

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.553/2022 (D.B.)

Suresh S/o Dashrath Idhole,
aged 38 years, Occ. NIL (Dismissed from service),
R/o Vardhaman Nagar, Kaulkhed,
Akola, Dist. Akola.

Applicant.

Versus

1. The State of Maharashtra,
Through Its Additional Chief Secretary,
Home Department, Mantralaya, Mumbai-32.
2. The Director General of Police,
Having its Office Near Regal Theater,
Kolaba, Mumbai.
3. The Superintendent of Police,
Akola, Tq. & Dist. Akola.

Respondents.

Shri S.P.Palshikar, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram :- **Hon'ble Shri Justice Vinay Joshi, Member (J) &
Hon'ble Shri Nitin Gadre, Member (A)**

JUDGMENT

Judgment is reserved on 04th March, 2025.

Judgment is pronounced on 24th April, 2025.

[Per :- Justice Vinay Joshi, Member (J)]

Heard finally with the consent of both learned counsel.

2. Punishment of dismissal from service imposed in departmental enquiry and its affirmation by Appellate Authority has been questioned in this Original Application.

3. The facts of the case can be stated briefly that, the applicant has joined on 30.12.2008 as Police Constable and posted at Police Head Quarter, Akola. After some transfers, he was re-posted at Police Head Quarter, Akola. On 25.12.2018, Crime No.696/2018 was registered against the applicant for the offence punishable under Sections 324, 504 r/w 34 of the Indian Penal Code (I.P.C.) and Section 85 of the Maharashtra Prohibition Act. It was alleged that on 25.12.2018 around 09.00 to 09.30 P.M. the applicant assaulted informant Vijay Nawkar by means of iron rod and thereby caused grievous hurt. So also, at relevant time the applicant was under influence of alcohol. Investigation in said crime laid to filing of charge sheet. After registration of crime, the applicant was suspended vide order dated 10.01.2019. It was followed by

initiation of departmental enquiry by respondent no.3 i.e. Superintendent of Police, Akola. Memorandum of charge, statement of imputation, list of witnesses and documents have been served. Initially applicant was singularly charged for causing grievous hurt to the informant Vijay Nawkar by means of iron rod leading to registration of crime for the offence punishable under Sections 324, 504 r/w 34 of the Indian Penal Code (I.P.C.) and Section 85 of the Maharashtra Prohibition Act. During pendency of enquiry, additional charge was framed alleging that the applicant had gave tip off to a habitual criminal Raja Raut about anticipated Police action and thus breach the Police discipline.

4. In domestic enquiry, three witnesses namely informant Vijay Nawkar, eye witnesses Balu Sirsat, and Pradip alias Rahul Thakur have been examined. After completing full-fledged enquiry, the Enquiry Officer held that the first charge about causing grievous hurt was proved, whilst the second charge of contacting criminal on Phone was partially proved. Appointing Authority agreed with both the findings and called upon the applicant by show cause notice dated 10.08.2020 to give his remark on the proposed punishment of dismissal from service. After hearing, the Appointing Authority vide impugned order dated 25.08.2020 has imposed major penalty of

dismissal from service. The said order was carried by applicant to both Appellate Authorities however, could not succeed. In turn, the applicant has approached to this Tribunal by invoking Jurisdiction under Section 19 of the Maharashtra Administrative Tribunals Act, for setting aside the order of dismissal.

5. The learned counsel for the applicant has assailed the impugned orders by raising serious grievance. It is contended that the enquiry was conducted in predetermined manner which is merely a farce. The Enquiry Officer has seriously erred in holding that the charges are proved. The findings recorded in the enquiry are based on assumption and presumption. There was no material against the applicant to hold that he has either caused grievous hurt or had a contact with criminal. During pendency of enquiry, additional charge was framed with malafide intention to some how rope the applicant. On the basis of same material, the Competent Criminal Court has acquitted the applicant from the charge of causing grievous hurt. The punishment imposed against the applicant was disproportionate to the proved misconduct.

6. Per contra learned P.O. resisted the application by canvassing that the enquiry was conducted by the Competent Officer.

The finding is based on relevant admissible material, hence interference is not called for.

7. It is not in dispute that while applicant was serving as Police Constable, at the instance of report lodged by one Vijay Nawkar Crime No.696/2018 was registered for the offence punishable under Sections 324, 504 r/w 34 of the Indian Penal Code (I.P.C.) and Section 85 of the Maharashtra Prohibition Act. It was alleged that on 25.12.2018 around 09.00 to 09.30 P.M., the applicant with his companion Shri Thakur was under influence of alcohol picked up quarrel with informant Vijay Nawkar. In the said occurrence the applicant dealt a blow, at the face of informant Vijay Nawkar by means of iron rod causing bleeding injury. It is not in dispute that on the basis of said incident, the applicant was tried in RCC No.506/2019 in the Court of J.M.F.C., Akola wherein he was acquitted vide judgment and order dated 24.08.2021. The applicant has not raised any grievance that no proper opportunity was given to him in departmental enquiry. Both sides have relied on various decisions to which we refer in the latter part, subject to relevancy.

