

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.519 OF 2015

DISTRICT : NASHIK

Shri Dyaneshwar V. Avhad.)
Age : 45 Yrs., Occu.: Nil,)
R/o. 15, Saipurty Saishiv Nagar,)
Spring Vally, Nasik.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Desk Officer,)
Home Department, World Trade)
Centre, Building No.1, Cuff Parade,)
Mumbai - 400 005.)
2. The Commissioner of Police.)
Nasik City, Nasik.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

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

PER : SHRI J.D. KULKARNI (VICE-CHAIRMAN)(J)

DATE : 31.01.2018

J U D G M E N T

1. The Applicant, a dismissed Police Constable has prayed for quashing and setting aside the order of his dismissal dated 17.03.2015 (Annexure 'Q', Pages 134 to 136 (both inclusive)) issued by the Respondent No.1.

2. It is very peculiar case wherefrom, it seems that the Applicant is getting tossed between dismissal and reinstatement and this is the third round of litigation.

3. Initially, on 31.01.2009, the Applicant was dismissed by the Respondent No.1. The said order of dismissal is at Exh. 'H' (Pages 91 to 94 (both inclusive)). The charge against the Applicant and the departmental enquiry (D.E) was as under.

“दोषारोप:-

अत्यंत गैरशिस्तीचे व पोलीस खात्यास न शोभणारे वर्तन की, ज्यात तुम्ही चालक पोशि/७३ ज्ञानेश्वर वाळीबा आव्हाड नेम. मो.परि. विभाग, नाशिक शहर यांनी तुमची पहिली पत्नी सौ. वंदना ज्ञानेश्वर आव्हाड हया हयात असतांना व त्यांना घटस्फोट दिला नसतांना तुम्ही सौ. जिजाबाई ज्ञानेश्वर आव्हाड रा. नायागांव ता. सिन्नर जि. नाशिक यांचेशी दुसरा विवाह केल्याने निष्पन्न झाले आहे. तसेच तुम्ही तुमची दुसरी पत्नी सौ. जिजाबाई आव्हाड यांना शिवीगाळ व दमदाटी करत असल्याचेही निष्पन्न झाले आहे. सौ जिजाबाई यांना तुम्ही एक वर्षापासुन घरातून काढून दिलेले आहे. यामुळे त्यांनी तुमचे विरुद्ध पोलीस आयुक्त कार्यालये, नाशिक शहर येथे तक्रार अर्ज दिलेला आहे.

सदर अर्जाचे चौकशी कामी त्या दि.१६.०६.२००८ रोजी १६.०० वा. सुमारास पोलीस आयुक्त कार्यालय, नाशिक येथे आल्या असता तुम्ही त्यांना वार्डटसाईट शिवीगाळ करून 'तुझा मर्डर करून टाकील' असा दम दिला. म्हणून तुमचे विरुद्ध सरकारवाडा पो. स्टे. येथे प.नॉ.कॉ. नं. २८४/२००८ भा.दं.वि.कलम ५०४, ५०६ प्रमाणे दि. १६.०६.२००८ रोजी दाखल आहे. अशा प्रकारे तुम्ही गैरशिस्तीचे व पोलीस खात्यास न शोभणार असे वर्तन केल्याने तुमचे विरुद्ध सदरचा दोषारोप तयार करण्यात आला आहे.”

4. After full-fledged the enquiry, the order dated 31.01.2009 was passed, whereby the Applicant was dismissed from service.

5. Being aggrieved by the aforesaid order of dismissal dated 30.01.2009, the Applicant filed an appeal before His Excellency the Hon'ble Governor of Maharashtra. The Hon'ble Governor was pleased to quash and set aside the order of dismissal. The said order was passed on 20th October, 2009 which is at Exhibit 'J' and its copies are placed on record at Pages 102 and 103). The relevant decision taken by the Government and the reason for taking decision of setting aside dismissal is as under :

