

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.170 OF 2023

**DISTRICT : THANE
SUB : Suspension**

Smt. Shital Prakash Pansare, Aged 31 Years,)
Worked as Police Constable (under suspension),)
In the office of below named Respondent.)
R/o. C/88, Saptaparn C.H.S. Ltd., Sector 4,)
Sanpada (W), Navi Mumbai, Dist. Thane.)... **Applicant**

Versus

The Deputy Commissioner of Police,)
Armed Police, Naigaon Head Quarter, LA-1,)
Dadar (E), Mumbai 14.).... **Respondent**

Shri A. V. Bandiwadekar, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 21.01.2025

Pronounced on : 24.01.2025

JUDGEMENT

Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondent.

2. The Applicant was working as 'Police Constable'. On 17.08.2021, Crime No.452/2021 was registered at Panvel City Police Station, Navi Mumbai under Sections 279, 337 and 338 of the I.P.C. read with Sections 184, 134(A) and 134(B) of the Motor Vehicles Act, 1988 against unknown persons. Later on, involvement of the Applicant in the aforesaid crime was suspected. She was arrested on 08.09.2021. Sections 302, 120(b) and 201 of the I.P.C. were added. She was

remanded to police custody till 15.09.2021. By the impugned order dated 14.09.2021 (Exhibit 'A'), she was placed under suspension. The impugned order further stated ‘

“आपण ज्यावेळी या गुन्ह्यातून जामीनावर मुक्त व्हाल त्याच्या पुढच्या दिवसापासून निलंबन कालावधीत वरिष्ठ पोलीस निरीक्षक (प्रशासन), सशस्त्र पोलीस नायगांव, मुंबई यांचेकडे प्रत्येक दिवशी २(दोन) वेळा हजेरी द्यावी. तसेच आपण दर शुक्रवारी सकाळी ०७.०० वा. साप्ताहिक कवायतीच्या वेळी नायगांव पोलीस मुख्यालय येथे कवायत मैदानावर हजर रहावे.”

The impugned order was passed by the Respondent. By order dated 18.07.2023, the Applicant was reinstated.

3. The grounds raised by the Applicant to impugn the order of her suspension are as follows :-

(a) For the Applicant who was holding the post of 'Police Constable', the Police Commissioner, Mumbai was the Competent Authority. Therefore, the Respondent i.e. Deputy Commissioner of Police was not competent to pass it.

(b) Section 25 of the Maharashtra Police Act, 1951 does not include Deputy Commissioner of Police as one of the authorities who can impose any of the punishments provided in the said sections. It would follow that the Respondent could not have, therefore, passed the impugned order of suspension of the Applicant by way of interim measure. Proviso to Rule 3 of the Bombay Police (Punishments and Appeals) Rules, 1956 does not show that the Respondent had been empowered by the State Government, by issuing special or general orders, to place police personnel of the rank of Police Constable under suspension.

(c) Assuming that the Respondent could have passed the impugned order, it was incumbent upon him, he being lower in rank than the Competent Authority, to forthwith report to the Competent Authority, the circumstances in which the order of suspension was made as per the proviso to clause (i) of sub-rule

(1)(A) of Rule 3 of the Bombay Police (Punishments and Appeals) Rules, 1956.

(d) Notification dated 12.01.2011 (Exhibit 'G') issued by the Home Department of the Government of Maharashtra does not name Deputy Commissioner of Police as one of the authorities who can pass an order of suspension against 'Police Constable'.

(e) Standing orders issued by the Police Commissioner which are not in accorded with Notification dated 12.01.2011 cannot override the said Notification.

4. On the basis of above referred grounds, the Applicant prays that the order of her suspension be declared to be *non-est*, and it be further declared that for the period of her suspension beyond 90 days, she is entitled to get full pay and allowances.

5. Hence, this Original Application.

6. Stand of the Respondent is as follows :-

The Applicant was placed under suspension because she was in custody in connection with a crime for more than 48 hours. The standing order dated 03.04.1993 and office order dated 29.06.1993 issued by the Commissioner of Police, Brihanmumbai empowered the Respondent to pass the impugned order. The issue involved in this O.A. is squarely dealt with by this Tribunal in its judgment dated 27.09.2022 in **O.A.No.613/2022 (Shri Suresh Bamane V/s Deputy Commissioner of Police, Armed Police, Naigaon, Mumbai)**. As per the standing order dated 06.06.2002 issued by the Commissioner of Police, Mumbai the Deputy Commissioner of Police is empowered to take action as per the rules under the Bombay Police (Punishments and Appeals) Rules, 1956. The Notification dated 12.01.2011 also provides for passing an order of suspension by the authority which is lower in rank to the Appointing Authority. Such authority then has to report to the Competent Authority, the circumstances under which the order of suspension was passed. Now, chare-sheet dated 28.02.2023 is served on the Applicant.

