

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.479 OF 2018

DISTRICT : MUMBAI

Shri Harish M. Baijal.)
Age : 56 Yrs., Superintendent of Police,)
State Human Rights Commission, Mumbai)
and residing at 55, A/2, 1st Floor, Room)
No.1, Railway Police Officers Quarters,)
Sir Bhalchandra Road, Dadar TT, Dadar,)
Mumbai - 400 014.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. Director General of Police.)
M.S, having office at Old Council)
Hall, Colaba, Mumbai.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 01.10.2019

W. H. M.

JUDGMENT

1. The Applicant has challenged the communications dated 09.03.2012 and 02.12.2017 issued by Respondent No.2 – Director General of Police for taking adverse entry in the confidential service report invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant has joined Police Service as Deputy Superintendent of Police in the year 1993 and during the course of tenure, promoted to the post of Deputy Commissioner of Police. He was nominated in IPS cadre in 2014. At the time of incident, he was serving as Deputy Director, Detective Training School, Nashik. The incident giving rise to the impugned communications dated 09.03.2012 and 02.12.2017 arose on 25.02.2012. That day, there was all India work meet at Maharashtra Police Academy, Nashik, which was attended by Respondent No.2 – Director General of Police (Shri Subramaniam), the then Hon'ble Home Minister for State of Maharashtra amongst others. The function was held in the premises of academy. The Applicant has also attended the function. He contends that in the function, he could not meet Director General of Police personally and could not salute as a mark of respect. However, he explained the circumstances, as to why he could not show respect in the form of salute and personal meeting which would be explained during the course of discussion. However, to his surprise, he had received communication dated 09.03.2012 from Respondent No.2 stating that he failed to remain present in the function though imperative and secondly, failed to meet Director General of Police personally and to salute him and the said conduct of the Applicant amounts to indiscipline, unbecoming of a senior Police Officer and note of the same is taken in his Confidential Service Report. The

Applicant had made representation making it clear that he was very much present in the function held on 25.02.2012, but did not get an opportunity to meet Director General of Police in person and to render salute and maintained that he was very much standing in the line-up where other senior Officers also stood erect and saluted him as per custom/practice in the Police Department. He, therefore, denied to have indulged in any kind of misconduct or indiscipline. After his representation, the Respondent No.2 admits about his presence in the function, but maintained its stand that the Applicant failed to meet Director General of Police in person and to render salute and this amounts to indiscipline, and therefore, the entry to that effect is taken in Confidential Service Record which is challenged by the Applicant in the present O.A.

3. Here, it would be appropriate to see the communication made in between the Applicant and Respondents about the matter in issue.

<u>Date</u>	<u>Substance</u>
09.03.2012	Dr. B.K. Upadhyay, the then Special Inspector General of Police (Estt.) issued communication to the Applicant stating that he was absent in the function held on 25.02.2012 though it was imperative on his part to remain present and secondly, failed to meet DIG personally and to render salute which amounts to indiscipline, and therefore, entry is taken in Confidential Report with warning that he should be careful in future.
26.03.2012	Applicant has made representation to Respondent No.2 with copy to Respondent No.1 stating that "दिनांक २५.२.२०१२ रोजी सांयकाळी ४.२५ वाजता आम्ही महाराष्ट्र पोलीस अकॅडमीच्या प्रांगणात पोहचल्यानंतर उपस्थित अधिका-यांनी आम्हाला मंचाच्या उजव्या बाजूकडील आसन व्यवस्थेकडे पाठवून स्थानापन्न होण्याबाबत सूचविल्याने, आम्ही चौथ्या रांगेत स्थानापन्न झालो. मा. गृहमंत्री ज्यावेळी कार्यक्रमस्थळी आले, त्यावेळी तिथे इतर राज्यातील अती वरीष्ठ अधिकारी व अयोजन समितीचे अधिकारी उपस्थित असल्याने, आम्ही बसून होतो. मिगलींग व आतषबाजी झाल्यानंतर मी, श्री श्रीकांत तरवडे, पोलीस उप महानिरीक्षक, सी.आय.डी. यांच्यासोबत आय.पी.मेस कडे पायी गेलो. तिथे पोहचल्यानंतर शामियामध्ये मा.गृहमंत्री यांच्या समवेत मा. पोलीस महासंचालक,