“३. अपीलार्थीस अपीलीय प्राधिकारी यांना दिनांक ८.९.२००९ रोजी प्रत्यक्ष सुनावणी दिली. प्रत्यक्ष सुनावणी दिली. प्रत्यक्ष सुनावणीत उपस्थित केलेले मुद्दे तसेच अपील अर्जात उल्लेखिलेले मुद्दे, या प्रकरणाची कागदपत्रे, शिस्तभंग प्राधिकारी यांचे अभिप्राय, आदेश इत्यादींची शासनाने छाननी केली त्यात शासनाला असे आढळून आले की, अपचारी, श्री. आव्हाड यांच्यावर पाहिली

पत्नी हयात असताना व तीला घटस्फोट दिला नसताना, दुसरा विवाह केल्याचा दोषारोप ठेऊन सेवेतून अशी शिक्षा देण्यात आलेली आहे. याबाबत अपचा-याने त्यांचा कोणताही दुसरा विवाह झाला नसल्याची बाजू मांडली व त्यांचे नातेवाईकांच्या अंतर्गत भांडणामुळे अपचा-याविरुद्ध दुस-या लग्नाच्या तक्रारी केल्याचे दिसून येते. अपचा-याची पत्नी किरकोळ कौटुंबिक वादातून अपचया-यास सोडून गेली व तिने अपचा-याविरुद्ध भादंवि कलम ४९८ (अ) प्रमाणे तक्रार नोंदविली. तथापि, सदर प्रकार अपचा-याच्या पत्नीने मागे घेतल्याचे दिसून येते, याबाबत उच्च न्यायालयाचे फौजदारी खटला क्र. ३५५३/२००८ मधील दिनांक ०८.१०.२००८ च्या न्यायनिर्णयात नमूद केल्यानुसार अपचारी व त्यांच्या पत्नीमध्ये समझोता झालेला असल्याने सदर प्रकरण निकाली काढलेले आहे. दिनांक ०८.९.२००९ च्या सुनावणी दरम्यान आपचा-याची पत्नी सौ.वंदना ज्ञानेश्वर आव्हाड याही उपस्थित होत्या व त्यांनीही अपचा-याविरुद्धचा दोषारोप चुकीचा असल्याचे नगूद केले. अपचा-याची कौटुंबिक जबाबदारी व सुनावणी दरम्यान समोर आलेल्या बाबी विचारात घेता अपचा-याने पहिली पत्नी हयात असताना दुसरे लग्न केले असे दिसून येत नाही. सबब, अपचा-यास देण्यात आलेली सेवेतून बडतर्फ ही शिक्षा रद्द करण्याच्या निष्कर्षाप्रत शासन आले आहे. त्यानुसार अपचा श्री. आव्हाड यांना दिलेली सेवेतून बडतर्फ हि शिक्षा रद्द करण्याच्या करून त्यांना सेवेत पुनःस्थापित करण्यात यावे असा शासनाने निर्णय घेतला आहे.”

The Applicant has accordingly reinstated in service.

6. Quite surprising vide order dated 15.10.2010, the decision to reinstate the Applicant was reviewed. The order in this regard at Annexure 'K' (Page Nos.106 and 107).

7. Being aggrieved by the order of review dated 15.10.2010, the Applicant filed O.A.No.439/2010 in which this Tribunal was pleased to pass order on 13.05.2010. In Para Nos. 7 and 8 of the order, the Tribunal has observed as under.

“7. Under the aforesaid facts and circumstances of the case, the impugned order dated 15.4.2010 is quashed and set aside. Accordingly, the Original Application is made absolute in terms of prayer clause 10(a). The applicant be reinstated in service with all consequential benefits within a period of two weeks from today.

8. Needless to say that the Respondent is at liberty to adopt proceedings against the applicant, if need be, in accordance with law. Hamdast.”

8. In view of the directions aforesaid, the matter was, therefore, again reconsidered by the competent authority and again, the Respondent No.1 was pleased to maintain the order of dismissal. Such order was passed on 21.07.2010 (Annexure ‘N’, Page 118).

9. Being aggrieved by the order dated 21.07.2010, the Applicant preferred O.A.No.669/2011 before this Tribunal Bench at Mumbai and in the said O.A, this Tribunal vide order dated 9.07.2014 was pleased to make following observations.

