

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1044 OF 2021

DISTRICT : MUMBAI

Sub.:- Removal from Service

Shri Ravindra B. Kolpe.)
Ex. Police Constable, Navi Mumbai Police)
Commissionerate and residing at Nawade)
Colony, Plot No.107, Taloja MIDC Road,)
Panvel, Navi Mumbai.)...**Applicant**

Versus

1. The Commissioner of Police)
Navi Mumbai Police Commissionerate)
Having Office at CBD Belapur,)
Navi Mumbai.)
2. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Shri B.A. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

**CORAM : Smt. Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member-A)**

DATE : 18.11.2024

PER : Smt. Justice Mridula Bhatkar (Chairperson)

JUDGMENT

1. The Applicant prays that impugned Order dated 18.1.2020 passed by the Respondent No. 1 as 'Disciplinary Authority' removing him from

service and also impugned Order dated 14.10.2021 passed by Respondent No. 2 as 'Appellate Authority' be quashed and set aside and thereupon he be taken back in service on post of 'Police Constable' in establishment of Commissioner of Police, Navi Mumbai.

2. The learned Counsel for Applicant submitted that 'Advertisement' was issued in February 2017 by Commissioner of Police, Navi Mumbai for recruitment to the posts of Police Constable. The Applicant had thereafter filled 'Application Form' sometime in February-March, 2017. The Applicant was called upon to submit 'Attestation Form' within 4 days from 05.06.2017 to which he did on 08.06.2017. The Applicant therein had stated that there were no pending 'Criminal Cases' or 'Civil Cases'.

3. The learned Counsel for Applicant further submitted that separately Commissioner of Police, Navi Mumbai had called for 'Character Verification Report' about Applicant from S.P., Ahmednagar and accordingly the same was furnished on 27.6.2017, stating therein that there was nothing adverse against Applicant.

4. The learned Counsel further submitted that C.R No. 37/2017 came to be registered on 27.06.2017 against the Applicant at 'Murud Police Station, District Raigad' for offences punishable under Sections 376 and 417 of IPC. The Applicant was then taken into custody on 02.07.2017 and arrested on 03.07.2017 and kept in 'Police Custody' till 05.07.2017. The Applicant thereafter was placed in 'Judicial Custody' till 20.7.2017. The Applicant was granted 'Bail' by 'Learned District Judge-3 & Additional Sessions Judge, Raigad' on 20.7.2017.

5. The learned Counsel then submitted that Commissioner of Police, Navi Mumbai, issued 'Order of Appointment' to the Applicant on 19.08.2017. The Applicant thereupon approached the office of Commissioner of Police, Navi Mumbai on 21.8.2017 to join and reported at Head Quarters.

6. The learned Counsel for Applicant further submitted that Applicant himself had disclosed the fact of prosecution against him immediately when he was to be sent for Training Programme by Commissioner of Police, Navi Mumbai. Thereafter, Commissioner of Police, Navi Mumbai took action to verify the facts of Criminal Case pending against the Applicant and received subsequent report of S.P, Ahmednagar on 28.08.2017.

7. The learned Counsel for Applicant submitted that in 'Order' dated 20.07.2017 granting 'Bail' to Applicant, the Learned District Judge-3 & Additional Sessions Judge, Raigad has made specific observation in Cri. MA No.520/2017 about consensual Sexual Relationship and that charge of Section 376 of IPC stood diluted against Applicant.

8. The learned Counsel for Applicant has further submitted that at the time of joining as 'Police Constable', in establishment of Commissioner of Police, Navi Mumbai on 21.08.2017, the Applicant was not required to make any specific disclosure about pendency of any Criminal Cases which was required to be made only at the time of filling-up the 'Attestation Form'. The said 'Attestation Form' was submitted during 4 days from 05.06.2017 to 08.06.2017 and not during July, 2017. He further submits that Applicant was arrested in the said Cr.No.37/2017 on 02.07.2017 and was in Police Custody from 02.07.2017 to 5.7.2017. The Applicant thereafter was transferred to Judicial Custody and had remained there till 20.07.2017. Therefore, there was no opportunity for Applicant to fill-up 'Attestation Form' during month of July, 2017. Therefore, Applicant had not suppressed any fact from Commissioner of Police, Navi Mumbai at the time of joining on 21.8.2017.

