

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

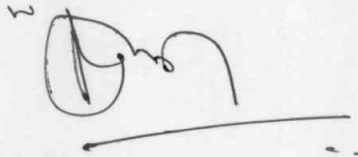
ORIGINAL APPLICATION NO.283 OF 2015

DISTRICT : MUMBAI

Shri Sanjay Lotan Raysing.)
Age : 34 Yrs, Occu.: Nil (Ex-Police)
Constable – Chest No.5065), Navi Mumbai)
Police Commissionerate, R/O. B/10/26,)
Ground Floor, Room No.1, Sector-4,)
CBD Belapur, Navin Mumbai 400 614.)
Address for Service of Notice :)
Shri A.V. Bandiwadekar, Advocate, Having)
Office at 9, “Ram-Pripa”, Lt. Dilip Gupte)
Marg, Mahim, Mumbai 400 016.)...**Applicant**

Versus

1. The Commissioner of Police.)
Navi Mumbai, having office at Navi)
Mumbai Police Commissionerate,)
CBD, Belapur, Navi Mumbai 400614)
2. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)...**Respondents**



Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri K.B.Bhise, Presenting Officer for Respondents.

**CORAM : SHRI RAJIV AGARWAL (VICE-CHAIRMAN)
SHRI R.B. MALIK (MEMBER-J)**

DATE : 30.01.2017

PER : SHRI R.B. MALIK (MEMBER-J)

JUDGMENT

1. This Original Application (OA) is made by a discharged Police Constable calling into question the said order of discharge, Exh. 'A' Page 15 of the Paper Book (PB) whereby he came to be discharged under the provisions of Rule 78(3) of the Bombay Police Manual without any advance notice on the ground that his services were no more required.

2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer for the Respondents.



3. It is common ground that the Applicant joined the Police Force as Constable on 24.12.2007 and functioned as such till such time as he was discharged as set out at the outset on 2.7.2008. The said order in Marathi needs to be fully reproduced herein below.

“क.पोआ/नमुं/आस्था-२/५०६८/१९३२/२००८
पोलीस आयुक्त यांचे कार्यालय
नवी मुंबई दि.२/७/२००८

विषय:- सेवेतून मुक्त करणेबाबत.....
नवप्रविष्ट पोलीस शिपाई/ संजय लोटन रायसिंग
चेस्ट नं.५०६५

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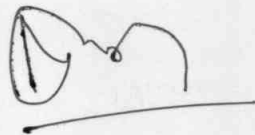
आदेश:-

नवप्रविष्ट पोलीस शिपाई संजय लोटन रायसिंग, चेस्ट नं.५०६५ यांच्या सेवेची यापुढे शासनास आवश्यकता नसलेने त्यांना मुंबई पोलीस नियमावली १९५९ भाग १ मधील नियम ७८ नुसार हे आदेश प्राप्त झाल्याच्या तारखेपासून सेवामुक्त (Discharge) करण्यात येत आहे.

त्याचप्रमाणे मुंबई पोलीस नियमावली १९५९ भाग-१ मधील नियम ७८ (३) नुसार त्यांना आगावू नोटीस न देता सेवामुक्त करण्यांत येत असल्याने त्यांना १ महिन्याचे वेतन व भत्ते देय आहेत. तरी लेखाधिकारी यांनी त्यांची आकारणी करून नवप्रविष्ट पोलीस शिपाई संजय लोटन रायसिंग, यांना ते आदा करावेत.

सही/-
(रामराव वाघ)
पोलीस आयुक्त, नवी मुंबई”

4. His order of appointment dated 20.12.2007 in Marathi to the extent germane hereto also needs to be reproduced.



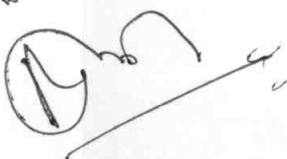
“पोलीस शिपाई या पदावरील तुमच्या नियुक्तीस मुंबई पोलीस अधिनियम १९५१ व मुंबई पोलीस (शिस्त व अपिल) नियम १९५६ व राज्य शासनाने वेळोवेळी विहीत केलेले अन्य निम लागू होतील व तुम्ही महाराष्ट्र राज्यात कोठेही बदली होण्यास पात्र राहाल.

