

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.609 OF 2017

DISTRICT : MUMBAI

Shri Sambhaji A. Patil.)
Age : 57 Yrs., Occu.: Service as)
Deputy Superintendent of Police and)
Residing at Plot No.34, Koyana Sanmitra)
Co-op. Hsg. Society, Godoli,)
District : Satara - 415 001.)...**Applicant**

Versus

1. The Director General of Police.)
M.S, Mumbai having office at 1,)
Shahid Bhagatsingh Marg,)
Coloba, Mumbai - 400 001.)
2. The Superintendent of Police.)
Satara, having office at 76, Malhar)
Peth, District : Satara.)...**Respondents**

Applicant in person.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 07.10.2019

JUDGMENT

1. The Applicant has filed the present O.A. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act,

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1985 challenging the communication dated 06.12.2016 whereby his complaint dated 28.09.2015 for disciplinary action against Shri Amol Tambe, the then Additional Superintendent of Police, Satara and Shri Vikas B. Patil, the then District Government Pleader, Satara was closed informing that no departmental action is warranted.

2. In nutshell, the facts giving rise to this application are as under:-

The Applicant has filed the present O.A. in person. He was Senior Police Inspector and In-charge of Police Station, Karad, District : Satara from 09.06.2008 to 25.08.2010. During his tenure, the offence vide Crime No.19/2009 for the offences under Sections 302, 120-B of Indian Penal Code read with 3/25, 5/27 of Arm Act was registered initially against unknown offenders. The applicant carried out the investigation and arrested 8 accused and filed charge-sheet against them. Later, he was transferred to local Crime Branch and further investigation was handed over to Shri M.B. Mulik, Senior Police Inspector, Karad City Police City Police Station and Shri Amol Tambe, Additional Superintendent of Police, Satara. They carried out further investigation and filed supplementary charge-sheet in the Court. As the offences were triable by Sessions Court, the case was committed to the Court of Sessions for trial which was registered as Sessions Case No.180/2009, 162/2011 and 109/2013. The learned Additional Sessions Judge, Satara conducted the trial and delivered the Judgment on 18.10.2014 convicting Accused Nos.1 and 2 for the offences under Section 302 read with 34 of Indian Penal Code and under Section 27 of Arm Act and sentenced to life imprisonment and fine and remaining Accused were acquitted. The Government has decided not to file appeal against the acquittal of the rest of the Accused.

3. The Applicant contends that the then Director General of Police Shri V.B. Patil, who was entrusted with the trial of the Sessions Case has not conducted the Sessions trial efficiently and failed to examine important witnesses in the trial. According to him, the Sessions Judge passed strictures on the Public Prosecutor Shri V.B. Patil in his Judgment. He further contends that Shri V.B. Patil was on cross terms with him and without any reason declared him hostile when he was examined as Investigation Officer in the trial. The said order was later set aside by Hon'ble High Court in Criminal Writ Petition No.2948/2014. The Applicant contends that the Sessions Judge had also passed strictures against Shri Amol Tambe for faulty investigation. According to him, it is because of his efficient investigation, the Accused Nos.1 & 2 were convicted and sentenced to life imprisonment but other Investigation Officer Shri Amol Tambe, the then Additional Superintendent of Police, Satara and Shri V.B. Patil, Public Prosecutor have not discharged their duties efficiently. He, therefore, filed complaint on 28.09.2015 addressed to Additional Chief Secretary, Home Department, Mantralaya for initiating departmental action as well as other suitable action against Shri Amil Tambe and Shri V.B. Patil. In this behalf, he referred to the decision of Hon'ble Supreme Court in **Criminal Appeal No.1485/2014 (State of Gujarat Vs. Kishanbhai) decided on 07.01.2014** wherein the Hon'ble Supreme Court issued directions to all State Governments to formulate a procedure for taking action against erring Investigation Officers responsible for failure of a prosecution case on account of sheer negligence or lapses on their part and to initiate suitable departmental action against them.

4. On receipt of complaint made by the Applicant, it was forwarded to Respondent No.1 – Director General of Police, who in turn called for the remark from Respondent No.2 – Superintendent of Police, Satara. Accordingly, the S.P, Satara submitted his report/remark by letter dated 07.10.2016 stating that there are no such strictures against

Amol Tambe

Shri Amol Tambe in the Judgment delivered by Sessions Court and further stated that no action could be initiated against the Government Pleader since it does not come within their jurisdiction. The Respondent No.1 - DGP accepted the report submitted by Respondent No.2 and closed the complaint. Accordingly, the Applicant was communicated by letter date 06.12.2016 that no further action is warranted in the matter and the complaint is closed. This communication is challenged by the Applicant in the present O.A. with direction to the Respondents to conduct enquiry afresh in the complaint made by the Applicant and for suitable action against Shri Amol Tambe, the then Additional Superintendent of Police, Satara and Shri V.B. Patil, the then Public Prosecutor, Satara.