8. On the canvass of these facts, we have analysed the available material. We are mindful of the settled legal position regarding the scope of interference in the findings recorded in

domestic enquiry. We may refer the decisions of Supreme Court in cases of *Principal Secretary, Govt. of A.P. & Another Vs. M. Adinarayana (2004) 12 SCC 579*, *Union of India & Ors. Vs. P. Gunasekaran (2015) 2 SCC 610* and *B.C.Chaturvedi Vs. Union of India & Ors. (1995) 6 SCC 749*. For the sake of convenience, we have culled out the ratio delineated in above decisions. The scope of interference with decision of disciplinary authority is limited. Interference is not permissible unless findings of the disciplinary authority are found to be perverse i.e. not passed on legal evidence. The Tribunal cannot venture into reappreciation of evidence. It can only consider whether enquiry held by the authority was in accordance with procedure and law, and by following principles of natural justice. The Tribunal can only interfere when the finding is wholly arbitrary, capricious based of no evidence. The Tribunal cannot interfere with finding of fact based on evidence and substitute its own independent finding. On the touch stone of above proposition of law, we have tested the submissions advanced by ld. counsels for the parties.

9. With the assistance of both sides, we have gone through the enquiry report and other related material. The learned counsel appearing for the applicant took us through various admissions given

by the witnesses in the domestic enquiry. It is argued that none of the witness has stated that the applicant assaulted by iron rod at the face of informant. There is no material to show that the applicant was under influence of liquor. No independent witness was examined. Moreover, the Enquiry Officer half-heartedly recorded that the second charge was partially proved.

10. The initial charge was as incident of assault dated 25.12.2018. It is the informant's case that on that day around 09.00 to 09.30 p.m. informant was near Panasonic Showroom on the road leading to Dakshata Nagar. While informant was chitchatting with his friend, the applicant and his associate Rahul Thakur arrived by consuming liquor. The applicant has argued with the informant at the instance of old dispute between informant and Shri Thakur. During argument, the iron rod held by applicant was hit at the face of informant causing bleeding injury. At that time, co-accused Shri Thakur also assaulted informant's friend Shri Sirsat at his neck by Tester. Informant and his other associates have cot hold the applicant on the spot, whilst Shri Thakur ran away. Immediately informant rushed to concerned Police Station and lodged the report. In order to establish the said principle charge, three witnesses have been examined in the departmental enquiry. The applicant's companion

Shri Pradip Thakur has been examined. Though he admitted of giving statement in the Preliminary Enquiry, however, he did not support the Department before Enquiry Officer. However, it emerges from his evidence that the incident occurred at relevant time near Panasonic Showroom. He admits that there was quarrel in between him and the applicant at one side, whilst informant Vijay Nawkar and his friends on the other side. He admits that at relevant time informant Vijay Nawkar sustained injury. Though he denied about the actual occurrence of assault, however, he has confirmed the occurrence of quarrel, presence of applicant and sustaining injury by informant Vijay Nawkar. Obviously, he being associate of applicant much cannot be expected from him which is a matter of appreciation.

11. Department has examined informant Vijay Nawkar who stuck to his initial statement about the assault. Though he admitted that he has not seen the exact weapon, however, he stated that due to the hit of weapon held by the applicant, he sustained bleeding injury. He has affirmed the incident of assault during his re-examination. Then department has examined eye witness Shri Balu Shirsat who was accompanying the informant. He has supported the evidence of informant. His cross examination does not yield to the extent of disabling his version.

12. Taking a resume of the evidence of informant, eye witness Shri Balu Sirsat and witness Shri Thakur, it emerges that at the relevant time incident occurred in which the applicant participated and by his weapon informant sustained injury. The said material was considered by the Enquiry Officer for arriving on the conclusion that the applicant has assaulted the informant.

13. The learned counsel appearing for applicant has attracted our attention to the Judgment of acquittal recorded by Magistrate in RCC No.506/2019 relating to same incident. Relying on the decision of the Hon'ble Supreme Court in case of **G.M.Tank Vs. State of Gujarat & Ors. (2006) 5 SCC 446**, it is argued that on the basis of same incident, evidence and witnesses, the applicant was acquitted by the Criminal Court and thus the contrary finding recorded in departmental enquiry would not sustain. We are well aware about the ratio laid down by the Hon'ble Supreme Court in said case, however, the said decision would not apply to the facts of this case.

14. Learned P.O. has rightly relied on the decision of the Hon'ble Supreme Court in case of **State of Rajasthan and Others Vs. Heem Singh (2021) 12 SCC 569** wherein Hon'ble Supreme Court has occasion to consider the effect of acquittal on disciplinary

proceeding. While elucidating the position, the Hon'ble Supreme Court has observed in para 38 as below:-

38. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Association Vs. Union of India, this Court held:

“37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.” (emphasis supplied)

39. In State V. S. Samuthiram, a two-Judge Bench of this Court held that unless the accused has an “honorable acquittal” in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an “honourable acquittal”.

