

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.355 OF 2018

**DISTRICT : PUNE
SUB : Removal from Service**

Smt. Jameelah Moulabaksh Shaikh,)
Aged 40 Yrs, Occ : Nil, Ex. Higher Grade)
Stenographer attached to the office of the
Additional Director General of Police)
(Wireless), (M.S.), Pune.)
R/o. A/18, Gharkul Housing Society,)
MHADA, Morwadi, Pimpri, Pune – 18.)... **Applicant**

Versus

1. The Commissioner of Police, Pune,)
 Having office at Pune.)
2. The Director General and Inspector)
 General of Police, (M.S.), Mumbai, having)
 Office at Old Council Hall, Shahid)
 Bhagatsinh Marg, Mumbai 400 039.)
3. The State of Maharashtra, through)
 Principal Secretary, Home Department,)
 Having office at Mantralaya, Mumbai 32.)...**Respondents**

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

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman.
 Hon'ble Shri Debashish Chakrabarty,
 Member (A)

Reserved on : 01.04.2025

Pronounced on : 23.04.2025

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

JUDGEMENT

Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. Case of the Applicant is as follows. The Applicant joined Police Department as 'LPC' on 01.03.1996. After change of cadre she was appointed as Junior Clerk in the year 2000. In the year 2007 she was appointed as Higher Grade Stenographer which is a Class-III post. She was working on the establishment of Additional Commissioner of Police, South Division, Pune City. In Crime No.71/2009 registered at Ajani Police Station, Nagpur City under Section 306 of IPC she was arrested on 17.03.2009. The allegation against her was that she had abetted commission of suicide by Police Inspector Mujib Karjatkar. By order dated 13.04.2009 she was placed under suspension w.e.f. 17.03.2009 as per Rule 4(2) (a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. By order dated 01.03.2012 she was called upon to show cause why departmental enquiry under Rule 8 of Rules of 1979 be not initiated against her. By applications dated 14.03.2012 and 26.04.2012 she prayed for staying the initiation of Departmental Enquiry on the ground that disclosure of her defence in Departmental Enquiry could adversely affect the criminal case which she was facing. However, she was served with a Chargesheet dated 16.06.2012. Deputy Commissioner of Police, Zone-1, Pune City was appointed as the Enquiry Officer. Her application dated 16.07.2012 to stay Departmental Enquiry during the pendency of criminal case went unheeded. However, her request to appoint Friend Officer to defend her was allowed by order dated 07.08.2012. Her representation dated 23.08.2012 to provide CDR of mobile phone of herself, deceased Karjatkar and his wife too,

went unheeded. Intimation regarding none of the dates of hearing in enquiry was received by her in time so as to enable her to put in her attendance and properly contest the proceeding. By application dated 08.07.2013 she asserted that the Enquiry Officer was biased and hence he should not proceed with the enquiry. She made a complaint against the Enquiry Officer to Respondent No.1 on 10.12.2013. The Enquiry Officer still proceeded with the enquiry and submitted his report on 31.12.2013. By judgment dated 27.05.2014 Additional Session Judge, Nagpur acquitted the Applicant. Without taking this development into account, the Respondent No.2 issued a Show Cause Notice dated 12.08.2015 to the Applicant proposing imposition of major penalty. By reply dated 22.09.2015 the Applicant prayed for exoneration. However, by order dated 25.01.2016, the Respondent No.2 imposed punishment of removal from service. The Appellate Authority, Respondent No.3, by order dated 31.01.2018 maintained order of Respondent No.2 and dismissed the appeal. Hence, this Original Application.

3. The Applicant has impugned orders dated 25.01.2016 and 31.01.2018 on the following grounds:-

- (1) Criminal case and Departmental Enquiry were based on the same set of facts. Hence, the Enquiry Officer ought to have waited for verdict of Criminal Court before proceeding with the Departmental Enquiry.
- (2) As per G.R. dated 03.04.2000 the Respondents ought to have deferred passing of final order in Departmental Enquiry till the decision in Criminal Case.

(3) No heed was paid to applications made by the Applicant to stay Departmental Enquiry proceeding till conclusion of Criminal Case.

(4) The Applicant had asserted that the Enquiry Officer was biased and prayed for *de-novo* enquiry. This request, too, was not acceded to without there being any legal justification for the same.

(5) Applications made by the Applicant to provide CDR of mobile phone of herself, the deceased Karjatkar and his wife were also not considered.

(6) Thus, at every stage of enquiry reasonable opportunity to defend herself was denied to the Applicant.