5. The Applicant in this behalf referred to the decision of Hon'ble Supreme Court in **Criminal Appeal No.1485/2014** (cited surpa). It was a Criminal Appeal filed by State of Gujarat against the Judgment of Hon'ble High Court acquitting the Accused tried for the offence of Rape and Murder. The Trial Court had convicted the accused, but he was acquitted in Hon'ble High Court due to serious lapses and lacunas in the investigation. The Hon'ble Supreme Court maintained the Judgment of acquittal delivered by Hon'ble High Court and noticed sheer negligence on the part of Investigation Officer. The Hon'ble High Court further noticed that often Accused gets benefit of doubt due to lapses committed by Investigation Officer in the investigation of serious crime. It is on this background, the Hon'ble Supreme Court gave directions to the State Government in Para No.21 of the Judgment, which is as follows :-

"21. *On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending*

purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

6. In pursuance of the directions issued by Hon'ble Supreme Court, the Home Department, Government of Maharashtra had issued Circular on 17.10.2015 to constitute Committee at District level as well as at Commissionerate level to examine the reasons for acquittal of the Accused and where Investigation Officer is found negligent in discharging his duties, the proposals for departmental action be initiated.

7. Turning to the facts of the present case, the complaint made by the Applicant was forwarded to Respondent No.2 for his remark who in turn forwarded remarks to the Office of DGP on 07.10.2016, which is at Page No.25 of Paper Book. The Respondent No.2 in his letter dated 07.10.2016 stated that there is no such strictures of negligence in respect of Investigation Officer Shri Amol Tambe in the Judgment. It appears that the Respondent No.2 had called for the remarks from the Office of District Government Pleader, Satara and on receipt of his remarks/opinion, he had informed Respondent No.1 that in Judgment, there is no such strictures against Shri Amol Tambe. The Respondent No.1 accepted the report submitted by Respondent No.2 and closed the complaint lodged by the Applicant.

8. One more subsequent development is that during the pendency of O.A, the matter was also examined by District Committee constituted by the Government in terms of Circular dated 17.10.2015. The Committee deliberated upon the Judgment given by Sessions

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Court. The Committee was of three members viz. Additional Superintendent of Police, Satara (Chairman), Additional District Government Pleader (Member) and P.I, Local Crime Branch (Member). The Committee made analysis of the Judgment in detail and found that there is no such specific observation in the Judgment that the remaining Accused are acquitted due to faulty or negligent investigation. The Committee, therefore, thus seems to have formed opinion that, no further action is warranted.

9. Thus, what transpires from the record that the complaint made by the Applicant was placed before the Committee which was duly constituted in terms of Government Circular dated 17.10.2015, which was issued in pursuance of directions given by the Hon'ble High Court in **Kishanbhai's** case. The material portion of the Circular dated 17.10.2015 is as follows :-

“ज्या गुन्ह्यामध्ये आरोपीची निर्दोश मुक्तता झाली आहे, त्याबाबतच्या फौजदारी प्रकरणातील न्यायालयाच्या आदेशांची तपासणी करून सदर खटल्याचा निकाल शासनाच्या विरुद्ध जाण्यामागील कारणांची नोंद करावी. जर संबंधित तपासी पोलिस यंत्रणा-सरकारी अभियोक्ते हे त्यामध्ये दोषी आढळल्यास त्यासंबंधीचा प्रस्ताव शिस्तभंग विषयक कारवाई करण्यासाठी संबंधित जिल्हा पोलिस अधीक्षक- पोलिस आयुक्त- संचालक अभियोग संचलनालय, मुंबई यांच्याकडे सादर करावा.”

10. Thus, as per Circular dated 17.10.2015, in case the Committee found Investigation Officer or Prosecutor guilty of laches or negligence, then it is required to forward proposal to the Competent Authority for disciplinary action. In the present case, the Committee did not make any such recommendation or proposal for disciplinary action against Investigation Officer or Prosecutor.

11. As such, in view of decision of Committee, it was end of the matter, as the Respondent No.1 – DGP accepted the report of S.P, Satara and closed the complaint.


12. Needless to mention that it falls within the domain of executive whether to initiate the departmental action against the public servant.

In the present matter, as the Committee constituted for this purpose did not make any such recommendation, the question of initiating D.E. does not survive.

13. Indeed, though the Applicant has sought relief of direction to initiate the D.E. against Shri Amol Tambe, the then Additional Superintendent of Police and Shri V.B. Patil, the then DGP, they are not made Respondents in the present O.A.

14. Furthermore, these proceedings instituted by the Applicant for direction of D.E. against some other employees can hardly be termed as grievance relating to service matter of the Applicant. The Applicant is not seeking any relief in respect of his service matter. What he is seeking is direction for enquiry against Shri Amol Tambe and Shri V.B. Patil.

15. The present O.A. is filed under Section 19 of the Administrative Tribunals Act which *inter-alia* provides that the person aggrieved by any order pertaining to any matter within the jurisdiction of Tribunal, may make an application to the Tribunal for redressal of his grievance. The jurisdiction of this Tribunal relates to recruitment, matters concerning to recruitment, service matters, etc. Whereas, service matters mean all matters relating to the condition of his service in connection with the affairs of the Union or of any State. Suffice to say, the present matter cannot be termed relating to service matter of the Applicant. He cannot be termed aggrieved person so as to make an application to the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. He is seeking direction for enquiry against other Government servants and not seeking any relief pertaining to his service matter. In other words, there being no issue or grievance relating to service matter of the Applicant, the present O.A. itself is not maintainable before this Tribunal. The Applicant has chosen wrong forum.



16. For the aforesaid reasons, I see no substance in the O.A. and it deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 07.10.2019

Dictation taken by :

S.K. Wamanse.

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