9. The learned Counsel for Applicant has relied on the evidence tendered by Applicant and the witnesses in 'Departmental Enquiry', especially Sunil M. Dubele, Senior Clerk in establishment of

Commissioner of Police, Navi Mumbai. The learned Counsel for Applicant further submitted that the impugned Order dated 18.1.2020 of Commissioner of Police, Navi Mumbai as 'Disciplinary Authority' about removal from service of Applicant was illegal and be set aside and thereupon Applicant should be taken back in service on post of Police Constable in establishment of Commissioner of Police, Navi Mumbai.

10. The learned Counsel for Applicant lastly pointed out that Applicant had filed Criminal Application No.496/2018 in Writ Petition No.1315 of 2018 which shows that by Order dated 26.11.2018, the Hon'ble Division Bench of Hon'ble Bombay High Court has allowed the settlement between the parties, as it was a consented Sexual Relationship and has quashed and set aside the 'Regular Criminal Case No.38 of 2017' and 'Cr.No. 37/2017' registered at Murud Police Station, District Raigad.

11. The learned CPO per contra submitted that 'Charge-Sheet' was issued on 24.10.2018 for conduct of Departmental Enquiry against Applicant. She submitted that the offence was registered on 27.06.2017 as Cr. No.37/2017 was of serious nature i.e. of Rape. The Cr.No.37/2017 had been registered prior to date of joining of Applicant on 21.08.2017 on post of Police Constable in establishment of Commissioner of Police, Navi Mumbai.

12. The learned CPO further submitted that Departmental Enquiry was conducted against Applicant and no procedure of law was contravened which was pointed out by learned Counsel for Applicant inviting indulgence of this Tribunal. She then submitted that it was the duty of Applicant to disclose the pendency of Cr. No.37/2017 registered at Murud Police Station, District Raigad against the Applicant at the time of joining on duty on 21.8.2017 in establishment of Commissioner of Police, Navi Mumbai. Hence, this act of suppression of very important fact by Applicant was treated as grave and after conduct of Departmental Enquiry, the Applicant was found guilty. Therefore, pursuant to

Departmental Enquiry; the Applicant was removed from service by Disciplinary Authority. She relied on 'Affidavit-in-Reply' dated 15.2.2022 filed by Commissioner of Police, Navi Mumbai through Mandar V. Naik, Assistant Commissioner of Police, Navi Mumbai.

13. Admittedly, the Applicant was issued the 'Charge-Sheet' for conduct of Departmental Enquiry on 24.10.2018 and in the next month i.e. on 26.11.2018, the Hon'ble Division Bench of Hon'ble Bombay High Court had quashed and set aside the 'Regular Criminal Case No.38 of 2017 and Cr.No.37/2017 against Applicant. The Applicant was served the 'Charge-Sheet' in 'Departmental Enquiry' for 'Non-Disclosure' of Cr.No.37/2017 registered against him at Murud Police Station, District Raigad at the time of joining on post Police Constable on 21.8.2017 in establishment of Commissioner of Police, Navi Mumbai.

14. We have gone through 'Enquiry Report' of 'Departmental Enquiry' especially evidence tendered by one Sunil M. Dubele, Senior Clerk in establishment of Commissioner of Police, Navi Mumbai. The copy of 'Attestation Form' was placed before us which shows that in 'Clause 11(क)', there is 'Specific Query' about whether he/she is facing criminal prosecution in any Court and if yes, state the details thereof such as Case No., in which Court case is pending, under Section, etc. In the Column against 'Clause 11(क)', the Applicant has clearly written 'No'. So, we asked Commissioner of Police, Navi Mumbai to affirm whether this 'Attestation Form' was filled-up by the Applicant by producing the 'Original Copy' as we found one Mohan Patil, Police Inspector, CBD Police Station, Navi Mumbai had filed 'Identity Certificate' on 'Attestation Form' on which date written was 07.07.2017. However, the Applicant was in Judicial Custody on 7.7.2017 and up to 20.7.2017. We realize that there was no occasion to Applicant to come out to fill-up the 'Attestation Form' on 7.7.2017 and that if would have been filled-up while in Judicial Custody; as particular procedures are required to be followed as per 'Maharashtra Prison Manual 1979'.