तुमची पोलीस शिपाई या पदावर नियुक्ती केल्याने तुम्हास या पदासाठी विहीत केलेले प्रशिक्षण पूर्ण करावे लागेल व त्यासंबंधी परिक्षा ४ संधीमध्ये उत्तीर्ण व्हावी लागेल. जर ४ संधीमध्ये तुम्ही परिक्षा उत्तीर्ण झाला नाहीत तर तुमची सेवा समाप्त करण्यात येईल.

तुम्हांस शासन निर्णय, वित्त विभाग क्र.अंनिओ-१००५/१२६/सेवा-४/ दि.३१.१०.२००५ मध्ये स्पष्ट केल्याप्रमाणे परिभाषित निवृत्ती वेतन योजने संबंधीच्या सर्व अटी व शर्ती लागू राहतील.

तुमची नेमणूक तात्पुरत्या स्वरूपाची असल्याने तुम्ही विहीत अटी पूर्ण न केल्यास अथवा गैरवर्तन केल्यास तुम्हांस कोणतीही पूर्वसूचना न देता तुमची सेवा समाप्त करण्यात येईल तसेच तुम्हास स्वखूशीने नोकरी सोड्याची असल्यास तत्पुर्वी एक महिना अगोदर लेखी नोटीस देणे आवश्यक राहिल. अन्यथा तुम्हांस एक महिन्याचे वेतन आगाऊ भरणे आवश्यक राहिल.”

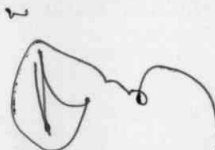
5. It is absolutely clear that in his letter of appointment, it was made clear that the provisions of Maharashtra Police Act, 1951 and Bombay Police (Discipline & Appeal) Rules, 1956 as amended from time to time would be applicable and he would be liable to be transferred anywhere within the State of Maharashtra.



Pertinently, the provisions of the Act and the Rules above referred to, were applicable.

6. In so far as the order of discharge herein impugned is concerned, Rule 78(3) of the Volume 1 of Bombay Police Manual was the source of authority for the Police Commissioner, Mumbai to discharge him because his services were no more required. The Commissioner of Police is the 1st Respondent while the State of Maharashtra in Home Department is the 2nd Respondent. Therefore, it is very clear that the validity of the impugned action will have to be tested primarily on the express text of the impugned order which say nothing more than the fact that his services were no more required. In a system and administration which is rule governed, the employer does not have an unbridled right outside the Rules to either appoint anybody or to terminate him once he was appointed in a manner known to Law and Rules.

7. As far as the present matter is concerned, as already indicated above, the source of authority is the Police Manual Volume 1 Rule 78(3). Now, as far as these Manuals are concerned, their efficacy has to be judged

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from the source they emanate from and their ambit and sweep. They are basically directions for the conduct of the business of the Police administration. They are quite obviously not the enactment nor are they having the force of statutory Rules. They are just directions and nothing more. Therefore, the service of a Police Personnel as a whole will basically be governed by the provisions of the Act and the Rules of 1956 to which a reference has already been made above. In any case, Rule 78 falls within Chapter III of the Police Manual which deals with appointment, probation, confirmation and seniority aspect of the matter and it lays down that the temporary appointment would make it clear that it was until further orders. This fact was not specifically mentioned in the letter of appointment of the Applicant. Rule 78 (ii) and (iii) need to be fully reproduced because (iii) was the provision expressly quoted in the impugned order.

“(ii) Temporary Government servants who have not been appointed for a definite period may be discharged from service by giving on month’s notice irrespective of whether such Government servants have or have not signed the prescribed undertaking mentioned in clause (v) below. In any case, temporary appointments made against or in

the chain of leave and deputation vacancies will be terminable on the return of absentees, whenever that may take place.

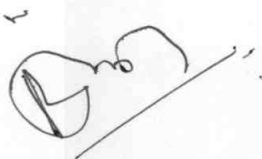
(iii) In cases of such temporary Government servants who are entitled to notice prior to the termination of their services accordingly to the terms of their appointment and whose services are terminated without any notice for the prescribed period, they will be given pay for that period together with all allowances to which they are otherwise entitled."