(7) From perusal of judgment in Criminal Case it can be clearly seen that the acquittal of the Applicant was honourable and not on account of extension of benefit of doubt.

(8) In the Departmental Enquiry, the Applicant did not examine herself. As per Rule 8(20) of Rules of 1979 she should have been generally questioned to explain circumstances appearing in evidence against her. This mandatory provision was not followed and thereby Departmental Enquiry stood vitiated.

(9) As per Circular of Respondent No.3 issued in December, 1998 it was necessary to record reasons for imposing severe punishment like removal from service. This guideline was not adhered to while passing the impugned orders.

(10) As per policy decision taken by the Government of Maharashtra on 28.10.2009 independent Enquiry Officer from the pool of retired Class-I Officers should have been appointed to conduct enquiry against the Applicant. This guideline was also not followed.

(11) As per G.R. dated 29.12.1988 Departmental Enquiry against the Applicant ought to have been entrusted to Special Enquiry Officer or District Enquiry Officer. Instead, an officer from the department was appointed as Enquiry Officer.

(12) Against the judgement of acquittal of the Applicant, State Government has not preferred appeal.

(13) Aforesaid circumstances taken together would show that the impugned orders cannot be sustained.

4. Stand of the Respondent No.2 is as follows. Departmental Enquiry was initiated and conducted as per applicable rules. Rules of natural justice were scrupulously followed. Ample opportunity was given to the Applicant to defend herself. Friend Officer was also appointed. She refused to avail these opportunities. Criminal Case and Departmental Enquiry could proceed simultaneously because nature of proof required in these proceedings is different. Charges in Criminal Case must be proved beyond reasonable doubt whereas in Departmental Enquiry charges can be proved on preponderance of probability. Besides, charges in Criminal Case and Departmental Enquiry were distinct and not the same. This Tribunal, in exercise of powers of judicial review, cannot sit in appeal over findings of facts recorded by the Disciplinary Authority which are based on evidence.

5. Further specific pleading of Respondent No.2 is as follows :-

“Then, the applicant and other government witnesses were called on 10.6.2013. On this date the applicant was present and in her presence the evidence of government witnesses 1) Ms. Karjatkar, 2) Ms. Alka Damodhar Bhillare, 3) Amman Gotem Fakir was recorded. On that day the applicant was required to remain present with her Friend Officer in the D.E., for which she was already informed by the D.E.O., still she failed to keep her Friend Officer present on 10.6.2013.

On 4.7.2013, the D.E.O. had given a letter to the applicant to remain present for recording her Second Statement and remain present before the D.E.O. on 17.09.2013. But she had not remained present. Then, on 28.10.2013, again the D.E.O. had issued a letter to the applicant that she remain present on 7.11.2013 with the list of her Defense Witnesses in the D.E. or else an ex-parte D.E. would be conducted. Again such letter was given to her on 11.11.2013 by the D.E.O. to the applicant through D.P.W., M.S., Pune.”

On all these grounds Respondent No.2 prays for dismissal of Original Application.

6. In Departmental Enquiry following charges were laid against the Applicant :-

“१. उच्चश्रेणी लघुलेखिका श्रीमती जमिला मौलाबक्ष शेख, नेमणूक अपर पोलीस आयुक्त, दक्षिण प्रादेशिक विभाग, पुणे शहर मयत नामे मुजीब कर्जतकर यांची प्रथम पत्नी नामे फौजीया मुजीब कर्जतकर या हयात असताना, तसेच स्वतः मयताची व त्यांची संमती नसताना त्यांच्यावर जबरदस्त मानसीक दबाव आणून कोणतेही कायदेशीर किंवा इतर सबळ कारण नसताना आणि शासनाची परवानगी नसताना तुम्ही मयत अधिका-याशी बेजबाबदारपणे द्वितीय विवाह करण्याचा प्रयत्न केलास व त्याद्वारे महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ मधील नियम क्र. २६ चा भंग करण्याचा आटोकाट प्रयत्न केला.

२. मयत नामे मुजीब कर्जतकरांवर तुमच्याबरोबर द्वितीय विवाह करण्याकरीता मानसिक दबाव आणण्याच्या हेतुने तुमच्या भ्रमण ध्वनीवरून मयताच्या भ्रमणध्वनीवर सातत्याने संदेश (SMS) पाठवून जाणीवपूर्वक गंभीर स्वरुपाचे गैरवर्तन केले.

