

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 538 OF 2022**

**(Subject:- Minor Punishment)**

**DISTRICT:-OSMANABAD**

**Narendra S/o Laxman Rathod,** )  
Age:- 34 years, Occ. Service (Police Naik) )  
R/o. Police Line, House No. 1/12, )  
Omerga, Tq. Omerga, )  
Dist. Osmanabad )  
Mob:- 9421977194 ) **APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra** )  
Through its Secretary, )  
Home Department Maharashtra State, )  
Mantralaya, Mumbai -32. )
- 2. The Director General of Police,** )  
Police Head Quarters, Old Council Hall,) )  
Sahid Bhagatsing Marg, )  
City Mumbai-400001. )
- 3. The Inspector General of Police,** )  
Aurangabad Renge, Near Youth Hospital )  
Vishram Bag Colony, Padampura Road, )  
Aurangabad – 431005. )
- 4. The Superintendent of Police,** )  
SP Office, Osmanabad, )  
Tq. and Dist. Osmanabad. ) **RESPONDENTS**

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**APPEARANCE :** Shri H.P. Jadhav, learned counsel  
for the applicant.  
: Shri V.G. Pingle, learned Presenting  
Officer for the respondent authorities.  
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**CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)**  
**RESERVED ON : 06.03.2024.**  
**PRONOUNCED ON : 08.05.2024.**  
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### **ORDER**

Heard Shri H.P. Jadhav, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking quashing and setting aside the order dated 02.03.2022 stopping thereby one increment for two years without any effect and also seeking quashing and setting aside the order dated 23.07.2022 treating thereby the dismissal period of the applicant from 14.08.2018 to 21.01.2019 "as it is" with further direction to consider the said period as duty period.

3. Brief facts giving rise to this Original Application are as follows:-

(i) On 01.07.2010, the applicant was appointed as a Police Constable at Head Quarter, Osmanabad and he has rendered his service as a Police Constable till 2015. In the year 2016,

he was given promotion as Police Naik and posted to Omerga Police Station and worked their till 2017.

(ii) The applicant further contends that while he was working as Police Naik at Police Station, Omerga one complaint dated 26.12.2016 came to be filed against him before the respondent No.4 by one Sneha Gapat alleging therein that the applicant has taken Rs. 50,000/- from her with assurance to help her in police recruitment process and further harassed her for remaining amount.

(iii) It is the further case of the applicant that on the basis of said complaint, Superintendent of Police, Osmanabad has directed to conduct the preliminary enquiry and one API Uttam Jadhav has conducted the enquiry and submitted the report to respondent No.4. The first report came to be submitted on 21.06.2017 and another one is on 07.07.2017. In both the reports the enquiry officer has recommended for initiation of departmental enquiry against the applicant.

(iv) On the basis of report submitted by the API, Uttam Jadhav, the respondent No.4 has suspended the applicant by order dated 18.09.2017 and further the applicant was also served with the charge sheet (Annexure 'A-5'). Thereafter, the detailed enquiry was conducted against

the applicant. The statement of witnesses came to be recorded and the applicant has cross examined the complainant and other witnesses. Further during pendency of enquiry, the respondent No.4 by order dated 28.04.2018 reinstated the applicant subject to outcome of the departmental enquiry. On conclusion of departmental enquiry and submission of the report by the enquiry officer, respondent No.4 has issued the show cause notice dated 07.06.2018 to the applicant as to why he should not be dismissed from service. The applicant has given his explanation to the said show cause notice on 24.07.2018. However, his explanation was not satisfactory and therefore, not accepted by the respondent No.4. By order dated 13.08.2018, the respondent No.4 has dismissed the applicant from service.

(v) Being aggrieved by the order of dismissal, the applicant has preferred an appeal to the Inspector General of Police, Aurangabad Range, Aurangabad. By order dated 11.01.2019, his appeal was partly allowed and the applicant was reduced in rank for three years by setting aside the order of dismissal. Accordingly, the applicant came to be reinstated in service on 22.01.2019.

