

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 756 OF 2022

DISTRICT:- LATUR

Jitendra s/o Vitthal Kadam,)
Age: 52 years, Occu: Service as Asst. Police))
Inspector at Police Control Room,)
S.P. Office, Latur.)
R/o: Behind Kedarnath Mangal Karyalaya,))
Nath Nagar, Ausa.)
Tq. Ausa, Dist. Latur- 413520)... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Secretary,)
Home Department,)
Madam Kama Road, Hutatma)
Rajguru Chowk, Nariman Point,)
Mantralaya, Mumbai- 400 032.)

2. The Director General of Police)
(Maharashtra State),)
Shaheed Bhagat Singh Marg,)
Colaba, Mumbai-400001.)

3. Special Inspector General of Police,)
(Nanded Range), MHADA Colony,)
Nanded-431803.)

4. The Superintendent of Police)
(Latur District), S.P. Office,)
Ambejogai Road, Latur-413512.)
Tq. Latur, Dist. Latur.)...**RESPONDENTS**

APPEARANCE : Shri V.D. Godbharle, learned counsel
for the applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 19.09.2024.

PRONOUNCED ON : 24.10.2024.

ORDER

Heard Shri V.D. Godbharle, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking quashing and setting aside the order dated 17.05.2022 and further seeking direction to the respondents to consider out of service period from 01.07.2020 to 22.05.2021 as duty period for all the purposes and to pay the full back wages for that period and for that purpose issue necessary orders.

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

(i) The applicant had entered in the police department as Police Constable in the year 1990 and after passing of the

Maharashtra Public Service Commission (MPSC) examination for the post of Police Sub-Inspector as an in-service candidate, appointed as Police Sub-Inspector on 01.04.2005. He was promoted on the post of Assistant Police Inspector on 12.09.2014. He was transferred to Latur district in September 2016 and posted at Devni Police Station.

(ii) In the year 2017 the departmental enquiry came to be initiated against the applicant in connection with the investigation in Crime No. 64/2017 and other one pertains to the Crime No. 153/2017 registered with Devni Police Station. The applicant was assigned with the investigation of the aforesaid crimes. The said enquiry was initiated against the applicant and one Police Inspector K.S. Patil. By order dated 19.06.2020 the respondent No.3 has passed the order 'removal from service'. Being aggrieved by the same, the applicant has filed statutory appeal before the respondent No.2 i.e the Director General of Police (Maharashtra State), Mumbai, who by order dated 19.04.2021 partly allowed the appeal filed by the applicant and passed the order as "reduction in pay of A.P.I. to the basic pay of A.P.I. for a period of two years." The applicant has challenged the said order before the respondent No.1 i.e. the State of

Maharashtra by filing Revision Application. By order dated 26.08.2021 the respondent No.1 has reduced the punishment and imposed the punishment of “strict warning”.

(iii) It is the further case of the applicant that he has filed the representation before the respondent No.2 on 24.05.2021 about regularization of out of service period from 01.07.2020 to 22.05.2021. Though the applicant has filed appeal immediately, the hearing took place on 16.02.2021. The appellate authority i.e. the respondent No.2 decided the appeal on 19.04.2021 and the copy of the same was served on the applicant on 18.05.2021. The respondent No.2 issued show cause notice dated 26.11.2021 to the applicant calling upon him to show cause as to why the out of service period of the applicant from 01.07.2020 to 22.05.2021 should not be treated as it is on the principle of ‘No work No pay’ and the said period shall not be treated as duty period except for the purpose of pension. The applicant has submitted his reply to the show cause notice on 25.01.2022 through the respondent No.4.

(iv) By impugned order i.e. 17.05.2022 the respondent No.2 has granted 50% of salary of the out of service period from

01.07.2020 to 22.05.2021 and it is further ordered that the said period should not be considered as duty period except for the purpose of pension. Hence, this Original Application.

