

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.896 OF 2024

DISTRICT : PUNE

Subject : Minor Punishment

Shri Sunil S. Pawar,)
Age : 57 Yrs., Working as Assistant)
Sub-Inspector, Unit-3, Crime Branch,)
Pune City Police Commissionerate,)
R/o. Suraj Classics, Flat No.15, Rasta Peth)
Pune – 411 011)...**Applicant**

Versus

The Director General and Inspector General)
of Police, M.S, Mumbai.)
Through the Additional Director General)
of Police (Administration), Old Council)
Hall, Shahid Bhagatsing Marg,)
Mumbai – 400 039)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant

Smt. Archana B. Kololgi, Presenting Officer for Respondents

CORAM : Shri A.M. Kulkarni, Member (A)

RESERVED ON : 5th February, 2025

PRONOUNCED ON : 14th February, 2025

J U D G M E N T

1. By the present OA applicant prays for directions to set aside the impugned order dated 8.7.2024 passed by the respondent wherein he modified the order of punishment dated 15.4.2022 passed by the Deputy Commissioner of Police, Zone-2, Pune City from 'stoppage of increment for a period of 2 years without affecting the future increments' to that of "सक्त ताकीद" (strict warning) and accordingly grant all consequential service benefits.
2. Learned Advocate for Applicant states that Applicant who is presently serving on post of ASI in Unit-III Crime Branch in establishment of Commissioner of Police, Pune had been earlier awarded punishment of 'Stoppage of One Increment for 2 Years Without Effect on Future Increments'. Now the 'Minor Penalty' imposed earlier has been reduced to "सक्त ताकीद" (strict warning) in Order passed on 08.07.2024 in Appeal by Additional Director General (Admin.), M.S, Mumbai.
3. Learned Advocate for Applicant states that 'Strict Warning' cannot be imposed as it is not provided under Section 25(1-A) of Maharashtra Police Act, 1951 as it provides for 'Minor Punishment' of only 'Warning'.
4. Learned Advocate for the Applicant submits that in the punishment order dated 19.04.2022 though final order mentions Bombay Police Act, 1951 Sections 25 & 26 and Mumbai Police (Punishment & Appeals) Rules, 1956, no specific provision of the Rules has been mentioned.
5. Learned Advocate for the Applicant submits a copy of Maharashtra Police Act as modified up to 7th June, 2013 published in 2013 by Government Printing Press wherein under Section 25(1)(क)(ख), it mentions "ताशेरे ओढणे" (ज्याची नोंद त्याच्या सेवा पुस्तकात घेतली जाईल).

6. The learned Advocate for Applicant submits that whereas no specific Rule has been mentioned in order of 19.04.2022, specific Section of the Act has been mentioned. It is a settled position that any Act will prevail over the Rules. The learned Advocate for Applicant draws my attention to communication addressed by Section Officer Uday B. Kannav, M.S, Home Department, Mumbai to Additional DG (Admin.), M.S, Mumbai dated 04.09.2020. A copy of this has been addressed to Respondent No.2 in current OA as well wherein in opening Para, it has been mentioned that “सक्त ताकीद ही शिक्षा म्हणून गणण्यात येत नसल्याने ...”.

7. The learned Advocate for Applicant relies on the Judgment of this Tribunal in OA No.295/2018 in Vaibhavi V. Harne's matter. The Judgment was delivered on 09.01.2020. There is reference to the Hon'ble Supreme Court Judgment in **Vijay Singh Vs. State of UP and Ors. (Appeal No.3550/2012)** in Para 25 of this Judgment. Paras 22 to 26 of the judgment reads as under:

“22. Furthermore, the Appellate Authority has imposed the punishment of strict warning (सक्त ताकीद) which is not provided in Rules 1956, as rightly pointed out by the learned counsel for the applicant. Initially the Disciplinary Authority has imposed punishment of withholding of two increments without cumulative effect by order dated 6.8.2016 exercising powers under Section 25 of the Bombay Police Act, whereas the Appellate Authority modified it to punishment of strict warning without reference to any of the provisions of law in which the same is contemplated.

23. As per Section 25 (1)(A) of the Maharashtra Police Act, 1956, following are the punishments:-

“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 subsection (2), in that behalf, may imposed 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 disqualified for future employment in Government service.....*

(1A) *The State Government or any officer authorized under subsection(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."*

24. *As such the punishment imposed by the Appellate Authority as 'strict warning' is not at all provided in the Statute.*

25. *Shri Bandiwadekar, learned counsel for the applicant in this behalf referred to the decision of the Hon'ble Supreme Court in Vijay Singh Vs. State of U.P & Ors, Civil Appeal No. 3550/2012, where the punishment of withholding of integrity certificate for the year 2010 was imposed. It was a case arising from U.P Police Officers of the subordinate ranks (Punishment & Appeal) Rules, which doesn't provide for punishment of withholding of integrity certificate. Hon'ble Supreme Court held that the punishment which is not prescribed under the Rules cannot be awarded and punishment outside the purview of the statutory rules is nullity. As regards the obligation cast upon the Appellate Authority, it has been further held that the statutory authorities are under legal obligation to decide the appeal or revision dealing with the grounds taken in appeal / revision, otherwise, it would be a case of nonapplication of mind.*