Handwritten signature/initials

महाराष्ट्र राज्य, व इतर अति वरीष्ठ अधिकारी बसलेले होते. त्यामुळे आम्ही तिथे जाणे योग्य झाले नसते. मा. गृहमंत्री रवाना झाल्यानंतर मा. पोलीस महासंचालक आय.पी. मेस मध्ये जावून त्वरीत परतले व गाडीत बसून रवाना झाले. मा. पोलीस महासंचालक व्यस्त असल्या कारणाने त्यांची भेट घेवून, त्यांना मानवंदना देता आली नाही.

सदर कार्यक्रमास आम्ही पूर्ण वेळ उपस्थित होतो. त्यामुळे आम्ही कोणतेही गैरशिस्तीचे वर्तन केलेले नाही, असे आम्हास वाटते. त्यामुळे बेशिस्त वर्तना बाबत आमचे गोपनीय अहवालात घेण्यात आलेली एकतर्फी नोंद कृपया रद्द करून तसे आम्हास कळविणे बाबत विनंती आहे.”

04.07.2012

Dr. B.K. Upadhyay, Special Inspector General of Police (Estt.) rejected the representation made by the Applicant to expunge the adverse entry which was communicated to him by letter dated 09.03.2012.

12.07.2012

Being aggrieved by communication dated 04.07.2012, the Applicant had filed appeal before Respondent No.1 explaining the situation and requested to expunge the remark. He has further pointed out in the appeal that he was very much present in the function and necessarily victimized out of prejudice against him.

23.07.2012

Dr. B.K. Upadhyay, Special Inspector General of Police communicated the Applicant that the contents of his earlier letter dated 09.03.2012 showing his absence only is deleted. The contents of letter dated 23.07.2012 is as follows :

संदर्भाधिन विषयास अनुसरून कळविण्यात येते की, श्री. हरिष बैजल हे दि. २५/०२/२०१२ रोजी झालेल्या अखिल भारतीय पोलीस कर्तव्य मेळाव्याच्या समारोपाच्या सभारंभास उपस्थित न राहिल्याबाबत बेशिस्तीच्या वर्तनाबाबतची नोंद त्यांच्या गोपनीय अहवालात घेतल्याबाबत या कार्यालयाचे समक्रमीकित, दि. ०९/०३/२०१२ च्या अ.शा.पत्रान्वये त्यांना कळविण्यात आले होते. त्या अनुषंगाने श्री. हरिष बैजल यांनी त्यांचे संदर्भाधिन, दि. ०३/०७/२०१२ च्या अ.शा.० पत्रान्वये बेशिस्त वर्तनाबाबतची नोंद रद्द करण्याबाबत केलेल्या विनंतीचा काळजीपूर्वक विचार करून सदरच्या दि.०९/०३/२०१२ च्या अ.शा. पत्रातील “गुन्हे प्रकटीकरण विद्यालयाचे उप संचालक म्हणून आपणही त्यावेळेस सदर सभारंभास उपस्थित राहणे आवश्यक होते. तसेच,” हा मजकूर काढून टाकण्यात येत आहे.

30.07.2012

Applicant again made representation to Respondent No.2 to expunge remark communicated to him by letter dated 09.03.2012 about alleged indiscipline for not meeting DGP in person and not rendering salute to him.

- 14.08.2012 Respondent No.1 – Govt. of Maharashtra took cognizance of the appeal/representation made by the Applicant and called for remarks from Respondent No.2 – DGP.
- 09.01.2014 Respondent No.2 submitted Parawise remarks to Respondent No.1 and maintained that, though the Applicant was present in the function, he did not meet DGP personally and failed to render salute which amounts to indiscipline.
- 02.12.2017 Respondent No.1 – Government of Maharashtra by communication dated 02.12.2017 rejected the representation/appeal made by the Applicant which is challenged in the present O.A.

