

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.347 OF 2022

DISTRICT : THANE

Shri Anand Sitaram Bhoir.)
Age : 46 Yrs., Occu.: Nil,)
Ex. Police Inspector, Police Control Room,)
Additional Commissioner of Police,)
East Region, Chembur, Mumbai – 400 071)
R/o. C/1501, Indraprashta Complex,)
Near Golden Nest, Mira Road (E),)
District : Thane.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner of Police.)
Mumbai, having office at Mumbai)
Police Commissionerate, L.T. Marg,)
Crawford Market, Fort,)
Mumbai – 400 001.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

**CORAM : A.P. KURHEKAR, MEMBER-J
BIJAY KUMAR, MEMBER-A**

DATE : 04/07/2022

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has challenged the order passed by Respondent No.1 - Government dated 04.10.2021 thereby confirming the order passed by Respondent No.2 - Commissioner of Police removing the Applicant from service which was passed in exercise of powers under Section 25 of Maharashtra Police Act, 1951 (hereinafter referred to as 'Act of 1951' for brevity) though in earlier round of litigation, the Government as an appellate authority quashed and set aside the order of removal from service and reinstated the Applicant in service and also confirmed the same in revisional jurisdiction under Section 27-A of 'Act of 1951'.

2. Shortly stated sequence of events are as under :-

- (i) The Applicant was Police Inspector on the establishment of Commissioner of Police, Mumbai. The Respondent No.2 - Commissioner of Police, Mumbai by order dated 20.08.2019 removed the Applicant from service exercising powers under Section 25 of 'Act of 1951', after regular Departmental Enquiry.
- (ii) Being aggrieved by it, the Applicant has preferred appeal before Respondent No.1 - Government which was heard by the then Minister and on hearing, both the parties, by order dated 16.09.2019 order of removal from service was set aside and Applicant was directed to be reinstated in service.
- (iii) Accordingly, said Order dated 16.09.2019 was implemented and Applicant was reinstated in service by Commissioner of Police, Mumbai.
- (iv) Thereafter, Respondent No.2 - Commissioner of Police, Mumbai made reference by his letter dated 17.09.2019 to the Government for revision of decision dated 16.09.2019 stating

reconsideration

that the appellate authority has not properly heard the Department and the charges levelled against the Applicant being serious, the order of removal from service was legal and requested the Government to reconsider its decision dated 16.09.2019.

- (v) On receipt of said communication, the Government initially by order dated 20.09.2019 stayed its earlier order dated 16.09.2019 whereby appeal was allowed.
- (vi) Later, Government reconsidered the issue in exercising revisional jurisdiction and confirmed its order dated 16.09.2019 whereby appeal was allowed and Applicant was reinstated in service. Accordingly, Government vacated stay granted earlier on 20.09.2019.
- (vii) Interestingly, Respondent No.2 - Commissioner of Police, Mumbai again made second reference by letter dated 06.07.2021 requesting the Government again to reconsider its decision and to maintain the order of removal from service.
- (viii) It is on the above background, the Respondent No.1 - Government again exercised powers of review under Section 27-B of 'Act of 1951' reversed his earlier decision by order dated 04.10.2021 and dismissed the appeal of the Applicant confirming order of removal from service dated 20.08.2019 passed by Commissioner of Police, Mumbai.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant assailed the impugned order dated 04.10.2021 and strenuously urged that once Government in first round of litigation (in appeal) under Section 27 of Maharashtra Police Act exercised the powers in appeal, set aside the order of removal from service dated 20.08.2019 passed by Commissioner of Police, Mumbai which has been implemented by

reinstating in service and later also, dismissed revision under Section 27-A of Maharashtra Police Act, the Government again legally not competent to reverse its earlier decision passed in appeal and revision exercising powers of review under Section 27-B of Maharashtra Police Act. He has further pointed out that for exercising powers under Section 27-B of Maharashtra Police Act, condition precedent is production of new evidence or material which could not be produced or was not available at the time of passing order under review and secondly, no such order reversing its earlier decision can be passed without giving reasonable opportunity of making representation against the penalty proposed. He, therefore, submits that in the present case, admittedly, there being no such notice before reversing the earlier orders, the impugned order dated 04.01.2021 is totally bad in law. He has further pointed out that there was no such any new material or evidence to reverse the order and on the same set of facts already existed and considered Government reversed its earlier order and the same being totally bad in law liable to be quashed.

4. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer made feeble attempt to justify the impugned order stating that Commissioner of Police, Mumbai by letter dated 17.09.2019 had brought additional fact to the notice of Authority that Government had already given sanction for prosecution under the provisions of Prevention of Corruption Act and it was treated as new material to reverse earlier orders. As regard non-issuance of notice, she fairly concedes that no notice was given prior to issuance of impugned order, but submits that liberty be granted to the Department to issue notice, if Tribunal comes to the conclusion that impugned order is bad in law.