26. *For the reasons mentioned as to ground Nos.(c) and (d), the order passed by Appellate Authority is not sustainable in law and deserves to be quashed. However, it would be appropriate to remand the matter to the Appellate Authority to decide the appeal afresh after giving opportunity to the applicant in accordance to law. I am, therefore, inclined to remand the matter to the Appellate Authority to decide the same afresh in accordance to law. Hence, the following order.*

O R D E R

(A) *The Original Application is allowed partly.*

(B) The impugned order dated 24.11.2017 is quashed and set aside. The matter is remitted back to Respondent no. 2, Appellate Authority with directions to decide appeal afresh within two months from today in accordance to law and observation made in order after giving opportunity of hearing to the applicant.

(C) No order as to costs.”

8. Learned PO submits that the order of punishment dated 19.4.2022 of 'stoppage of increment for two years without cumulative effect' awarded to the Applicant is based on Bombay Police Act, 1951 Sections 25 and 26 of Mumbai Police (Punishments & Appeals) Rules, 1956. Learned PO produces original Marathi Book of Mumbai Police Rules of 1956 (updated till 30.04.1979) published by Government Printing Press, Mumbai in 1983. Learned PO draws my attention to the order dated 8.7.2024 passed by the appellate authority, the Additional Director General (Admin), Maharashtra Dr. Nikhil Gupta (Page 22 of OA) wherein the punishment awarded to the Applicant has been revised and reduced to "सक्त ताकीद".

9. Learned PO further submits that Mumbai Police (Punishment & Appeals) Rules, 1956 have not been amended. She contends that in view of this fact, the punishment of "सक्त ताकीद" awarded to the Applicant is valid. She wants to submit the copies of relevant pages of these Rules. She also provided the copy of the said to the Applicant.

10. Learned PO submits that it is not necessary to mention the specific Act/Rules, provisions in the final order to be passed in any punishment, as the same has been mentioned in the original order passed by the Competent Authority on 19.04.2022. Learned Advocate for the Applicant draws my attention also to MAT Principal Bench order dated 25.4.2023 of the Division Bench in OA No.960/2019 (Shri Abhimanyu E. Kerure Vs.

The State of Maharashtra & Ors.), especially Para 6, 7 & 8 of this Judgment, which reads as under:

“6. On hearing these submissions, we put query to the learned C.P.O, as to under what circumstances a warning is generally given in the administration. Learned C.P.O submits that warning is not a punishment under the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. These submissions of the learned C.P.O is acceptable. However, our query is not about the punishment, but under what circumstances a warning is given to a civil servant. Learned C.P.O on instructions from the officer present states that they not in a position to submit.

7. Considering the submissions and the answer given to our queries, as per Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, ‘warning’ is not a punishment. We understand that when a person is at fault or committed any wrong then he is required to be corrected or to be improved for which ‘warning’ is given. However, when a person has not done any wrong, all he has acted as per the rules, within his authority, then there is no need to give him the ‘warning’. The morale of the Civil servant matters. Nothing is pointed out to us and nothing is placed on record to support the remarks passed by the Hon’ble Minister. Needless to say, that every order passed or action taken by the authority should be fair and judicious adhering to the principles of natural justice. In the present case, therefore, we hold that such remark and action of giving warning to the applicant in the present factual and legal scenario is unwarranted, unfair and arbitrary. Hence, it is necessary to invoke the power of judicial review to quash and set aside the said order of giving ‘warning’.

8. Hence, we pass the following order.

(a) *The Original Application is allowed.*

(b) *We uphold the order of the Respondent-State of closing the departmental enquiry against the applicant. However, the order of giving 'warning' to the applicant is hereby quashed and set aside."*

11. I have considered the submissions of both the sides and perused the documents produced. It is found that the specific Rule of the Mumbai Police (Punishments & Appeals) Rules, 1956 is Rule 3(2)(2) which mentions 'minor punishments' of which No.2 is "सक्त ताकीद (ज्याची नोंद त्याच्या सेवा पुस्तकात घेतली जाईल)" whereas Rule 5 mentions "वेतनवाढी रोखणे". Rule 3(2) reads as under:

“३(२) त्याचप्रमाणे कोणताही पोलीस अधिकारी शिस्तभंग किंवा गैरवर्तणूक किंवा ज्यायोगे तो आपले कर्तव्य बजावण्यास अपात्र ठरेल असे कोणतेही कृत्य करण्याबद्दल दोषी ठरेल आणि त्यास निलंबित करणे किंवा बडतर्फ करणे किंवा नोकरीतून काढून टाकाणे आवश्यक नसेल, तर त्यास खालील शिक्षा करता येतील :-

- (१) ताकीद देणे,
- (२) सक्त ताकीद (ज्याची नोंद सेवापुस्तकात घेतली जाईल),
- (३) जादा कवायत,
- (४) एका महिन्याच्या पगारापेक्षा अधिक नाही, असा दंड,
- (५) वेतन वाढी रोखणे.”