(vi) Being aggrieved by the order of reduction in rank by departmental appellate authority, the applicant has filed Revision Petition before the Director General of Police, Maharashtra State, Mumbai and by impugned order dated 02.03.2022, the Revisional Authority has modified the said order of reduction in rank into withholding of grade increment for two years. Further during the pendency of the Original Application by order dated 23.07.2022, the respondent No.3 has treated the dismissal period of the applicant from 14.08.2018 to 21.01.2019 "as it is". Thus against both the orders, the applicant has filed this Original Application.

4. Learned counsel for the applicant submits that the disciplinary authority by order dated 13.08.2018 has not accepted the findings recorded by the enquiry office and in terms of Rule 448 (22) of Maharashtra Police Manual Part – (1), recorded his findings with the reasons for disagreeing with the findings of the enquiry officer and accordingly, the disciplinary authority after giving opportunity of hearing to the applicant, dismissed the applicant from service.

5. Learned counsel for the applicant submits that on the same set of evidence by order dated 11.01.2019, the

Inspector General of Police, Aurangabad Range, Aurangabad has accepted the findings recorded by the enquiry office and set aside the order of dismissal passed against the applicant by disciplinary authority and passed the order of reduction of the rank of the applicant for three years. Learned counsel for the applicant submits that in the Revision Petition filed, the Director General of Police, Maharashtra State, Mumbai, on the same set of evidence has modified the order passed by the first departmental appellate authority and converted into withholding of grade increment for two years vide order dated 02.03.2022.

6. Learned counsel for the applicant submits that the first Departmental Appellate Authority and Revisional Authority have confirmed the negative findings recorded by the enquiry officer with the charge No. 1 i.e the applicant has accepted Rs. 50,000/- from the complainant Sneha Gapat to help her in the physical test in the police recruitment process. So far as the other two charges are concerned, the first departmental appellate authority has considered the same as not so serious and accordingly, set aside the order of dismissal.

7. Learned counsel for the applicant submits that the so far as the Revisional Authority is concerned, though the Revisional Authority has recorded the observations that the findings as against the applicant are lacking the transparency about his misbehavior with the complainant Sneha Gapat, however, modified the order and inflicted the punishment of withholding of grade increment for two years instead of reduction in rank.

8. Learned counsel for the applicant submits that there is no consistency and the impugned order passed by the revisional authority suffers from perversity. There was no evidence against the applicant in connection with charges leveled against him and still then, just for the sake of punishment the Revisional Authority directed withholding of grade increment for two years. Learned counsel for the applicant submit that the impugned order dated 02.03.2022 is liable to be quashed and set aside. The applicant may be exonerated from all the charges leveled against him.

9. Learned counsel for the applicant submits that the impugned order dated 23.07.2022 is passed upon the decision taken by the respondent No.2 withholding thereby

grade increment for the two years of the applicant. In this regard it has been observed that the applicant is not exonerated fully in the departmental enquiry and as such, the said dismissal period is not considered as a duty period. Learned counsel for the applicant submits that the impugned order dated 23.07.2022 is total in violation of the provisions of Rule 70 (1) of the Maharashtra Civil Services (Joining Time, Foreign services and Payments During Suspension and Removal) Rules, 1981. Learned counsel for the applicant submits that the Original Application deserves to be allowed.

10. Learned counsel for the applicant placed his reliance on the following case laws:-

(i) **State of Karnataka & Anr. Vs. Umesh....., reported in 2022 SCC online SC 345.**

(ii) **State of Maharashtra through Secretary, Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, Mantralaya & Ors. Vs. Madhukar Suryabhan Ingale in Writ Petition No. 1697/2019, reported in 2020 DGLS (Bom.) 271**

(iii) **Manik Abas Jadhav Vs. Mira Bhayandar Municipal Corporation and Others. Writ Petition No. 1852/2014, reported in 2019 DGLS (Bom.) 356**

(iv) **Shirishkumar Rangrao Patil Vs. the State of Maharashtra, through its Chief Secretary**



**and another, Writ Petition No. 3095 of 1995, reported in 1997 (1) Bom. C.R. 303**

**(v) The State of Maharashtra Vs. Shri Dilip Anant Surve in Writ Petition No. 4622 of 2003.**

11. On the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 4 learned P.O. submits that the charges leveled against the applicant were grave and serious. Though he was dismissed from service by the disciplinary authority, however, in appeal/revision, higher authorities have taken lenient view and finally the applicant was awarded the punishment of withholding of grade increment for two years. By filing this Original Application, the applicant is now requesting to consider the last impugned order dated 23.07.2022 which is uncalled for. The applicant is not entitled for any relief as claimed by the present Original Application.