5. As discussed above, the facts of the case are very peculiar in nature where Government initially allowed the appeal, set aside the order dated 20.08.2019 for removal of service and reinstated the Applicant. Thereafter, on the reference made by Commissioner of Police, Mumbai

27-A of Maharashtra Police Act and after reconsidering the matter confirmed its earlier decision of allowing appeal and reinstatement of the Applicant in service. However, later again, Commissioner of Police made reference by his letter dated 06.07.2021 and thereon Government again exercised powers of review under Section 27-B of Maharashtra Police Act and reversed its earlier orders allowing the appeal and also ordered dismissing revision. Ultimately, by order dated 04.10.2021, the Government confirmed the order of dismissal of service dated 20.08.2019 initially passed by Commissioner of Police, Mumbai.

6. In view of submission at the Bar, now issue posed for consideration is whether impugned order dated 04.10.2021 is sustainable on the touch-stone of Section 27-B of Maharashtra Police Act which empowers the Government to review its order passed under Section 25, 27 or 27-B, as the case may be. It would be apposite to reproduce Section 27-B of Maharashtra Police Act, which is as under :-

“27-B. Power of State Government or Director General and Inspector General to review order passed under Sections 25, 27 or 27A.-

The State Government or the Director-General and Inspector-General of Police may, at any time, either *suo motu* or otherwise, review any order passed by it or him, as the case may be under sections 25, 27 or 27A, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come or has been brought, to its or his notice:

Provided that, no order imposing or enhancing any penalty shall be made by the State Government or Director-General and Inspector-General unless the Police Officer concerned has been given a reasonable opportunity of making a representation against the penalty proposed, or where it is proposed to make any of the major penalties specified in subsection (1) of section 25 or to enhance the minor penalty imposed by the order sought to be reviewed, to any of the major penalties:

Provided also that, if any inquiry under the prescribed rules has not already been held in the case, no such penalty shall be imposed except after holding an enquiry in the manner prescribed by rules.”

7. As stated above, the facts of the present case are very peculiar and glaring in nature. *Ex-facia* the impugned order dated 04.10.2021 is unsustainable in law since the condition precedent for invoking powers under Section 27-B of Maharashtra Police Act are totally absent. True, under Section 27-B, State Government or Director General and Inspector General have powers to review its order made earlier under Section 25, 27 or 27-A but it is subjected to rider of production of new material or evidence which cannot be produced and was not available at the time of passing the order under review which has the effect of changing the nature of the case, and secondly earlier order can be reviewed without giving reasonable opportunity of hearing and by making representation to the delinquent. Suffice to say, for exercising power under Section 27-B of Maharashtra Police Act production of new material or evidence which cannot be produced earlier and opportunity of hearing is *sine qua non*.

8. Significant to note that initially the Government decided appeal filed against the order of removal from services and the Appellate Authority had come to the conclusion that charges are not proved. Perusal of order dated 16.09.2019 further reveals that before deciding appeal, opportunity of hearing was also given to the department namely C.P., Mumbai. Thus, it is apparent that Appellate Authority has considered the facts on which order was based and recorded its finding that the charges are not proved and the Applicant was given clean chit. He was directed to be reinstated and accordingly came to be reinstated. Thereafter, the C.P. Mumbai made reference by its letter dated 17.09.2019 to the Government to reconsider its decision given in appeal. Initially, the Government by order dated 20.09.2019 stayed his order dated 16.09.2019 whereby appeal was allowed. Thereafter, the Government reconsidered the issue under revisional ^{review} jurisdiction contemplated under Section 27A and again confirmed his earlier findings of exonerating the Applicant and vacated the stay meaning thereby reviving his order of allowing appeal and reinstatement of the Applicant.

All corrections are carried out as per order dated 6.7.2022.

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However, later again C.P. Mumbai made communication by letter dated 06.07.2021 stating that the charges levelled against the Applicant in departmental inquiry were serious. In the said communication, he made reference of Anti-Corruption case stating that on 01.01.2019 the Applicant was caught raid handed while accepting bribe of Rs. 20 lakhs and the Government by communication dated 26.11.2019 has given sanction for prosecution. It is on receipt of this communication, the Government purportedly exercised the power under Section 27-B of Maharashtra Police Act and reversed his earlier orders.

9. Insofar as reasoning for reversing the order is concerned, all that Government in impugned order stated that if the punishment imposed is set aside, it would send wrong signal in the society and further recorded that the charges are proved. This is very strange reasoning given by the Government. Initially, the Government allowed the appeal exonerating the Applicant with the specific findings that the charges are not proved. I am afraid that such course of action is permissible in law. As stated above, it is only in the event, the production of new evidence or material which could not have been produced earlier, the Authority can exercise the powers of review under Section 27-B of Maharashtra Police Act.