12. As per Maharashtra Police Act of 2013, Section 25(1) in totality has been amended vide the footnote which reads thus: “सन २००० चा महाराष्ट्र अधिनियमचा क्रमांक ४०, कलम ६ अन्वये मूल मजकूर ऐवजी हा मजकूर दाखल करण्यात आला.” Section 25 reads as under:

“२५. (१) राज्य शासनास किंवा पोट-कलम (२) अन्वये त्याबाबतीत प्राधिकृत केलेल्या कोणत्याही अधिका-याला, निरीक्षक किंवा पोलीस दलातील दुय्यम दर्जाचा कोणताही सदस्य, आपले कर्तव्ये बजावण्याच्या बाबतीत कुर, विकृत, बेपर्वा अगर निष्काळजी आहे किंवा आपली कर्तव्ये बजावण्यास अयोग्य आहे असे राज्य शासनाचे, किंवा पोट-कलम (२) अन्वये त्याबाबतीत प्राधिकृत करण्यात आलेल्या कोणत्याही अधिका-याचे मत झाल्यास, त्यास त्यांच्यावर खालीलपैकी एक किंवा त्यापेक्षा अधिक शास्ती लादता येईल.

(क) अशा निरीक्षकाच्या किंवा पोलीस दलात दुय्यम दर्जाच्या कोणत्याही सदस्याच्या निष्काळजीपणामुळे किंवा आदेशभंगामुळे झालेल्या शासनाच्या कोणत्याही आर्थिक हानीची संपूर्ण किंवा अंशतः वसुली त्याच्या वेतनातून करणे;

(ख) निलंबन;

(ग) खालच्या दर्जावर, श्रेणीवर किंवा वेतनश्रेणीवर आणणे, किंवा कोणत्याही मानविशिष्ट पदावरून काढून टाकणे किंवा विशेष वित्तलब्धी काढून घेणे;

(घ) सक्तीची निवृत्ती;

(ङ) भविष्यात पोलीस सेवेतून काढून टाकणे, खात्याव्यतिरिक्त इतर कोणत्याही शासकीय खात्यामध्ये नोकरीसाठी अनर्ह ठरणार नाही;

(च) भविष्यात शासनाच्या सेवेत नोकरीसाठी अनर्ह ठरतील अशी बडतर्फी;

परंतु, त्यांच्या वर्तणुकीसंबंधीची चौकशी किंवा कोणत्याही फौजदारी गुन्ह्यासंबंधित त्यांच्याविरुद्ध आलेल्या तक्रारीचे अन्वेषण प्रलंबित असतानाच्या काळात एखाद्या पोलीस अधिका-याला निलंबित करणे ही, खंड (ख) खालील शिक्षा आहे, असे मानण्यात येणार नाही.

१-क) राज्य शासनास किंवा पोट-कलम (२) अन्वये त्याबाबत प्राधिकृत केलेल्या कोणत्याही अधिका-यास शिस्तभंगाबद्दल किंवा गैरवर्तणाबद्दल अगर, आपले कर्तव्य

बजावण्यास अयोग्य ठरवील अशा कृत्याबद्दल दोषी असलेला निरीक्षक किंवा पोलीस दलातील दुय्यम दर्जाचा कोणताही सदस्य, यांचा दोष पोट-कलम (१) मध्ये निर्दिशिलेली कोणतीही शिक्षा देण्यासारख्या स्वरूपाचा नाही असे राज्य शासनाचे किंवा अशा प्राधिकृत केलेल्या अधिका-याचे मत असेल तर, अशा निरीक्षकावर किंवा दलातील दुय्यम दर्जाच्या कोणत्याही सदस्यावर पुढीलपैकी कोणतीही एक किंवा अधिक शिक्षा लादता येतील :-

- (क) ताकीद देणे;
- (ख) ताशेरे ओढणे (ज्याची नोंद त्याच्या सेवापुस्तकात घेतली जाईल);
- (ग) अतिरिक्त कवायत;”

12. For aforesaid reasons, the following order is passed:

ORDER

(A) The Original Application is allowed partly.

(B) The impugned order dated 8.7.2024 is quashed and set aside. The matter is remitted back to Respondent, Appellate Authority with directions to decide appeal afresh within two months from today, in accordance to law and observation made in order, after giving opportunity of hearing to the applicant and communicate the decision to the applicant within one week thereafter.

(C) No order as to costs.

Sd/-
(A.M. Kulkarni)
Member (A)
14.2.2025

Dictation taken by: SKW & SGJawalkar.