4. At this juncture, it would be apposite to see the contents of communication dated 09.03.2012, which is as follows :-

‘प्रिय बैजल,

महाराष्ट्र पोलीस अकादमी, नाशिक येथे दि.२५/०२/२०१२ रोजी झालेल्या अखिल भारतीय कर्तव्य मेळाव्याच्या समारोपाच्या दिवशी पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई हे समारोप समारंभास उपस्थित होते.

२. गुन्हे प्रकटीकरण विद्यालयाचे उप संचालक म्हणून आपणही त्यावेळेस सदरहू समारंभास उपस्थित राहणे आवश्यक होते. तसेच, महाराष्ट्र पोलीस दलाच्या प्रमुखांच्या उपस्थितांच्यावेळी त्यांना भेट देवून उचित शिष्टाचार दाखविणे आवश्यक असतानाही त्यावेळी आपल्याकडून त्यांना भेट देवून उचित शिष्टाचार दाखविणे आवश्यक असतानाही त्यावेळी आपल्याकडून तसे शिस्तीचे वर्तन झालेली नाही. पोलीस दलासारख्या शिस्तप्रिय खात्यातील आपल्यासारख्या पोलीस अधीक्षक दर्जाच्या वरिष्ठ अधिका-यान अशप्रकार गैरशिस्तीचे केलेले वर्तन आपणास अशोभनीय आहे.

३. यास्तव, आपल्या सदरहू बेशिस्तीच्या वर्तनाबाबतची नोंद आपल्या गोपनीय अभिलेखावर घेण्यात येत असून, भविष्यात अशप्रकारची पुनरावृत्ती होणार नाही, याची आपण जाणीवपूर्वक नोंद घ्यावी.”

5. Shri M.D. Lonkar, learned Advocate for the Applicant has pointed out that admittedly, the Applicant was present in function held on 25.02.2012, but the Respondent NO.2 without ascertaining the factual position had issued impugned order dated 09.03.2012 stating that he was not at all present in the function and also failed to meet DIG personally and to render salute to him and it shows bias approach of Respondent No.2 in view of order passed by Hon'ble High Court in Writ Petition No.7960/2011 (Harish Baijal Vs. State of Maharashtra) decided on 21.10.2011 arising from the transfer of the Applicant while he was serving at Thane. The learned Advocate for

Harish Baijal

the Applicant further pointed out that when upon the representation made by the Applicant, his presence was seen and established by the documents tendered by the Applicant, that time itself, the communication dated 09.03.2012 ought to have been recalled but for the decision of Hon'ble High Court in Writ Petition No.7960/2011, the DGP had nurtured grudge against the Applicant and declined to withdraw the communication dated 09.03.2012. He further submits that the Applicant could not meet DGP personally in a function as explained in the reply/representation made to DGP and there was no intentional omission for not rendering salute to DGP. He, therefore, submits that the impugned communication is not sustainable in law and the career of senior IPS Police Officer cannot be put in jeopardy by taking entry in Confidential Service Record without examining it objectively in transparent and impartial manner.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submits that, though the Applicant was found present in the function, admittedly, he did not meet DGP personally and failed to render salute as a mark of respect as per protocol, and therefore, the challenge to the communications dated 09.03.2012 and 02.12.2017 is without substance.

7. Now turning to the pleadings in Para No.6.3 of O.A, the Applicant has made following categorical and specific pleading explaining the situation as to why he could not meet DGP in person, which is as follows :-

"6.3 The Petitioner states that after having received the aforesaid memo, the Petitioner specifically pointed out in his representation that on the day of the function on 25.02.2012, the Petitioner was present personally during the whole function. The Petitioner also referred to the photographs as well as CD in which the entire video shooting was recorded. The Petitioner in fact enclosed the video CD as well as the photographs of the function held at Maharashtra Police Academy on 25.02.2012. The Petitioner therefore contended that the Hon'ble DGP was with the Hon'ble Home Minister and the other high

officials, it was improper and unfair on the part of the Petitioner to disturb the Hon'ble DGP. In view of the busy schedule and occupation of the Hon'ble DGP, the Petitioner did not get an opportunity to personally meet the Hon'ble DGP and render salute, but he was very much standing in the line-up where other senior officers also stood erect and saluted him; as is the custom in the police department. The Petitioner therefore contended that he has not committed any misconduct of any nature whatsoever. The Petitioner therefore requested the Respondent No.2 not to enter the aforesaid adverse entry into his Annual Confidential Report."