15. We then asked whether the 'Attestation Form' could have been filled up by applicant while he was in Judicial Custody on 07.07.2017 to which learned CPO on instructions received from office of Commissioner of Police, Navi Mumbai stated that information was that all candidates of that recruitment for the posts of Police Constables were directed to fill-up their 'Attestation Form' during 4 days i.e. from 05.06.2017 to 08.06.2017. Hence, the Applicant must have filled-up this 'Attestation Form' within these 4 days and not when Mohan Patil, Police Inspector, CBD Police Station, Navi Mumbai had filed 'Identity Certificate' on 'Attestation Form' on which date written was 07.07.2017. The Applicant therefore had rightly disclosed that no Criminal Cases were pending against him at that time of filling of 'Attestation Form'. The Criminal Case No.38/2017 was registered against him later on 27.06.2017. Thus, admittedly, when the Applicant joined the duty on 21.08.2017, the Criminal Case No.38/2017 was pending against him. However, as Charge-Sheet in Departmental Enquiry is about Non-Disclosure of information about pendency of Criminal Cases against the Applicant, this nature of charge against Applicant necessarily poses a question before us which is as follows :-

“Whether there was particular procedure followed by Respondent-State or mechanism was in existence ?

To this question, learned CPO based on instructions answered 'No'. Thus, when there was no such procedure followed by Commissioner of Police, Navi Mumbai which had required every candidate selected for appointment to post of 'Police Constable' to be under obligation to disclose about pendency of Criminal Cases against him/her after filling the 'Attestation Form'. Further it is not expected from newly recruited Police Constables that they would had knowledge that at the time of joining the Police Force, they should even after filling Attestation Form truthfully must separately disclose at the time of joining about the pendency of Criminal Cases. It is to be noted that at the time of filling-up of 'Attestation Form' during 4 days from 05.06.2017 to 08.06.2017,

no Criminal Case was pending against the Applicant. The Applicant had in fact furnished the true information about developments in the interregnum i.e. after filling-up the 'Attestation Form' upon joining on post of Police Constable in establishment of Commissioner of Police, Navi Mumbai on 21.8.2017 that in intervening period of about 2 months that Cr.No.37/2017 had been registered against him at Murud Police Station, District Raigad. Thus, as submitted by learned Counsel for Applicant, the 'Enquiry Officer' has failed to appreciate this basic circumstance in the evidence which very much had unfolded at the time of 'Departmental Enquiry'.

16. As pointed out by learned Counsel for Applicant that in cross-examination of Sunil Dubele, Senior Clerk in establishment of Commissioner of Police, Navi Mumbai when specific question was put to him whether there was any mechanism available or directions given by any Senior Officers for collecting all information about antecedents of candidates before permitting them to join on post of 'Police Constable' in establishment of Commissioner of Police, Navi Mumbai and further he had answered in the negative. He had also admitted that newly recruited Police Constables have no knowledge about rules and regulations which is required to be followed in Police Department.

17. Thus, we are of the considered view that Enquiry Officer so also Appellate Authority had lost sight of this basic fact and Charge-Sheet should not have been issued on 24.10.2018 based on presumption that newly recruited Police Constables would had prior knowledge of all rules and regulations of Police Department. The fact that Applicant had himself disclosed this fact immediately soon after joining on post of 'Police Constables' on 21.08.2017 and before being sent for Training Programme is not refuted by Commissioner of Police, Navi Mumbai. Hence, we do not see any good ground to hold that Applicant had committed any grievous misconduct by not disclosing the fact of criminal prosecution pending against him when he joined on post of 'Police

Constable' on 21.08.2017 in establishment of Commissioner of Police, Navi Mumbai. Hence, indulgence is required.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned Order dated 18.01.2020 passed by Respondent No.1 as Disciplinary Authority and so also impugned Order dated 14.10.2021 passed by Respondent No. 2 as Appellate Authority are hereby quashed and set aside.
- (C) The Respondent No.1 is directed to take the Applicant back in service on post of 'Police Constable' and Order is to be issued during the period from 25.11.2024 to 01.12.2024.
- (D) The Respondent No.1 had not sent Applicant for training programme after joining on post of 'Police Constable'. Therefore, Applicant should be sent for Training Programme to immediate next batch by Respondent No.1.
- (E) The Applicant though recruitee of the batch of 2017 of Police Constables in establishment of Respondent No.1. Hence, seniority of Applicant is to be maintained at the bottom of the said batch of 2017 of Police Constables by Respondent No.1.
- (F) The period when Applicant has not worked, the rule 'no work no pay' would be applicable to Applicant. Thus, Applicant would not be entitled to get any salary or increment and also not be entitled to back-wages from the date of termination till reinstatement on post of Police Constable by Respondent No.1.

(G) The Pay Fixation of Applicant can be notional subject to decision on the Suspension Period of Applicant which must be decided expeditiously by Respondent No.1.

(H) No Orders as to Costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Sd/-
(MRIDULA BHATKAR, J.)
Chairperson

Mumbai

Date : 18.11.2024

Dictation taken by :

S.K. Wamanse.

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