12. Learned P.O. submits that so far as the impugned order dated 02.03.2022 is concerned, the said date is incorrectly mentioned by the applicant in prayer clause. As per annexure 'A-12' the order passed by the Revisional Authority is dated 24.01.2022.

13. Learned P.O. submits that the impugned order dated 23.07.2022 treating the dismissal period from 14.08.2018 to 21.01.2019 “as it is” is passed in terms of provisions of Rule 70 (1) of M.C.S. (Joining Time, Foreign services and Payments During Suspension and Removal) Rules, 1981. There is no substance in the Original Application and the same is liable to be dismissed.

14. Leaned Presenting Officer has placed his reliance on the following case :-

(i) **Yoginath D. Bagde Vs. State of Maharashtra & Anr.**

15. On going through the pleadings minutely and on careful perusal of the annexures submitted by both the parties and considering the rival submissions, I am of the opinion that no interference is required in impugned orders and the Original Application is liable to be dismissed.

16. So far as the issue about the punishment inflicted on the applicant is concerned, the disciplinary authority i.e. the respondent No.4 has inflicted the punishment of dismissal on the applicant from service. The enquiry office has recorded the findings to charge No.1 in the negative and held that there is no evidence that the applicant has accepted

Rs. 50,000/- from complainant Sneha Gapat for helping her in the physical test of the recruitment process of the police department. The disciplinary authority i.e. the respondent No.4 has however, disagreed with the said findings and recorded the findings in affirmative to charge No.1 with the observations that if the charge No. 2 is proved, the same is in connection with charge No.1 and as such, the negative findings cannot be recorded to charge No.1. Further the first departmental appellate authority has accepted the findings recorded by the enquiry officer to the extent of charge No.1 and considering remaining two charges held that the punishment of dismissal from service inflicted by the disciplinary authority is disproportionate to act proved. Accordingly, directed reduction of the rank of the applicant for the period of three years. Further the departmental revisional authority has come to the conclusion that even charge No.2 cannot be said to be proved and allegations in this regard are lacking transparency and considering the charge No.3 proved against the applicant which is in the context that the applicant has not cooperated to preliminary enquiry officer while conducting the enquiry.

17. In my considered opinion, the first appellate authority so also the revisional authority have carefully and minutely scanned the evidence and on the basis of evidence alone, modified the order of punishment to the extent as the applicant found guilty. I don't find any perversity in the order. The revisional authority has not considered any extraneous evidence. There is no reason to set aside the impugned order dated 24.01.2023 (wrongly mentioned as 02.03.2022 in the application and prayer clause 'B').

18. In a case State of **Karnataka & Anr. Vs. Umesh, reported Civil Appeal Nos. 1763-64 of 2022** decided on 22.03.2022, reported in (2022) 6 SCC 563, the Hon'ble Supreme Court has considered effect of the acquittal in the criminal case. In the instant case, no criminal case was registered against the applicant and as such, the ratio laid down by in the aforesaid cited case may not be applicable to the facts and circumstances of the present case.

19. In a case, **State of Maharashtra & Ors. Vs. Madhukar Suryabhan Ingale** in **Writ Petition No. 1697 of 2019**, reported in 2020 DGLS (Bom.) 271 relied upon by the learned counsel for the applicant, the Hon'ble High Court has

discussed the scope of interference in service matters/disciplinary proceedings by invoking Articles 226 and 227 of the Constitution of India and held that the scope is very limited. However, it is observed that the Tribunal is legally empowered to interfere with the decision of disciplinary authority if there is no evidence or the findings recorded in the enquiry report are perverse. In the instant case, the departmental appellate authority so also the revisional authority have scanned the evidence minutely and carefully and accordingly, modified the punishment order by taking very lenient view against the applicant. Findings recorded by them are not perverse.