8. Whereas, the Respondent No.1 did not counter this pleading and all that stated that it is the Respondent No.2 who is competent authority to comment on the pleadings raised in Para No.6.3.

9. Whereas, the reply of Respondent No.2 to Para No.6.3 is as follows :-

"With reference to contents of paragraph Nos.6.3 and 6.4, I say as follows : As clarified above, while dealing the para no.6.2 of the O.A, suitable letter has been already issued after due consideration on 23.07.2012. However, the other observations have been kept as such of this office letter dated 09.03.2012, as it is humble submission of this office that it cannot be accepted by any stretch of imagination that the applicant could not get an opportunity to pay respect to the them D.G.P. by saluting or meeting him during the course of the said Meet. Hence, the observation made in the letter dated 09.03.2012 with that regard are just, proper in all respect."

10. As such, despite specific pleadings of the Applicant in Para No.6.3 that "because of busy schedule and occupation of DGP, he did not get any opportunity to personally meet him and to render salute, but he was very much standing in the line-up of other senior Officers also stood erect and saluted him, as is the custom of Police Department, and therefore, he thought it improper on his part to disturb DGP", there is no counter to deny these specific pleadings made by the Applicant. It being pleadings relating to factual aspect, it ought to have been dealt with by the Respondent in the manner they want to throw light on the factual aspect. Suffice to say, there is no specific denial to the pleadings made in Para 6.3 of O.A. As per Order

W. 10/11/12

8 Rule 5 Sub-Rule 1 of Civil Procedure Code, every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated not to be admitted in the pleadings of the Defendant shall be taken to be admitted except as against the person under disability. Besides, as per Rule 12 of Central Administrative Tribunal (Procedure) Rules, 1987, Rule 12(1) in reply, the Respondents shall specifically admit or deny or explain the facts stated by the Applicant in his application and may also state such additional fact, as may be found necessary for the just decision of the case. However, in the present case, there is no such specific denial to the pleadings made in Para No.6.3 of O.A. Apart, the explanation given by the Applicant as to why he could not meet DGP is quite reasonable.

11. Needless to mention that the Confidential Report of Government servant is very crucial and the authority, who is entrusted with writing Confidential Reports needs to act fairly and objectively while writing C.Rs. The purpose of writing C.Rs is primarily to forewarn the employee to mend his ways and to improve performance. The C.Rs are thus maintained to assess the suitability of concerned Government servant for promotion, etc. and it has potential for shaping future career of the employee. Suffice to say, it therefore needs fairness, justness and objectivity while making entries in C.Rs. Needless to mention, the judicial intervention is permissible albeit imperative where the impugned action of taking entries in C.Rs suffers from vice of arbitrariness, unreasonableness or malice.

12. Turning to the facts of the case, the Applicant has categorically explained the situation as to how and why he could not meet DGP so as to render salute to him. There was public function organized by Academy attended by the then Hon'ble Home Minister and other dignitaries. The Applicant has categorically stated that the official in-charge of the function and looking after the said arrangement of guests asked him to seat in 4th row. He further states that after the

function was over, the DGP was seated along with Hon'ble Home Minister in Shamiyana, and therefore, did not think it appropriate to go there. After departure of Hon'ble Home Minister, immediately the DGP also left the function. He, therefore, states that in view of this situation, he could not meet DGP and to render the salute as a mark of respect. Whereas, the Respondents sought to contend that the Applicant ought to have met DGP and it was imperative on his part to meet him and to render salute and the contention of the Applicant that he could not meet the DGP is untenable.

