole attempt on the part of the Respondent no.1 was predetermined, so much so that the participation of the petitioner in the said Departmental Enquiry was a mere formality since outcome there was a forgone conclusion. That such action of the Respondent no.1 totally lacked

the fairness, reasonable opportunity and the principles of natural justice and therefore the petitioner could not expect justice.

6.18 *The petitioner was deprived of opportunity by the Respondent no.1 to offer his comments to the report of the Enquiry Officer.”*

(Quoted from page 9-12 of OA)

6. In support of the above grounds, the Ld. 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 in reply points out as under:

“11. With reference to para 6.10, I say that the contents of this para are not true and correct. Respondent No.1 mentioning the misconduct/misbehavior act which is as under:

1) *Applicant wrongly mentioned in his application that his 21 years police service record was good but in truth, Applicant has 7 minor punishments in his service period.*

2) *On 4-1-2012, Applicant was on duty at Bandra Railway Terminus, subway Rickshaw Stand, during the duty time without any prior/written/oral permission from his senior officer and/or intimation to senior officer, Applicant left his duty/duty spot and/or without arranging other police on the said spot, Applicant*

approached at Nirmalnagar Police Station with one complainant Shri. Dipakkumar Chandra Tiruwa and accused. For the said act, Applicant had not taken any written/oral permission from his senior as well as not considered consequences of his negligence/ misbehavior/ misconduct and hence, the said act is illegal and negligence. Applicant was absent on the duty spot as per the said proof of station diary entry No.9 at 13.30.

3) *Applicant filed one application on 16-1-2012 at Bandra Police Station for seeking permission to meet Commissioner of Police regarding his personal problems, relating the said application on 17-1-2012 A.C.P. Bandra Shri. Sidam issued letter to Applicant regarding to remain present on 19-1-2012 to solve the Applicant's problem. As per the letter dt. 17-1-2012 Applicant came before the A.C.P. Mr. Sidam and Applicant arrogantly uttered that, I am not interesting with you, I am directly going to meet Commissioner of Police. The said act and behavior of the Applicant's shows misconduct/misbehaviour.*

4) *Thereafter on 20-5-2013 with malafide intention, Applicant filed an application without proper channel with false allegation against the A.C.P. Mr. Sridam before the Director General of Police as well as Government of Maharashtra. The said act and misconduct/misbehavior of the Applicant shows his nature.*

5) *On 21-8-2012 at the time of Morcha Bandobast, Applicant arrogantly quarreled with his Senior Officer to Mr. Dhopavkar in front of all the police staff on the issue of his presenty. The said act and behavior of the Applicant's shows misconduct/misbehaviour.*

6) *On 11-7-2012 and dt.1-11-2012, Applicant again filed false complaint without supporting any type of proof against the General Duty police head constable and other police officers regarding*

unlawful gain/money/bribe. The said act and behavior of the Applicant's shows misconduct/misbehaviour.

7) *On 20-1-2013, Applicant again filed false complaint against A.C.P. Mr. Sridam to Director General of Police, Mumbai, regarding one passenger Mr. Lokendar Singh Dashrath Singh Naruka and Ajaykumar sinha R/at Jaunpur were travelling with diamond and revolver and A.C.P. Mr. Sridam not checked their documents and received money from the said travelers and released them without any legal action. In fact, A.C.P. Mr. Sridam were checked the said traveler and also examined the documents thereafter they released. A.C.P. Mr. Sridam done his duty proper channel. But with malafide intention Applicant moved false allegation by way of application to Director General of Police, Mumbai against the A.C.P. Mr. Sridam and alleged that A.C.P. Mr. Sridam has taken money from the said traveler and released them by illegal way. Applicant not filed the said false alleged application by proper channel. As a result of that Applicant has breached the Mumbai Police Rules 1999 Part I Rule 429 (2).*

The Commissioner of Police conducted the Departmental Enquiry through A.C.P. Harbour Division against the Applicant. In the said Departmental Enquiry all the abovementioned charges were proved against the Applicant and hence Commissioner of Police issued Show Cause Notice to Applicant on 24-3-2014 for Compulsory retirement from service.

As per the letter dt. 17-4-2014, On 20-5-2014 Applicant remained present before Respondent No. 1 and argued in favour of him to defense. After hearing the Applicant's argument, Respondent No. 1 dissatisfied with Applicant's argument and Respondent No.1 declared final order on 27-5-2014 against the Applicant "compulsory retirement from service".