10. Learned P.O. made feeble attempt to justify the impugned order stating that the information about sanction for prosecution given by the Government on 26.06.2019 as stated by C.P. in his letter dated 06.06.2021 can be treated as additional factor weighed the Government to reconsider its earlier decision. Indeed, explicitly such sanction of prosecution cannot be termed or construed as new evidence or material in respect of charges framed against the Applicant in D.E. It was totally different issue and bribe case has nothing to do with D.E. charges.

11. In D.E. the Applicant was charged for following misconduct:-

“तुम्ही पोलीस निरीक्षक आनंद भोईर, कक्षा -१०, गुन्हे शाखा येथे नेमणुकीस असतांना मु.प्र.शा. वि.स्था.गु.र.क्र.२२/१८ कलम ६५ (ई) , ८१, ८३, ९०, १०८ महाराष्ट्र मदयनिषेध कायदा या गुन्ह्याचे तपास अधिकारी म्हणुन खालीलप्रमाणे कसुरी केली आहे.

- (१) तुमच्याकडे तपासासाठी असलेल्या गुन्ह्यामध्ये आरोपीतांचा रिमांड अर्जामध्ये आरोपीतास फायदा होईल अशा प्रकारची मोघम कारणे नमुद केलीत. अशा रितीने तुम्ही पोलीस अधिकारी म्हणुन पोलीस दलात अशोभनीय वर्तन केलेत.
- (२) तुमच्याकडे तपासासाठी दिलेल्या गुन्ह्याच्या कागदपत्रांमध्ये जाणुनबुजुन त्रुटी ठेवल्यात, अशा रितीने तुम्ही पोलीस अधिकारी म्हणुन पोलीस दलात अशोभनीय वर्तन केलेत.
- (३) तुमच्याकडे तपासासाठी दिलेल्या गुन्ह्याच्या कागदपत्रांमध्ये जाणुनबुजुन त्रुटी वरिष्ठांच्या निदर्शनास येवु नयेत म्हणुन गुन्ह्याचे कागदपत्रे वरिष्ठांच्या अवलोकनासाठी ठेवली नाहीत. अशा रितीने तुम्ही पोलीस अधिकारी म्हणुन पोलीस दलात अशोभनीय वर्तन केलेत.
- (४) तुमच्याकडे तपासासाठी दिलेल्या गुन्ह्यामध्ये आरोपीतांचे मोबाईल फोन जाणुनबुजुन हस्तगत केले नाहीत, अशा रितीने तुम्ही पोलीस अधिकारी म्हणुन पोलीस दलात अशोभनीय वर्तन केलेत.
- (५) तुमच्याकडे तपासासाठी दिलेल्या गुन्ह्याच्या तपासासाठी शासकीय वाहन असतांनाही ते न वापरता स्वतःचे खाजगी इन्वोव्हा कार क्र.एम.एच.-४८/ए.टी.-७२२७ याचा वापर केलात. अशा रितीने तुम्ही पोलीस अधिकारी म्हणुन पोलीस दलात अशोभनीय वर्तन केलेत.”

12. The perusal of charges framed in D.E. thus reveals that charges were pertaining to alleged illegalities and favour done by the Applicant to accused while investigating Crime No.22/18 for offences under Section 65 (e), 81, 83, 90, 108 of Maharashtra Prohibition Act and the said charges are not at all related to the imputation of bribe or prosecution under the provisions of Prevention of Corruption Act. This being the position, the aspect of grant of sanction for prosecution under the provision of Prevention of Corruption Act has no relevance at all and that could not be said additional evidence in support of the charges inquired into against the Applicant. It is only in case where new evidence is produced which could not have been produced earlier for same reason and new evidence tendered found worthy to prove charges framed in D.E. in that event only authority can exercise powers under Section 27-B of Act. Whereas in present case, it is not so. The Government mechanically exercised powers under Section 27-B of Act without bothering to see whether new material is connected to charges of misconduct enquired into D.E. It reflects total non application of mind.

13. Furthermore, the Government passed the impugned order reversing its earlier decision given in appeal without giving any notice or opportunity of hearing to the Applicant which is mandatory for exercising the powers under Section 27-B of Maharashtra Police Act. The Applicant is deprived of protection guaranteed in law and principles of natural justice are trampled upon. It has caused serious prejudice to the Applicant. Suffice to say, the impugned order is in flagrant contravention of express provisions of law. It is arbitrary and totally bad in law.

14. For the aforesaid reasons, we have no other option except to conclude that the impugned order dated 04.10.2021 reflects total non-application of law and there is breach of mandatory provisions of law which renders the impugned order totally bad in law and liable to be quashed and set aside. Hence the following order:-

ORDER

(A) Original Application is allowed.

(B) Impugned order dated ^{4/10/2021}~~04.01.2021~~ is hereby quashed and set aside.

(C) The Applicant be reinstated in service within two weeks from today. He will not be entitled for back wages on principle of 'No Work No Pay'

(D) No order as to costs.

Sd/-

(BIJAY KUMAR)
Member-A

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 06/07/2022

Dictation taken by :

V.S. Mane

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