Considering all these circumstances, the impugned order of suspension of the Applicant cannot be faulted.

7. In his Rejoinder, the Applicant has pleaded that by the Standing Order dated 06.06.2002 only powers of imposing punishment are delegated by the Commissioner of Police and under this order, power of passing an order of suspension is retained by the Commissioner of Police and not delegated to subordinate authority. The Applicant has further pleaded that when O.A.No.613/2022 was decided by this Tribunal by judgment dated 27.09.2022, attention of the Tribunal was not invited to Standing Order dated 06.06.2002. Consequently, the decision of this Tribunal dated 27.09.2022 cannot be pressed into service while deciding instant O.A.

8. In judgment dated 27.09.2022, this Tribunal observed :-

"Suffice to say, Deputy Commissioner of Police, if specifically empowered by Commissioner of Police under Section 10(2) of Maharashtra Police Act, he is competent to exercise all powers including powers of suspension. Only because in Notification dated 22.01.2011, the name of DCP is not figured that would not take away source of power given to DCP within the meaning of Section 10(2) of Maharashtra Police Act. I, therefore, see no illegality in issuance of suspension order by Deputy Commissioner of Police."

9. The Applicant has relied on the judgment dated 03.01.2023 passed by this Tribunal in **O.A.No.1098/2022 (Shri Dada Somnath Sul V/s Deputy Commissioner of Police, Zone -2, Panvel, Navi Mumbai)**. In this case, it is held:-

"8.Rule 3(1-A) of Maharashtra Police (Punishment & Appeal) Rules, 1956 is as under:-

***"3(1-A) :** (i) the appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place, a Police Officer under suspension where-*

(a) an inquiry into his conduct is contemplated or is pending,

or

(b) a complaint against him of any criminal offence is under investigation or trial:

Provided that where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made.

Explanation - The suspension of a Police officer under this sub-rule shall not be deemed to be a punishment specified in clause (a-2) of sub-rule (1).

(ii) A Police Officer who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended by the appointing authority under the rule."

9. Thus, it is the appointing authority or any other authority to which it is subordinate or any other authority empowered by the State Government in this behalf is empowered to place Police Officer under suspension. Thus, DCP is not appointing authority. Admittedly, DCP does not figure in the Notification dated 12.01.2011 issued by Home Department, Government of Maharashtra whereby powers are conferred on certain Police Officers to suspend the Police Officers cadre-wise. It speaks about the powers of Commissioner of Police including Railway Police in their respective Commissionerate to suspend Police Officers of and below the rank of Police Inspector. Suffice to say, there is no such empowerment by the Government in favour of DCP investing the powers of suspension to be exercised under Rule 3(1-A) of Maharashtra Police (Punishment & Appeal) Rules, 1956.

10. Insofar as Office Order dated 30.06.2014 is concerned, it's perusal reveals that Commissioner of Police, Navi Mumbai empowered the DCP to impose minor punishment of warning, fine and withholding of increment. Thus, apparently, the purported empowerment relates to punishment only. Indeed, this aspect is made clear by explanation given below the Chart. It would be apposite to reproduce Chart along with explanation, which is as under :-

"मुंबई पोलीस अधिनियम १९५१ मधील कलम २५ व २६ मध्ये करण्यात आलेल्या सुधारणांच्या पार्श्वभूमीवर नवी मुंबई पोलीस आयुक्तालयाच्या आस्थापनेवर कार्यरत असलेल्या पोलीस अधिका-यांना खालील प्रमाणे शिस्तभंगाची कारवाई करण्याचे अधिकार प्रदान करण्यात येत आहेत.

