

1. Heard Smt. Suchita Dhongde, learned counsel appearing for the applicant and Smt. Resha Deshmukh, learned Presenting Officer appearing for respondent authorities.

2. By filing the present Original Application, the applicant is seeking quashing and setting aside order dated 04.09.2015 passed by respondent No. 2 directing withholding of one annual increment of the applicant and order dated 07.06.2017 passed by respondent No. 3 confirming the order passed by respondent No. 2 dated 04.09.2015. The applicant is also seeking direction to release one annual increment withheld as per orders dated 04.09.2015 and confirm on 07.06.2017 forthwith with all consequential benefits.

3. Brief facts as stated by the applicant giving rise to the present Original Application are as follows :-

(i) The applicant is serving as Police Constable with respondent No. 2. On 28.10.2012 at about 3.30 p.m. the applicant along with one Mr. Bhupesh Ashok More, Nana Salve allegedly demanded Rs. 2000/- from one Mr. Mayur Pandurang Vitkar by giving him threats. On his refusal, the applicant forcibly took out amount of Rs. 2000/- from the pocket of shirt of said Vitkar at the point of knife and attempted to cause him fatal injury. Consequently Crime No. 155/2012 came to be registered against the applicant and other for the offences punishable under Sections 307, 395, 323, 504, 406 of IPC at Azadnagar Police Station.

(ii) The applicant further contends that on the basis of these allegations coupled with other allegations of absenteeism on duties while attaching to Striking Force, the applicant was suspended from service vide order dated 06.11.2012 (Annexure A-1). He was also issued show cause notice on 26.02.2015 (Annexure A-2) as to why disciplinary action should not be initiated against the applicant. The applicant has submitted reply to the said show cause notice on 17.03.2015 (Annexure A-3). In the meantime, by order dated 07.03.2015 (Annexure A-4), the applicant was reinstated in service.

(iii) It is the further case of the applicant that the department has conducted the departmental enquiry against the applicant on 04.12.2015 by passing an order of punishment holding him guilty of the charges levelled against him and withholding his one annual increment. Being aggrieved by the same, the applicant has preferred departmental appeal before the respondent No. 3. By order the 07.06.2017, the Additional Director General of Police, Nashik dismissed the said appeal filed by the applicant. Hence, the present Original Application.

4. Learned counsel for the applicant submits that in complete violation of Rule 444 of Police Manual, the respondents proceeded to conduct the Departmental Enquiry against the applicant, although the Criminal Case was initiated and pending. Moreover, the applicant and other two accused were tried by the Sessions Judge, Dhule for the offences punishable under Sections 307, 395, 323, 504, 406 of IPC and by judgment and order dated 10.01.2017, the Sessions Judge had acquitted the applicant and others.

5. Learned counsel for the applicant submits that pursuant to the acquittal of the applicant from the criminal offences, the respondent No. 2 was pleased to pass an order dated 15.01.2018 (Annexure A-8) treating the period of suspension of the applicant as the period spent on duty. Learned counsel submits that the present Original Application is preferred only to the extent of withholding one increment of the applicant and the order passed by the respondent No. 3 confirming the said order.

6. Learned counsel for the applicant submits that nature of the charges levelled against the applicant in the Criminal Case and that of the Departmental Enquiry were

identical, rather one and the same. The competent Criminal Court has acquitted the applicant clearly from the charges after full-fledged trial. In terms of the provisions of Rule 444 of the Police Manual, it was incumbent upon the respondents to wait for passing final order of punishment till the decision of the Criminal trial. The respondents, however, did not follow their own manual and hastily passed the order of punishment.

7. Learned counsel for the applicant submits that moreover the charges levelled against the applicant are not proved in the Departmental Enquiry. The evidence considered for arriving at conclusion about proof of the charges in the enquiry is inadequate and insufficient to hold the applicant guilty. The act of the respondents passing an order regularizing the period of suspension after the decision of the Criminal Court shows that the respondents were compelled to pass an order, because the Criminal Court has acquitted the applicant for all the offences for which he was charged. Thus mala-fide intention of the respondents to punish the applicant is clear from the conduct of the respondents. Learned counsel submits that the impugned orders cannot be legally sustainable and the present Original Application deserves to be allowed.