13. Thus, in the present matter, the omission on the part of Applicant not to meet DGP and to render salute as a mark of respect is said to be amounting to indiscipline and entry to that effect was sought to be taken in C.Rs. of the Applicant. As such, this is not a case where the Applicant did any overt act so as to construe it as indiscipline but what is construed as indiscipline is omission to meet DGP personally and to salute him. One should not forget that it was public function attended by dignitaries as well as other Officials and the Applicant has already explained the circumstances existed on the day of function. Besides in Para No.6.3, he has made a specific pleading that he was very much standing in the line-up where other senior Officials also stood erect and saluted him as is the custom/protocol in the Police Department. It is only non-meeting of DGP personally and to render salute is treated as act of indiscipline. In my considered opinion, the explanation given by the Applicant is just and reasonable for not meeting the DGP in person and to render salute to him.

14. As stated above, earlier, by communication dated 09.03.2012, the Applicant was informed that he was not at all present in the function which itself shows that the communication dated 09.03.2012 was issued in cavalier manner without ascertaining the factual aspect. The Respondent No.2 ought to have first ascertained, the

14/10/12

factual aspect before issuance of any such communication casting aspersion on the conduct of the Applicant. Surprisingly, when the Applicant by representation dated 26.03.2012 pointed out his presence which was evident from the photograph, etc., that time also, the Respondent No.2 instead of recalling communication dated 09.03.2012 only deleted portion from communication dated 09.03.2012 about the absence of the Applicant. As such, it is pointer of pre-determine view of the DGP perhaps due to bias nurtured against the Applicant in view of the observation made by the Hon'ble High Court against the DGP in the matter of transfer filed by none other than the Applicant.

15. In 2011, the Applicant was transferred while he was serving as Superintendent of Police, Anti-Corruption Bureau, Nashik. The Tribunal dismissed the O.A. filed by the Applicant and the matter was taken up before the Hon'ble High Court in **Writ Petition No.7060/2011**. The Hon'ble High Court allowed the said Writ Petition and the impugned transfer order was quashed. In Para No.20, the Hon'ble High Court held as follows :-

"20. Hence, this petition succeeds partly. The impugned order passed by the Tribunal in Original Application No.556 of 2011 is hereby quashed and set aside. However, it is directed that the petitioner will continue as DCP, Thane till 31/12/2011 and he will be issued a fresh order appointing him as the Deputy Director, Detective Training Institute at Nasik with effect from 1/1/2012 and the said posting order shall be issued to him on or before 31/12/2011. We make it clear that none of the complaints that were relied upon in the impugned order by the Tribunal shall form part of the petitioner's service record unless the said complaints are enquired into by the SLPCA, to be headed by a retired Judge of this Court and Mr. K.S. Subramanian - the present DGP shall not be a member of the said authority."

16. Thus, at the time of decision of Writ Petition, Shri Subramaniam was DGP and in terms of order passed by Hon'ble High Court in Writ Petition filed by the Applicant, he was precluded from being Member of the Committee to be headed by retired Judge of

Hon'ble High Court to enquire into the complaints relied by the Government in support of transfer order. The Writ Petition was decided on 21.10.2011. Whereas, the incident giving rise to this present O.A. occurred on 25.02.2012, when Shri Subramaniam was DGP. As such, it seems that the then DGP had nurtured some bias against the Applicant and the impugned communication has been made due to prejudice. As such, despite explaining situation as to why the Applicant could not meet DGP and to render him salute without considering factual aspect, the impugned communication has been issued in colourable exercise of powers. Omission to meet DGP personally and to render salute as a protocol is explained by the Applicant and explanation is quite reasonable.

17. The necessary corollary of aforesaid discussion leads me to conclude that the action of taking adverse entry in Service Book of the Applicant by communications dated 09.03.2012 and 02.12.2017 is unsustainable in law and the same is liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communications dated 09.03.2012 and 02.12.2017 are quashed and set aside.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 01.10.2019
Dictation taken by :
S.K. Wamanse.