12. With reference to para 6.11, I say that the contents of this para are not true and correct. Respondent No. 1 states that, as per the Applicant, there is no Circular dt. 26.12.1998 is available, but Circular dt. 20-10-1998 and Mumbai Police Manual Vol. I, Rule 449(3) clearly shows that, punishment should be given step by step, but considering the misbehavior and misconduct act of the Applicant's are very serious nature activities and which have been proved, so Applicant is liable for the declared punishment.

13. With reference to para 6.12, I say that the contents of this para are not true and correct. Respondent No. 1 states that, they conducted the Departmental Enquiry through A.C.P. Harbour Division against the Applicant. In the said Departmental Enquiry all the abovementioned charges were proved against the Applicant and it is clarified that the Applicant's misbehavior and misconduct activities are very serious nature.

14. With reference to para 6.13, I say that the contents of this para are not true and correct. On 20-5-2013 Applicant moved an application before his senior authority against the A.C.P. Mr. Sridam, the said application had been enquired and examined by D.C.P. western, after enquiry Hon'ble D.C.P., Western found the said application is baseless, meaningless and false alleged.

15. With reference to para 6.14, I say that the contents of this para are not true and correct. Respondent No. 1 states that, during the period of Departmental Enquiry, Applicant again filed an application on 20-5-2013 to his senior authority against the A.C.P. Mr. Sridam, the said application have been enquired and examined by D.C.P. western, after enquiry Hon'ble D.C.P., western came to know that the said application is baseless, meaningless and false alleged, as a result of that Applicant liable for additional chargesheet, hence on 11.9.2013 additional chargesheet filed against the Applicant. Respondent No. 1 has taken time to time permission from concerned authority/Government of Maharashtra, Home Department for conducting the Departmental Enquiry.

18. *With reference to para 6.17, I say that the contents of this para are not true and correct. The first chargesheet has been filed against Applicant for negligence and misbehavior/misconduct of the Applicant at incidence at the Nirmalnagar Police Station and second additional chargesheet has been filed against Applicant during the pending period of Departmental Enquiry, for an application filed by the Applicant on 20-5-2013 his senior authority against the A.C.P. Mr. Sridam, the said application have been enquired and examined by D.C.P. Western, after enquiry Hon'ble D.C.P., Western came to know that the said application is baseless, meaningless and false alleged, as a result of that Applicant liable for additional chargesheet.*

19. *With reference to para 6.18, I say that the contents of this para are not true and correct. Respondent No. 1 states that, Enquiry Officer mentioned his opinion that Applicant should remove from service, the said opinion is not bonded on Respondent No. 1, hence Respondent No. 1 had given opportunity to Applicant for filing Applicant's reply. The Applicant had filed his reply thereafter personally one opportunity given to Applicant for hearing on the Applicant's say. But, Applicant's misconduct/misbehavior activities are very serious nature, considering all the facts Respondent No. 1 given the said final order i.e. compulsory retirement. It is very crystal clear that opinion of Enquiry officer and order of Respondent No.1 is different.*

21. *With reference to para 6.20, I say that the contents of this para are not true and correct. After considering all the facts and perused all the witnesses statements which is recorded by Enquiry Officer/Government document/Applicant's baseless, /false application/Enquiry Officer's report, Respondent No. 1 passed the order dt. 27.5.2014 against the Applicant."*

(Quoted from pages 175-180 of OA)

8. The Respondent has, therefore, prayed that the OA is without any foundation and devoid of any merit and, therefore, should be dismissed.

9. The Ld. PO has submitted that the DE against the Applicant has been completed and any interference in the same by the Tribunal is unwarranted unless the decision is clearly in violation of some statute and is shockingly arbitrary. In support of his submission she has cited following judgments:

1) Transport & Dock Workers Union & Ors. Vs. Mumbai Port Trust & Anr. Civil Appeal No.9753 of 2010 decided by the Hon'ble Supreme Court on 15.11.2010. Wherein it has been observed as follows:

“45. In our opinion, there is often a misunderstanding about Article 14 of the Constitution, and often lawyers and Judges tend to construe it in a doctrinaire and absolute sense, which may be totally impractical and make the working of the executive authorities extremely difficult if not impossible.

51. In administrative matters the Court should, therefore, ordinarily defer to the judgment of the administrators unless the decision is clearly violative of some statute or is shockingly arbitrary. In this connection, Justice Frankfurter while Professor of Law at Harvard University wrote in ‘The Public and its Government’ –

“With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of government. The great judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people.”