३	१) पोलीस उप आयुक्त, (मुख्यालय), नवी मुंबई. २) पोलीस उप आयुक्त, गुन्हे शाखा, नवी मुंबई. ३) पोलीस उप आयुक्त, विशेष शाखा, नवी मुंबई. ४) पोलीस उप आयुक्त, वाहतूक शाखा, नवी मुंबई. ५) पोलीस उप आयुक्त, परिमंडळ-१ वाशी, नवी मुंबई. ६) पोलीस उप आयुक्त, परिमंडळ-२, पनवेल.	१) पोलीस उपनिरीक्षक २) पोलीस शिपाई ते सहाय्यक पोलीस उपनिरीक्षक (PC to ASI)	मुंबई पोलीस (शिक्का व अपिले) नियम १९५६ मधील नियम ३ मध्ये खालील नमूद केलेल्या किरकोळ शिक्का १) ताकीद देणे २) सक्त ताकीद ३) मूळ वेतनाएवढा दंड ४) वेतन स्थगित खालील नमूद करण्यात आलेल्या स्पष्टीकरणाच्या अधीन राहून मुंबई पोलीस (शिक्का व अपिले) नियम १९५६ मधील नियम ३ मधील सर्व शिक्का (मोठ्या/ किरकोळ)
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स्पष्टीकरण :- पोलीस उप आयुक्त आणि अपर पोलीस आयुक्त यांनी निलंबित तसेच बडतर्फी, सेवेतून कमी व सक्तीने सेवानिवृत्त, इ. कारवाई करताना कसूरदाराच्या नियुक्तीचे आदेश कोणत्या दर्जाच्या अधिका-याने निर्गमित केले आहेत याबाबत स्वतः खात्री करून त्यांना त्या शिक्षाबाबतचे आदेश निर्गमित करावेत. जर कसूरदाराच्या नियुक्तीचे, पदोन्नतीचे आदेश पोलीस आयुक्त, नवी मुंबई यांचे स्वाक्षरीने निर्गमित केले असल्यास अशा कसूरदाराच्या निलंबनाचे, बडतर्फी, सेवेतून कमी व सक्तीने सेवानिवृत्त या शिक्षाबाबतची प्रकरणे पोलीस आयुक्तांकडे सादर करावीत. ”

11. Thus, in the first place, the purported empowerment to DCP pertains to impose minor punishment and by way of explanation, it is clarified that insofar as suspension, dismissal and removal from service is concerned, where appointment order is by Police Commissioner, Navi Mumbai, in that event, such matters are required to be placed before Commissioner of Police, Navi Mumbai for appropriate orders. This being the position, the Office Order dated 30.06.2014 is of no assistance to learned P.O.

12. Reliance placed by learned Presenting Officer on the decision rendered by the Tribunal in **O.A.No.613/2022 (Suresh B. Bamane Vs. Deputy Commissioner of Police) decided on 27.09.2022** is misplaced. In that case, by Office Orders dated 03.04.1993 and 29.06.1993, the Commissioner of Police had specifically empowered DCP to exercise his powers of suspension. Therefore, in the light of Office Orders dated 03.04.1993 and 29.06.1993, the Tribunal held that DCP can exercise the powers of suspension by virtue of Section 10 of Maharashtra Police Act. Section 10(2) of Maharashtra Police Act provides that “Every such Deputy Commissioner shall, under the orders of the Commissioner, exercise and perform any of the powers, functions and duties of the Commissioner to be exercised or performed by him under the provisions of this Act or any other law for the time being in force.” Therefore, the Tribunal held that there was delegation of powers by Commissioner of Police to DCP by Office Orders dated 03.04.1993 and 29.06.1993. However, in the present case, there is no such delegation of powers of suspension by Commissioner of Police, Navi Mumbai to the Respondent – DCP, Zone-II, Panvel. The Office Order dated 30.06.2014 as reproduced above speaks about delegation of powers of punishment to DCP and insofar as suspension is concerned, there is no such delegation of powers to DCP. On the contrary, by way of explanation, it is made abundantly clear that where appointing authority is Commissioner of Police, then he is the only competent authority to take a call.”

10. The Respondent has relied on the judgment of the Hon’ble Supreme Court in Civil Appeal No.10831/2010 with Civil Appeal No.10832/2010. In these appeals, the question involved was whether the order of dismissal / suspension was passed by the Competent Authority. The Tribunal as well as the High Court held that the authorities passing order of dismissal/suspension were not competent authorities. It was held:-

"Our attention has been drawn to Section 25 of the Bombay Police Act, 1951 which is as under:

25. Punishment of the members of the subordinate ranks of the Police Force departmentally for neglect of duty, etc. (1) 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 in the opinion of the State Government or such authorized officer, is cruel, perverse, remiss or negligent in, or unfit for, the discharge of his duties, any one or more of the following penalties, namely:-

- (a) recovery from pay of the whole or part of any pecuniary loss caused to Government on account of the negligence or breach of orders on the part of such Inspector or any member of the subordinate rank of the Police Force;
- (b) Suspension;
- (c) reduction in rank, grade or pay, or removal from any office of distinction or withdrawal of any special emoluments;
- (d) Compulsory retirement;
- (e) removal from service which does not disqualify for future employment in any department other than the Police Department;
- (f) dismissal which disqualifies for future employment in Government service;

Provided that, suspension of a police officer pending an inquiry into his conduct or investigation of a complaint against him of any criminal offence shall not be deemed to be a punishment under clause (b).