4. Learned counsel for the applicant submits that the respondent No.1 has reduced the punishment inflicted on the applicant and passed the order of issuance of 'strict warning'. The appeal filed by the applicant was allowed by the respondent No.1. The said punishment is not recognized in terms of the provisions of Section 25 (1) (A) of the Maharashtra Police Act, 1951 so also the Rule 3 (1) and (2) of the Bombay Police (Punishments and Appeals) Rules, 1956 and in terms of para No. 436 of Maharashtra Police Manual, Part No.1.

5. Learned counsel for the applicant submits that if the said punishment is not recognized by law, then since the respondent No.1 has allowed the appeal filed by the applicant, the applicant seems to have been fully exonerated. Thus in terms of Rule 70 (2) and (3) of the Maharashtra Civil Services (Joining Time Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Rules of 1981'), the applicant is entitled for full

pay and allowances for the entire period and the said period shall be required to be counted for all the purposes.

6. Learned counsel for the applicant in order to substantiate his contention placed his reliance on the following case laws:-

- (i) **Smt. Vaibhavi Vishwas Harne Vs. the Joint Commissioner of Police & Anr. (O.A.No. 295/2018)**
- (ii) **Vijay Singh Vs. the State of Uttar Pradesh & Ors. reported in (2012) 5 SCC 242.**

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 2 & 3 submits that the regular and joint departmental enquiry was initiated against one Police Inspector K.S. Patil and the applicant by the Special Inspector General of Police, Nanded Range, Nanded for the misconduct noticed while they were serving at Police Station, Devani, Dist. Latur. The said enquiry was resulted in issuance of a final order of punishment upon the applicant herein as removal from service vide order dated 19.06.2020. In the statutory appeal preferred by the applicant, the appellate authority has modified the punishment of removal from service to reduction in the pay of A.P.I to the basic pay of A.P.I. for a period of two years. Being

aggrieved by the said, the applicant has preferred the Revision Application before the respondent No.1. The respondent No.1 i.e. the State Government has reduced the punishment of reduction in pay of A.I.P. to the basic pay of A.P.I. for the period of two years to "Reprimand".

8. Learned P.O. submits that the "Reprimand" is punishment as per Section 25 (1A) (b) of the Maharashtra Police Act, 1951 and Rule 3 (2) (ii) of the Maharashtra Police (Punishments and Appeals) Rules, 1956. It is not the case that the applicant has been given clean chit or exonerated from the charges leveled against him in the Regular Departmental Enquiry ordered against him. Hence, the applicant is not entitled for 100% back wages as a matter of enforceable right as per Rule 70 of the Rules of 1981. Thus by following the due procedure of law as prescribed under this Rule, the appropriate, correct and legal order has been passed. The same is free of any malafide and vindictiveness.

9. Learned Presenting Officer submits that in fact the disciplinary enquiry has ended in major punishment upon the applicant and the same has been reduced by the respondent No.2 to reduction in pay of A.P.I. to the basic pay

of A.P.I. for a period of two years, which is also a punishment. The applicant has not challenged the punishment passed by respondent No.1 in the Review Application. There is no substance in the Original Application and the same is liable to be dismissed.

10. In the context of above submissions, Section 25 of the Maharashtra Police Act, 1951 and Rule 3 of the Bombay Police (Punishments and Appeals) Rules, 1956 are reproduced hereinbelow:-

“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."*

Rule 3 of the Maharashtra Police (Punishments and Appeals) Rules, 1956 as under:-

"3. *(1) Without prejudice to the provisions of any law for the time being in force, the following punishments may be imposed upon any Police Officer, namely:-*

*(a-1) [***]*

(a-2) Suspension;

(i) reduction in rank, grade or pay or removal from any office of distinction or withdrawal of any special emoluments;

(i-a) compulsory retirement;

(ii) removal from service which does not disqualify from future employment in any Department other than the Police Department;

(iii) dismissal which disqualifies from future employment in Government Service.

(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 this rule.

(iii) An order of suspension under sub-rule (1) may be revoked at any time by the authority making the order or by way authority to which it is subordinate.