15. We are compelled to think that the above observations would provide a complete answer to the submission raised by the applicant. It was not an acquittal on merit. In examination of the decision dated 24.08.2021 rendered by the Magistrate, it is evident that none of the witnesses including the informant and his friend supported the prosecution case. They have completely disowned the allegations made in the Police report. Since they left loyalty to the prosecution, for want of adequacy of evident, the Trial Court has recorded a Judgment of acquittal. Certainly, the applicant is not entitled to take benefit of said acquittal which was not on merit nor

“Hon’ble acquittal” but an acquittal extracted on account of hostility of witnesses.

16. We have referred above that injured Vijay Nawkar and his friend Shri Shirsat have stated about the occurrence. Their evidence in the domestic enquiry was remained intact. At this juncture, we must remember the legal position about the standard of proof required in criminal trial and departmental enquiry. In this regard, we may refer the decision of the Hon’ble Bombay High Court in case of **Union of India and Others Vs. S.M.Padwal 2024(4) Mh.L.J.596** which was relied by the applicant himself. It is ruled that the standard in both proceedings materially differs. On the basis of preponderance of probability the finding needs to be recorded in departmental enquiry. The relevant observations made in para 25 reads as below-

By now, it is well settled that standard of proof required for holding a person guilty in criminal charges and in an inquiry conducted by way of a departmental proceedings is entirely different. In a criminal case, onus of establishing the guilt is on the prosecution and if the prosecution fails to establish the guilt beyond reasonable doubt, the accused will be presumed to be innocent, however, strict burden of

proof required to establish guilt in a criminal case is not required in departmental proceedings and it is preponderance of probabilities which is sufficient to bring home a charge in the departmental matters. We may, in this regard, refer to the judgment of the Hon'ble Supreme Court in the case of [State of Rajasthan and Ors. Vs. Heem Singh](#), 2020 MhLJ Online (S.C.) 116 (2021) 12 SCC 569, wherein certain observations made by the Hon'ble Supreme Court in the case of State Vs. S. Samuthiram, 2012 MhLJ Online (S.C.) 35 (2013) 1 SCC 598 have been quoted with approval.

17. In domestic enquiry, the material which is logically probative to a prudent mind is to be accepted. The material i.e. the evidence of two witnesses logically tends to show the existence of the incident. The said evidence carries a high degree of probability and therefore we are loath to substitute the rational, logical and prudent inference drawn by the Enquiry Officer in the departmental proceeding.

18. So far as the second charge about giving tip off to the criminal, the department has examined three witnesses i.e. Rajesh

Raut, Gopal Panhalkar and Bhagwat Deshmukh. It is the prosecution case that Rajesh Raut was wanted criminal. The applicant telephonically informed him that Police are looking to him hence he should be aware. Naturally Rajesh Raut did not support the prosecution, however, Gopal Panhalkar who is a Driver of Rajesh Raut stated about telephonic talk in between them. Though Gopal Panhalkar tried to give a different colour to the talk, however, the inference drawn by the Enquiry Officer was quite probable and logical. In the circumstances, we see no reason to deviate from the findings recorded by Enquiry Officer.

19. The learned counsel for the applicant relied on the decision of Hon'ble Supreme Court in the case of S.M.Padwal (Supra) to contend that in absence of any evidence, guilt of employee in departmental proceeding cannot be proved. We have no doubt in our mind that in absence of material finding of guilt cannot be recorded. However, if there exist some evidence with degree of definiteness, then finding of guilt can be recorded in departmental enquiry. The said decision was restricted to the then facts wherein there was no material against the delinquent, but on two inadmissible confessions the finding of guilt was recorded. Moreover the witnesses to whom confession was given were not examined.

Thus, the finding being on inadmissible material and absence of any other evidence the employee was reinstated. As referred hereinabove two witnesses have stated about the actual assault. As regards to the second charge, C.D.R. and S.D.R. was recovered to establish the conversation with goon. The enquiry report also bears a reference that the Medical report was positive.

20. In conclusion, we are of the considered view that both the charges of misconduct are established by the department on the set parameters of the standard of proof required under domestic enquiry. We see no reason to substitute the finding of the Enquiry Officer which was rational and logical. The applicant being Police Constable has assaulted on Public road as well as kept contact with the criminal which is a matter of concern. The member of Police force shall carry high image in the society and should be off a clean rectitude. Though the department has pointed four other criminal cases against the applicant, however, we have kept them aside from our consideration. In conclusion, the punishment imposed by the Authority is quite proportionate to the serious misconduct. We see no exceptional reason to brand the punishment as shockingly disproportionate warranting interference.

21. In view of above, application carries no merits. **Hence,
Original Application is dismissed. No order as to costs.**

**(Nitin Gadre)
Member(A)**

**(Justice Vinay Joshi)
Member(J)**

Dated – 24/04/2025
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Member (J)
& Hon'ble Member (A).
Judgment signed on : 24/04/2025.
and pronounced on