It is quite clear that the appointment of the Applicant was not under the above quoted Rule 78 and therefore thereunder, he cannot be removed also so what if the word used is "discharged".

8. Going by the state of the impugned order as it is in the light of the provisions above quoted, we are in agreement with the submissions of Mr. Bandiwadekar, the learned Advocate for the Applicant that in any case, there could have been no justification for discharging the Applicant, picking him up from nowhere. It is not even the case of the Respondents that he was the junior-most, and therefore, the others junior to him, ought to have

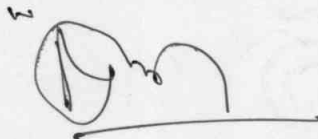
been first discharged before the Applicant, if the services were no more required. That would be the outcome of the plain reading and its effect that the impugned order read alongside the provisions above quoted. But in any case, we are very clearly of the opinion that the Police Commissioner in exercise of the powers under the Police Manual could not have discharge the Applicant because after-all, once a Government servant is appointed which in this case is the post of Police Constable, then the protective umbrella of Article 311 extends to him and the Act whereby he loses the job has to be fully justified by the employer which in this case happens to be the State of Maharashtra.

9. On that count alone, the said OA can be worked out but that is not all. In fact, from the correspondence that ensued *inter-partes*, it would become clear that the real reason for making the impugned order was that after his appointment, when his character verification was to be made, in the Attestation Form, Clause 11 which required him to state as to whether he had been arrested, prosecuted, kept under detention bound down, etc., he answered in the negative. As a matter of fact, as on that day, a prosecution was pending



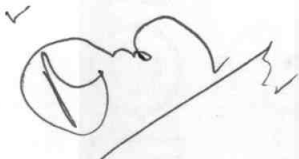
against him. The said prosecution was against the Applicant and 5 others. The Applicant was apparently the Accused No.5 and the others could be his relatives as would become clear from their names. They were charged under Section 147, 323 and 447 of the Indian Penal Code (IPC). The copy of the order of the learned Judicial Magistrate 1st Class, Chopda in District Jalgaon in **Regular Criminal Case No.64/2003 (State of Maharashtra Vs. Pandharinath N. Koli and 5 others, dated 19.7.2008)** it would become quite clear that the learned JMFC found no substance in the case of the prosecution against the Applicant and his co-accused. He has discussed the evidence in Paras 6, 7 and 8 of his Judgment and made an order of what can safely be described as "clean acquittal". However, according to the Respondents, the crux of the matter is not the outcome of the prosecution much as it is the fact that the prosecution was pending against him and he had suppressed the said information which *ipso-facto* is sufficient to result in loss of job.

10. Whatever else one may say or not say, it is very clear that, therefore, on Respondents' own showing the so called suppression by the Applicant because the



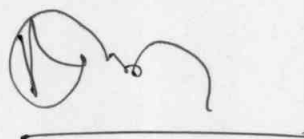
impugned order and if that was so, then there is no reason why it should not have been specifically mentioned that the reason was the said suppression. Left alone with the impugned order, one cannot get any inkling of what becaused the "discharge". Without getting drawn into the academic discussion, in our opinion, such a course of action adopted by the Respondents cannot pass muster with the constitutional test in so far as the safeguards provided to the public servant, are concerned.

11. Bombay Police (Punishment and Appeals) Rules, 1956 are framed in exercise of powers under Section 25(2)(c) read with Section 5(b) of the Bombay Police Act, 1951. Section 5 has the subheading of, "Constitution of Police Force" and Section 5(b) lays down *inter-alia* that the recruitment, pay, allowances and all other conditions of service of Police Force (emphasis supplied) would be as may from time to time be determined by the State Government by general or special order. Section 25(2)(c) of the Maharashtra Police Act provides *inter-alia* that the exercise of punitive powers of the Director General of Police would be subject to the Rules and orders made in that behalf by the Government.