(2) The following punishment may also be imposed upon any Police Officer if he is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which does not require his suspension or dismissal or removal:-

- (i) Caution.*
- (ii) A reprimand (to be entered in the service book).*
- (ii) Extra drill.*
- (iv) Fine not exceeding one month's pay.*
- (v) Stoppage of increments.*
- (vi) recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.*

Provided that-

(a) the punishment specified in clause (iii) shall not be imposed upon any officer above the rank of Constable;

(b) the punishment referred to in clause (iv) shall not be imposed upon an Inspector.

Explanation.- For the purpose of this rule,-

(1) a Police Officer officiating in a higher rank at the time of the commission of the default for which he is to be punished, shall be treated as belonging to that higher rank;

(2) the reversion of a Police Officer from a higher post held by him in an officiating capacity to his substantive post does not amount to reductions;

(3) the discharge of a probationer, whether during or at the end of the period of probation, on grounds arising out of the specific conditions laid down by the appointing authority, e.g. want to vacancy, failure to acquire prescribed special qualifications or to pass prescribed tests, does not amount to removal or dismissal;

(4) the discharge of a probationer, whether during or at the end of the period of probation, for some specific fault or an account of his unsuitability for the service amount to removal.

[3-A. Notwithstanding anything contained in clause (ii) and (iii) of sub-rule (1) of rule 3, the State Government may, for reasons to be recorded in writing remove the disqualification incurred under the said clauses by any Police Officer removed or dismissed from service.]

11. The applicant claims that the punishment 'strict warning' is not recognized by the aforesaid provisions and as such, the said punishment shall be considered as a punishment not in existence. Per contra, learned P.O. submits that the 'Reprimand' is a punishment in terms of Rule 25 (1A) clause (b) of Maharashtra Police Act, 1951 and in terms of Rule 3 (2) clause (ii) of the Maharashtra Police (Punishments and Appeals) Rules, 1956. Learned P.O. submits that the meaning of said punishment is 'strict warning' (सक्त ताकीद) and the same is to be entered in the service book. Mere change in the nomenclature of the punishment as 'strict warning' (सक्त ताकीद) passed by the respondent No.1 instead of 'Reprimand', it cannot be said that the said punishment of 'strict warning' (सक्त ताकीद) is not recognized.

12. In order to understand the said phrase 'strict warning' (सक्त ताकीद), I have carefully gone through the chapter: 13- departmental punishment of Maharashtra

Police Manual part –I administration, particularly Rule

436. The said Rule 436 is reproduced hereinbelow:-

“४३६. विभागीय शिक्षा:- (दुरुस्ती क्रमांक १९५ नुसार सुधारित)

(१) पोलीस निरीक्षक आणि त्याखालील पोलीस अधिकाऱ्यांना खालील शिक्षा देता येतील.

“I. गौण शिक्षा (Minor Punishment)

(अ) ताकीद देणे (Caution)

(ब) सक्त ताकीद (Reprimand) (सेवा पुस्तकात नोंद घेतली पाहिजे.)

(क) जादा कवायत(Extra Drill)

(ड) एक महिन्याच्या वेतनापेक्षा अधिक नसलेला दंड

(ई) वेतनवाढी रोखणे

II. मोठ्या शिक्षा (Major Punishment)

(अ) पदावनती, श्रेणी अथवा कमी करणे अथवा कोणत्याही प्रतिष्ठित पदावरून काढून टाकणे अथवा कोणत्याही विशेष वित्त लब्धी काढून घेणे.

(ब) पोलीस खात्या व्यतिरिक्त इतर कोणत्याही खात्यात भविष्यकाळात नोकरी करण्यास अनर्थ होणार नाही अशा रीतीने नोकरीतून काढून टाकणे.

(क) भविष्यकाळ नोकरी करण्यास तो अनर्थ ठरेल अशा रीतीने बडतर्फ करणे.

(ड) निष्काळजीपणा अथवा आदेश भंग करून, शासनाची द्रव्य हानी होण्यास कारणीभूत झाल्यास ती हानी संपूर्ण किंवा अंशतः वेतनातून वसूल करणे.