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that in the judgment of acquittal dated 10.01.2017, the Sessions Judge in para No. 8 has observed that “P.W. Nos. 1 to 5 have turned hostile”. Thus the applicant came to be acquitted absolutely on the ground that the witnesses are not supporting the prosecution.

9. Learned Presenting Officer submits that the applicant remained absent on duty without prior permission, besides one cognizable offence was registered against the applicant at Azad Nagar Police Station. Thus the charges as against the applicant to that extent are proved in the Departmental Enquiry. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

10. It is true that if the charges levelled in the Criminal Case, so also, in the Departmental Enquiry are identical and if the delinquent came to be acquitted in connection with the Criminal case, the Departmental Enquiry shall also be concluded in the similar manner.

11. In the instant case, at the relevant time the applicant was working in the Striking Force, which is quite an important and responsible duty. Thus the presence of each and every member of the Striking Force is necessary to perform duties effectively and efficiently. It appears that the show cause notice dated 26.02.2015 was given to the applicant on two counts firstly that he remained absent while discharging his duty in the Striking Force. The applicant remained absent on duty on 26.09.2012, 11.10.2012 and 12.10.2012 without prior permission and second charge is pertaining to the incident, which is the subject matter of the Sessions Trial. The applicant along with two other persons allegedly seeking amount of Rs. 2000/- from one Mr. Mayur Pandurang Vitekar and on his refusal, forcibly taken out amount of Rs. 2000/- from his pocket at the point of knife for consuming liquor. By order dated 04.09.2015, the respondent No. 2 i.e. the Superintendent of Police, Dhule has stopped the applicant's annual increment for a period of one year (effective). In the show cause notice so also in the appeal decided by respondent No. 2, the absence of the applicant on duty while working in the Striking Force is considered as serious aspect and explanation submitted by the applicant to that extent found unsatisfactory. The appellate

authority in the order dated 07.06.2017 has specifically observed that on 26.09.2012, 11.10.2012 and 12.10.2012, the applicant remained absent at Sakri Sub-Division Crash Platoon Duty. It is specifically observed that on 11.10.2012 though applicant present in morning and afternoon sessions, but remained absent in night and on 12.10.2012 remained absent in the morning session and in the afternoon session and night remained present. It is further observed that there is clear entry about the absence of the applicant in the Crash Platoon Duty Attendance Register.

12. Though learned counsel for the applicant has vehemently submitted about violation of Rule 444 of Police Manual. It is however Rule 445 of the Police Manual and the same cannot be made applicable to the facts of the present case for two reasons : (i) that the Sessions Court has not clearly acquitted the applicant accused and the applicant came to be acquitted as the witnesses have not supported prosecution case and (ii) the charge of absenteeism was levelled against the applicant only in the Departmental Enquiry and considering the same, show cause notice came to be issued to the applicant for imposing minor punishment on the applicant on account of his absenteeism while working in Striking Force.

13. So far as regularization of suspension period of the applicant as the period spent on duty is concerned, the same has no bearing on the ground that the punishment to be inflicted at the conclusion of the Departmental Enquiry or afterwards. In view of the acquittal of the applicant in connection with the criminal Case, the department has liberally considered the suspension period of the applicant as duty period and regularized it. However, I find no reason to interfere in the orders passed by the respondent No. 3 and confirmed by the respondent No. 2 inflicting punishment thereby stoppage of one annual increment (effective). There is no substance in the present Original Application and the same is liable to be dismissed. 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 accordingly disposed of.

PLACE : Aurangabad.
DATE : 25.07.2024

(Justice V.K. Jadhav)
Member (J)

KPB S.B. O.A. No. 853 of 2018 VKJ Withdrawing of Annual Increment