३. मयत नामे मुजीब कर्जतकर यांचे उपरोक्ष त्यांच्या घरात त्यांची पत्नी नामे फौजीया कर्जतकर यांच्या संमतीशिवाय मयताच्या पत्नीच्या विरोधास न जुमानता जबरदस्तीने घूसून मयताच्या पत्नीस धमक्या देणे, शिवीगाळ करणे, मयतास घटस्फोट (तलाक) देण्यासाठी मयताच्या पत्नीवर दबाव आणणे इ. बेकायदेशीर, बेशिस्त व शासकीय कर्मचा-यास अशोभनीय असे वर्तन करून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ मधील नियम क. ३(३) चा भंग केला.

४. मयत पोलीस अधिकारी नामे मुजीब कर्जतकर तुमचे वरिष्ठ अधिकारी असतानाही त्यांचेप्रती आदराची भावना न बाळगता त्यांच्या बदल मनात वाईट वासना बाळगून त्यांचे सामाजीक, सांसरीक व वैवाहीक जीवन उध्वस्त करण्याचे अत्यंत अनैतिक, घृणास्पद व गंभीर स्वरुपाचे गैरवर्तन करून त्याद्वारे महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ मधील नियम क्र. ३(३) प्रमाणे शासकीय कर्मचा-यास अशोभनीय असे वर्तन केले आहे.”

By his report dated 31.12.2013, the Enquiry Officer held all these charges to be proved.

7. The Disciplinary Authority, Respondent No.2 concluded as follows :-

“अपचारी, श्रीमती शेख, उश्रेलले, यांच्याविरुद्धच्या विभागीय चौकशी प्रकरणातील विभागीय चौकशी अधिकारी यांनी सादर केलेला अंतिम समारोप अहवाल व विभागीय चौकशीच्या कागदपत्रांच्या काळजीपूर्वक छाननीअंती मी खाली नमूद केल्याप्रमाणे निष्कर्षाप्रत येत आहे :-

मयत नामे मुजीब कर्जतकर यांचे घरात त्यांची पत्नी नामे फौजीया कर्जतकर यांच्या संमतीशिवाय मयताच्या पत्नीच्या विरोधास न जुमानता जबरदस्तीने घूसून मयताच्या पत्नीस धमक्या देणे, शिवीगाळ करणे, मयतास घटस्फोट (तलाक) देण्यासाठी मयताच्या पत्नीवर दबाव आणणे इ. बेकायदेशीर, बेशिस्त व शासकीय कर्मचा-यास अशोभनीय असे वर्तन करून मयत पोलीस अधिकारी नामे मुजीब कर्जतकर त्यांचे वरिष्ठ असतांनाही त्यांचेप्रती आदराची भावना न बाळगता, त्यांच्याबदल मनात वाईट वासना बाळगून त्यांचे सामाजिक, संसारीक व वैवाहिक जीवन उध्वस्त करण्याचे अत्यंत अनैतिक, घृणास्पद व गंभीर स्वरुपाचे गैरवर्तन करून एका जबाबदार

शासकीय कर्मचा-यास अशोभनीय असे वर्तन केले आहे. सदर प्रकरणातील सर्व सरकारी साक्षीदारांचे जबाब आणि दस्तऐवजी पुराव्याच्या आधारे श्रीमती जमिला मौलाबक्ष शेख, उच्च श्रेणी लघुलेखिका यांचेविरुद्धचे दोषारोप क्रमांक १ ते ४ पूर्णपणे सिध्द होत आहेत.’’

8. The Appellate Authority concluded as follows :-

“सदर प्रकरणी वादी यांची बाजू ऐकून घेण्यात आली तसेच वादी यांनी सादर केलेली व इतर उपलब्ध कागदपत्रे तपासण्यात आली. त्यावरून असे दिसून येते की, अपिलार्थी यांना शिस्तभंग प्राधिकारी यांनी त्यांचेविरुद्ध उपलब्ध असलेल्या कागदपत्री पुराव्याच्या आधारे त्यांनी कर्तव्यात गैरवर्तणुक/गैरवर्तणाची कसुरी केल्याचे विभागीय चौकशीत दोषारोप सिध्द झाल्याच्या आधारे शिक्षा केलेली आहे. वादी यांची त्यांच्या गैरवर्तणाबाबतची कसुरी नाकारता येत नाही.’’

9. As per record, on 10.06.2013 statements of wife of the deceased, her younger brother and next-door neighbor of the deceased were recorded. By way of examination-in-chief of wife of the deceased her statement recorded by police at Ajani Police Station (‘and which was perhaps was treated as FIR’) was used and it was confronted to her and she admitted the same to be correct. Thereafter, she was made available for cross-examination. On this day, Friend Officer of the Applicant was absent. Her request to defer cross-examination was rejected and the statement was thus recorded to have been concluded. Other two witnesses gave their statements of examination-in-chief, and they were also not subjected to cross-examination owing to absence of Friend Officer and in this manner these statements were also shown to have been concluded.