(ई) निलंबन

(फ) सक्तीची सेवानिवृत्ती

(२) (अ) वरील उपनियम (१) (i) मधील (क) मध्ये उल्लेखलेली शिक्षा पोलीस शिपाई दर्जावरील कोणत्याही अधिकाऱ्याला देण्यात येणार नाही.

(ब) पोलीस अधिकाऱ्याच्या वर्तणुकीबाबत नियमित विभागीय चौकशी केल्याशिवाय आणि अशी शिक्षा लादण्याचा आदेश निर्गमित करण्याच्या कारणांसह चौकशीची टिप्पणी त्यांच्या सहीने काढली असल्याशिवाय उपनियम (१) (ii) मधील (अ) (ब), (क) मधील कोणतीही शिक्षा पोलीस अधिकाऱ्यास केली जाणार नाही.

(३) एखादा पोलीस अधिकारी वरिष्ठ दर्जाच्या पदावर स्थानापन्न असताना त्याने केलेल्या कसुरीबद्दल शिक्षेस पात्र ठरत असल्यास तो अशा वरच्या दर्जाचा अधिकारी आहे असे समजले जाईल.

- (४) एखादा पोलीस अधिकारी स्थानापन्न म्हणून धारण केलेल्या वरच्या पदावरून मूळपदावर प्रत्यावर्तित करण्यात आल्यास त्याची पदावन्ती केली असे समजले जाणार नाही.
- (५) परिवीक्षाकाळात किंवा अखेरीस काही विशिष्ट दोषांमुळे किंवा नोकरीस अयोग्य असल्यामुळे परिवीक्षाधीन इसमास नोकरीतून मुक्त (Discharge) केले असल्यास त्यास काढून टाकले (Removal) असे समजले जाईल.”

13. So far as Rule 436 (1) (I) (b) is concerned, the word “सक्त ताकीद” is used and it’s meaning in English is “Reprimand”. Having carefully gone through the order passed by the respondent No.1 dated 26.08.2021 it appears that the respondent No.1 has modified the punishment of “reduction in pay to the basic pay of A.P.I. for the period of two years” in to ‘strict warning’ (सक्त ताकीद). In view of above, in my considered opinion, the respondent No.1 has not fully exonerated the applicant in connection with the departmental enquiry as contemplated against the applicant. In the concluding para the respondent No.1 has observed that the punishment as provided against the applicant was little bit harsh one and in terms of the Maharashtra Police Manual, Part-I Administration Rule 449, the previous record to be considered and such an officer/employee shall be punished if the charges are proved considering the aspect of the reformation.

14. Learned counsel for the applicant has placed his reliance in a case **Smt. Vaibhavi Vishwas Harne Vs. the Joint Commissioner of Police & Anr.,** wherein in the identical facts of the case the principal seat of this Tribunal at Mumbai has observed that the punishment 'strict warning' as imposed by the appellate authority is not at all provided in the statutory rule. However, it further appears that the parties have not brought to the notice of the Tribunal the provisions of Rule 3 of the Bombay Police (Punishments and Appeals) Rules, 1956 and clause No. 436 of Maharashtra Police Manual, Part No.1 Administration, wherein the term "Reprimand" is explained.

15. So far as the impugned order dated 17.05.2022 is concerned, the Competent Authority has passed the order in terms of the Rule 70 of the Rules of 1981. Rule 70 prescribes the provisions for 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 reinstated. The said Rule 70 of the Rules of 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 sub-rules (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.”

16. In terms of sub-rule (2) of Rule 70 of the Rules of 1981, if the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, then he shall be paid full pay and allowances to which he would have been entitled, had he not been dismissed,

removed or compulsorily retired or suspended. In the instant case, the applicant is not fully exonerated. The respondent No.1 has inflicted the punishment of 'Reprimand' upon the applicant. The respondent- competent authority has rightly passed the order in terms of sub-rule (4) and (5) of Rule 70 of the Rules of 1981. There is no reason to interfere in it. The order is proper, correct and legal and thus calls for no interference. Hence, the following order:-

ORDER

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

MEMBER (J)

Place:-Aurangabad

Date : 24.10.2024

SAS O.A. 756/2022 Duty Period/Salary & Allowances.