20. In a case **Manik Abas Jadhav Vs. Mira Bhayandar Municipal Corporation & Ors.** in **Writ Petition No. 1852 of 2024**; reported in 2019 DGLS (Bom.) 356 relied upon by learned counsel for the applicant, the Division Bench of Hon'ble High Court of Bombay has observed that the disciplinary authority has to give the reasoned order. In the instant case, the departmental revisional authority has recorded the reasons and accordingly, passed the order.

21. In a case **Shirishkumar Rangrao Patil Vs. The State of Maharashtra & Anr.** relied upon by learned counsel for the applicant, the Division Bench of Hon'ble High Court of Bombay has considered the scope of interference in the service matters by the Hon'ble High Court while exercising the writ jurisdiction and held that the High Court cannot function as a Court of Appeal for reappreciating the evidence or the findings based on evidence.

22. In a case the **State of Maharashtra & Ors. Vs. Shri Dilip Ananat Surve** in **Writ Petition No. 4622/2003** the facts of are different and cannot be made applicable to the facts and circumstances of the present case.

23. In a case **Union of India & Anr. Vs. B.C. Chaturvedi** in **Civil Appeal No. 9830 of 1995 with 3604/1988**, reported in (1995) 6 SCC 750, the Hon'ble Supreme Court has dealt with the scope of judicial Review and further observed about the factors to be considered. In this context it is held that if the findings of disciplinary authority/appellate authority are based on same evidence, Court/Tribunal cannot reappreciate the evidence and substitute its own findings. The similar view is taken by the

Hon'ble Supreme Court in a case **Yoginath D. Bagde Vs. State of Maharashtra & Anr.**

24. So far as second limb of the submissions are concerned, by impugned order date 23.07.2022, the dismissal period of the applicant from 14.08.2018 to 21.01.2021 is treated "as it is" in terms of Rule 70 (1) M.C.S. (Joining Time, Foreign services and Payments During Suspension and Removal) Rules, 1981. The said Rule 70 of Rules, 1981 is reproduced hereinbelow:-

**"70. Regularization of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside as a result of appeal or review and such Government servant is re-instated.-** (1) When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order—

- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
- (b) Whether or not the said period shall be treated as a period spends on duty.

(2) Where the authority competent to order re-instatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired

has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule(2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In a cases other than those covered by sub-rule (2), (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held the Government servant shall, subject to the provisions of subrules (6) and (7), be paid such proportion of the full pay and allowances to which he would have been entitled., had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement,. As the case may be, as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by



him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice:

Provided that payment under this sub-rule to a Government servant (other than Government who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936) shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority, or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

Note:- The order of competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of –

- (a) extraordinary leave in excess of three months in the case of a temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of a permanent Government servant.

(6) The payment of allowance under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 68.

(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement. Where the pay and allowances admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.”

25. So far as the period of absence from duty is concerned, Rule 70 of M.C.S. Rules, 1981 takes care of it only when the dismissal, removal or compulsory retirement is set aside as a result of appeal or review and such Government servant is reinstated. In terms of sub-rule (2) of Rule 70 of Rules, 1981, if the Government servant has been fully exonerated, he be paid the fully pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired as the case may be and in terms of sub-rule (3), the said period shall be treated as period spent on duty for all the purposes. However, in terms of sub-rule (5) of Rule 70 of Rules, 1981, in case falling under

sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty. However, the competent authority if the Government servant so desires shall convert the same the said period into leave of any kind due and admissible to the Government servant. In the instance case, the provisions of Rule 70 of Rules, 1981 as aforesaid are not applicable to the case of the applicant

26. In view of above discussion, I find no substance in the Original Application and the same is liable to be dismissed. Hence, the following order:-

**ORDER**

- (A) The Original Application is hereby dismissed.
- (B) In the circumstances, there shall be no order as to costs.
- (C) The Original Application is accordingly disposed of.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 08.05.2024**

SAS O.A. 538/2022(S.B.) Minor Punishment