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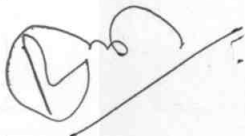
The 1956 Rules have been framed by the Government. These Rules apply to all Police Officers of and below the rank of Inspector to be called as Police Officers. Rule 2 makes it clear that no Police Officer who was subject to these Rules would be departmentally punished otherwise in accordance with the provisions of the said Rules. Rule 3 *inter-alia* provides the various types of punishments that could be meted out including removal from service which does not disqualify the future employment in any department other than Police Department and punishment of a more serious nature which would disable fresh employments in Government service. Then there are Rules about how the delinquent could be placed under suspension, etc. the details of which it is not necessary to go into. Rule 4(2) of the 1956 Rules lays down in effect that unless a departmental enquiry was held into the conduct of the said Police Officer, he could not be punished and the reasons, etc. for passing such an order in writing would have to be given. Adequate opportunity will have to be given to the Police Officer concerned in that behalf.

12. It is, therefore, very clear that the 1956 Rules framed under the Act prescribe the procedure to be

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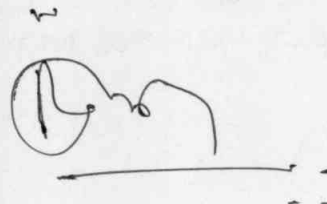
followed in case the punitive powers were to be exercised. There are safeguards for the delinquent Officer in the form of a departmental enquiry wherein he would get an opportunity of being heard.

13. The crux of the matter herein is that there was clear occasion and need to provide to the Applicant the opportunity of being heard. As a matter of fact, the provisions of the Manual which have been pressed into service could never have been done in the backdrop of the facts such as they are and the facts that surrounded the impugned order, an action which is a ruse to circumvent the provisions of the Act and Rules and thereby directly offend the constitutional mandate can quite certainly not be approved judicially. We unhesitatingly hold that a loss of job of a Police Officer by recourse to the provisions of Manual can never be a substitute for a procedure to be followed in accordance with the Police Act and the 1956 Rules and whatever cannot be done directly, cannot be done indirectly as well, and therefore, an action which in fact manifests, a clear attempt to circumvent the provisions of Constitution, Law and Rules can certainly not pass muster with the judicial scrutiny.




14. In view of the fact that we are adopting this view that commends to us, it will not be proper to examine the merit of the "suppression" aspect of the matter because the act of the Respondents is not supportable on a basic premise.

15. Mr. Bandiwadekar relied upon **OA 836/2009 (Lalit S. Mohite Vs. The Deputy Commissioner of Police and one another, dated 12.01.2010)**. On behalf of the Respondents, reliance was placed on **Dipesh B. Pardeshi Vs. General Manager, MSED & Ors. (Writ Petition No.5222/2008, dated 15.1.2009)** and a Judgment of the Hon'ble Supreme Court in **Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav, Appeal (Civil) 3266 of 2001, dated 26th February, 2003**. All the above referred Judgments examined the merit of the matter with regard to the suppression of information and as already mentioned above, in the present matter, the undoing of the Respondents is that they deprived the Applicant who had put in a few months service of his right to be heard. They tried to create an artificial situation to justify their action by taking recourse to the provisions of the Manual, which in our opinion, they could not have done.



16. That having been said, the point still remains that the Respondents have alleged actionable suppression against the Applicant, and therefore, in accordance herewith, they can still take action and it will not be possible even on the part of this Tribunal to let the Applicant go completely scot free, and therefore, the final order will have to be so designed as to take care of interest of both the sides.

17. The order herein impugned stands quashed and set aside. The Respondents, in case, they so decide will be free to initiate an appropriate action in accordance with the observations herein made based on the law and rules above discussed and in case they so decide, they are hereby directed to complete the said action within a period of four months from today which will include completion of the enquiry and communication of its outcome to the Applicant. The Applicant shall have a right to challenge the order in case he was aggrieved thereby. If the enquiry was not completed within a period of four months from today, the same shall stand quashed and set aside and the Applicant shall be immediately reinstated to the post he had been discharged from, as if the impugned order was not made and in that event, he

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would be entitled to the back-wages and all other service benefits of a regular Government employee. No order as to costs.

Sd/-

(R.B. Malik)
Member-J
30.01.2017

Sd/-

(Rajiv Agarwal)
Vice-Chairman
30.01.2017

Mumbai

Date : 30.01.2017

Dictation taken by :

S.K. Wamanse.

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