10. Record further shows that on 10.06.2013 the Applicant had submitted an application before the Enquiry Officer that enquiry proceeding be stayed till CDR of herself, the deceased and his wife were made available to her since these details were crucial to her defence. This request was well founded considering charge no.2 (which is quoted above) levelled against the Applicant. This charge was the foundation. It stated that the Applicant used to repeatedly

send SMSes to the deceased on his mobile phone. According to the department this was the trigger which drove the deceased to commit suicide. Under such circumstances it was necessary for the department to provide relevant CDR to the Applicant to properly conduct her defence. Report of enquiry dated 31.12.2013 shows that the then Senior PI of Ajani Police Station, Nagpur by name Sunil Jaiswal was also examined by the department. He registered A.D. case regarding death of the deceased which was stated to be suicidal, registered Crime No.71/2009 under Section 306 of IPC, conducted investigation and submitted Chargesheet. His examination-in-chief was recorded by the Enquiry Officer. He stated that the investigation had revealed that the Applicant/Accused had abetted suicide of the deceased. He further stated that the deceased had left behind a suicide note holding the Applicant solely responsible for his suicide and absolving his wife, complainant completely.

11. During the enquiry one Imran Pathan was also examined. Examination-in-chief of Sunil Jaiswal and Imran Pathan was recorded by the Presenting Officer unlike the first three witnesses examined on 10.06.2013. Examination-in-chief of these three witnesses was recorded by the Enquiry Officer himself. However, none of the five witnesses examined during the enquiry was cross-examined. On 10.06.2013, the Applicant was present when statements of three witnesses were recorded but the Friend Officer was absent. When statements of Sunil Jaiswal and Imran Pathan were subsequently recorded the Applicant as well as the Friend Officer both were absent. Thus, in effect all five witnesses examined during the enquiry were not subjected to cross-examination.

12. On the basis of record, it can be concluded that on 10.06.2013 statements of witnesses were abruptly, and perhaps hastily closed. Thus, reasonable opportunity to defend herself was denied to the Applicant on this occasion. However, the day on which Sunil Jaiswal and Imran Pathan were examined, the Applicant remained absent. The Friend Officer was also absent on this day. What transpired on 10.06.2013 can be hardly said to be 'fair play'. It may be reiterated that natural justice is fair play, nothing more but nothing less.

13. We have observed that request of the Applicant to supply to her CDR was legitimate and justified. However, we may observe that subsequently when statements of Sunil Jaiswal and Imran Pathan were recorded, the Applicant and the Friend Officer remained absent without there being any compelling reason except to impede further progress in Departmental Enquiry. What happened on 10.06.2013 was opposed to principles of natural justice but what happened on the day on which statements of Sunil Jaiswal and Imran Pathan were recorded could be attributed to the Applicant herself. But for the last mentioned circumstance we might have concluded that the flaw which crept in Departmental Enquiry on account of what transpired on 10.06.2013 was sufficient to quash and set aside the impugned orders since they essentially arose out of Departmental Enquiry which in effect commenced with recording of statements of witnesses on 10.06.2013. However, later on the Applicant appears to have contributed to the deficiency which remained in the proceeding. On balancing these two circumstances, the first attributable to the Enquiry Officer and the second to the Applicant herself, we have come to the conclusion that the matter has to be remanded to conduct *de-novo* enquiry from the stage of recording of evidence.

14. For the reasons discussed hereinabove, we quash and set aside the impugned orders dated 25.01.2016 and 31.01.2018 and remand the matter to conduct *de-novo* enquiry from the stage of recording of evidence. The Respondents are directed to appoint Enquiry Officer and provide Friend Officer to the Applicant if she so desires. The enquiry shall be conducted in a fair manner. The Applicant shall extend full co-operation to ensure that enquiry is completed within the stipulated time. In case the Enquiry Officer finds that the Applicant is resorting to dilatory tactics he should record reasons for such conclusion, and proceed further. CDR sought by the Applicant shall be provided to her since this record appears to be necessary for her proper defence. We have refrained from making any observations with regard to the impugned orders, and dealing with rest of the submissions since we have directed *de-novo* enquiry. The enquiry shall be completed within six months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(M. A. Lovekar)
Vice-Chairman