(1A) 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 punishments 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 punishments 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.]

Punitive powers of [Director-General and Inspector-General], Commissioner, Deputy Inspector General [(including Director of Police Wireless)] and [Superintendent] [and Principal of Training Institution].

[(2) (a) The Director General and Inspector General] including Additional Director General, Special Inspector General, Commissioner including Joint Commissioner, Additional Commissioner and Deputy Inspector General shall have authority to punish an Inspector or any member of the subordinate rank under sub-section (1) of (1A). A Superintendent shall have the like authority in respect of any police officer subordinate to him below the grade of Inspector and shall have powers to suspend an Inspector who is subordinate to him pending enquiry into a complaint against such Inspector and until an order of the Director General and Inspector or Additional Director General and Inspector General and including the Director of Police Wireless and Deputy Inspector General of Police can be obtained.]

(b) The Principal of [a Police Training College] shall also have the like authority in respect of any member of the subordinate ranks of the Police Force below the grade of Inspector [undergoing training at of [such [College] or) serving under him, and in respect of head constables and constables belonging to the Police Force of [the District in which such [College] is situated) or of any other district attached to [such [College] for duty under him. [He may also suspend an Inspector who is [undergoing training at [such College] or] subordinate to him pending inquiry into a complaint against such Inspector and until an order of the [Director General and Inspector General] or Deputy [Director-General] and Inspector General] can be obtained]

[(ba) The Principal of a Police Training School shall have authority in respect of any member of the subordinate ranks of the Police force below the grade of an Inspector, undergoing training at such school or serving under him, or attached to such school for duty under him.]

[(bb) ***]

(c) the exercise of any power conferred by this sub-section shall be subject always to such rules and orders as may be made by the State Government in that behalf.

(3) Nothing in [sub-section (1), (1A)] and (2)-

(a) shall affect any Police Officer's liability to a criminal prosecution for any offence with which he may be charged; or

(b) shall entitle any authority subordinate to that by which the Police Officer appointed, to dismiss or remove him.

A perusal of section 25(2)(a) clearly shows that the Special Inspector General of Police as well as the Additional Commissioner of Police are the competent authorities to impose the punishment on police officer of the rank of Inspector or lesser than that. Under the proviso to Section 25(1), the said officer (s) are also the officers to pass the order of suspension. Moreover, Rule 3(1-A)(i) of the Rules also provides that the Appointing Authority or any other authority to which it is subordinate or

any other authority empowered by the State Government can pass the order of suspension pending enquiry.

(emphasis supplied)

11. It was submitted by the learned P.O. that Notification dated 12.01.2011 issued by the Home Department specifically states :-

“ If the order of suspension as aforesaid is issued by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order of suspension was made as the proviso clause (i) of sub-rule (1-A) of rule 3 of Bombay Police (Punishment and Appeals) Rules, 1956.”

It was further submitted that by Standing Order dated 06.06.2002, the powers to place the Police Constable under suspension have been delegated to Police Officers holding the rank of Deputy Commissioner of Police. The Standing Order dated 06.06.2002 *inter-alia* states :-

पोलीस उप आयुक्त	पोलीस उप निरीक्षक दर्जाचे पोलीस अधिकारी.	मुंबई पोलीस (शिक्षा व अपिले) नियम १९५६ मधील नियम 3(1)(a-1), (a-2), (i), (i-a), (ii) and (iii) मध्ये नमूद केलेल्या शिक्षाव्यतिरिक्त अन्य सर्व शिक्षा
	सहाय्यक पोलीस उप निरीक्षक व त्याखालील दर्जाचे सर्व पोलीस अधिकारी व पोलीस अमलदार	खाली नमूद करण्यात आलेल्या स्पष्टीकरणाच्या अधीन राहून मुंबई पोलीस (शिक्षा व अपिले) नियम १९५६ मधील सर्व शिक्षा

This order does not show that thereunder powers to place Police Constable under suspension have been delegated to Police Officers holding the rank of Deputy Commissioner of Police.

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A conjoint consideration of Notification dated 12.01.2011 and Standing Order dated 06.06.2002 shows that powers to place Police Constable under suspension are not delegated to Police Officers holding the rank of Deputy Commissioner of Police. This flaw will render the impugned order of suspension unsustainable.

12. For the reasons discussed hereinabove, the impugned order of suspension of the Applicant dated 14.09.2021 is quashed and set aside. The Applicant is held entitled to all benefits flowing from this determination. The same shall be paid to ^{her} ~~him~~ within two months from today.

13. No order as to costs.

Sd/-

(M. A. Lovekar)
Vice-Chairman