55. In Keshavanand Bharti vs. State of Kerala AIR 1973 SC 1461 (vide paragraph 1547) Khanna,J. observed :

“In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error.”

2) District Forest Officer Vs. R. Rajamanickam & Anr. (2000) 9 SCC 284. Wherein it has been observed as follows:

“1.
In Union of India v. Upendra Singh it was held thus p.811 of IJL:

‘6. In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

2. In view of the aforesaid decision we find that the Tribunal was not justified under law to interfere with the correctness of the charges leveled against the delinquent officer. We, therefore, set aside the order and judgment of the Tribunal under appeal.”

10. On considering the submissions advanced by both sides following issues arise for our consideration:

- 1) Whether the conduct of the Applicant was grave enough to attract the punishment awarded to him?
- 2) Whether the punishment is very harsh?

- 3) Whether the Respondents have made proper enquiry in the allegations made by the Applicant?

Discussion and findings:

11. The Applicant has been charged for unauthorized absence on number of occasions while posted for important duties. In the first instance it is established that he had made false entries about his departure to cover up his absence in the mini diary at the beat where he was posted. Even though he had an occasion to cite his immediate superior Head Constable Shri Keskar as defence witness in his support in the departmental enquiry, he preferred not to do so for reasons best known to him.

12. In another instance during, 'Bandobast' for 'Morcha' he remained absent. With a view to cover up his absence on duty, when he was probably indulging in private illegal activities, he appears to have invented a plea of assailing every one superior to him including Head Constable, ACP who was the Enquiry Officer and even Commissioner of Police (Respondent No.1) who is Applicant's appointing and disciplinary authority. He has made baseless allegations of corruption which have been proved false during the enquiry against his superiors. Making false allegations against seniors and circulating copies of the same to the authorities outside the department as well as in the department amounts to indiscipline and misconduct.

13. We have examined the available record. It is noticed that the Applicant is in the habit of making allegations of corruption against his immediate seniors starting from Head Constable, PI, ACP right up to the Commissioner of Police, Railways. It is noticed that a detailed enquiry was made regarding the allegations. However, during the enquiry he did

not furnish any document or evidence to support his allegations and, therefore, the Enquiry Officer has held that he has made baseless charges. Moreover, the Applicant has made these serious allegations directly to Commissioner, Income Tax, Home Minister, DGP as seen from Exhibit R-7 page 190 of the reply filed by the Respondent no.1. Being a member of disciplined force it was expected on the part of the Applicant to bring his grievances, if any, to the notice of the senior officers with complete details during enquiry. If the Applicant had no supporting evidence he should have refrained himself from doing the same. It appears, however, that he indulged in the same and thus the charge of misconduct and indiscipline through his insubordination is proved.

14. We have perused the orders issued in the DE as well as in the appeal made by the Applicant. Both the orders have been passed after recording the sound reasons before reaching to the conclusion. It is erroneous to contend that the orders are cryptic or without any reasons.

15. We find that the Respondent no.1 has already shown leniency to the Applicant and has taken the decision of retiring the Applicant compulsorily from service rather than dismissing him considering the gravity of the charges levelled against the applicant. The punishment would entitle the Applicant to receive terminal benefits and, therefore, we find that the punishment has been inflicted after careful consideration, and therefore, it cannot be said to be harsh. We find that the charges levelled against Applicant have been enquired properly and found to be true. The charges were also noticed to be grave and amount to indiscipline, misconduct and insubordination, which is contrary to the expected behavior from the member of the uniformed force.

16. We have gone through the judgments referred to by the Ld. Advocate for the Applicant and found that the same are not attracted in view of the facts in the present case.

17. We, therefore, find that the punishment inflicted on the Applicant in the form of compulsory retirement from service is proportionate to the charges proved against him. The Respondents had conducted the enquiry by giving an opportunity of hearing to the applicant. As observed by the Hon'ble Supreme Court 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. There is no illegality in the impugned orders dated 27-05-2014 and 26-10-2015. Therefore, no interference in it is called for. There is no merit in the O.A. Hence, the O.A. deserves to be dismissed.

18. In view of discussion in foregoing paragraphs O.A. stands dismissed with no order as to costs.

(P.N. Dixit)
Member (A)
12.02.2019

(B.P. Patil)
Member (J)
12.02.2019

Dictation taken by: S.G. Jawalkar.