“7. This Original Application is brought against the order of the Commissioner of Police, Nashik. We do not want to spend even one word more than what is absolutely necessary. We do not want to pre-empt or prejudice the matter. Therefore, let it go to the same authority. He may take an appropriate decision in the manner he in his discretion deems fit and proper. He will be free even to decide if in his wisdom he himself wants to go ahead or he would think it proper to forward it to any other authority. But post remand any decision under Section 27(B) of Bombay Police Act, must reflect proper application of mind and precise reasoning, howsoever long or short to justify whatever decision is rendered. The quick changes that have been taking place in this matter has resulted in swining of fortunes for the Applicant and he getting tossed between dismissal and reinstatement. We have given our most anxious consideration to the course of action that we should be adopting in that regard. In our opinion, while an outer time limit for complying with our directions should ensure the quick decision with both the sides coming to know finally their fate sooner than later, we should not order reinstatement of the Applicant. After all more often than not the adjudicators in such circumstances have got to chose lesser of the

two evils and we decide that the course of action delineated above is lesser of the two evils, if one went by the history hereof.

8. The matter is hereby remitted to the Commissioner of Police, Nashik to start the proceedings against the Applicant de-novo under Section 27(B) of the Bombay Police Act, 1951 and render a decision afresh after affording an opportunity of being heard to the Applicant in accordance with the principles of natural justice and remain guided by the directions hereinabove. The proceedings be concluded by 31st October, 2014. Till then, the Applicant shall not be reinstated. The state of affairs in that behalf after the conclusion of the proceedings shall be in accordance with the decision thereof and directions given by the said authority. This Original Application stands disposed of in these terms with no order as to costs.”

10. The said order was reviewed vide order passed in M.A.No.582/2014 on 27.11.2014 whereby the directions in Para No.8 as above were given to State Government instead of Commissioner of Police, Nashik.

11. In view of the order passed by this Tribunal in O.A.No.669/2011 on 9.07.2014 as referred above, the

Respondent No.1 passed interim order dated 17th March, 2015 while following the conclusions and the order of dismissal was maintained. The said conclusions are as under :

“निष्कर्ष: सदर प्रकरणी अपिलार्थीची बाजू ऐकून घेण्यात आली तसेच उपलब्ध कागदपत्रे तपासण्यात आलीत. चौकशी अधिका-यांच्या समारोप अहवालामध्ये अपिलार्थीने सौ.जिजाबाई सोबत गंधर्व पद्धतीने दुसरा विवाह केल्याने नमूद आहे. अपिलार्थी ज्ञानेश्वर आव्हाड व सौ. जिजाबाई हया दोन ते अडीच वर्षे एकत्रीत राहील्याचे दिसून आलेले आहे. अपिलार्थी व सौ. जिजाबाई या बोधलेनगर येथे राहत असतांना आपिलार्थीचे पुन्हा त्यांच्या पहिल्या पत्नीशी सलोख्याचे संबंध निर्माण झाले. त्यामुळे दोघे जिजाबाईचा छळ करीत. याविरुद्ध जिजाबाईने दाखल केलेल्या तक्रारीच्या अनुषंगाने अपिलार्थीने त्यांना शिवीगाळ केली व धमकी दिल्याचे विभागीय चौकशीत सिद्ध झालेले आहे.

अपिलार्थीने सुनावणी दरम्यान उपस्थित केलेले मुद्दे योग्य वाटत नाहीत. त्यांच्या मुद्द्याच्या समर्थनार्थ त्यांनी कोणतेही लेखी पुरावे दिलेले नाहीत. केवळ भाऊबंदकीच्या वादास्तव एखादी स्त्री स्वतःचे चारित्र पणाला लावून विवाहाचा खोटा दावा करू शकते असे म्हणणेच नपटणारे आहे. वरील सर्व वस्तुस्थिती व चौकशी अधिका-यांचा अहवाल विचारात घेता. अपिलार्थीवरील दोषारोप पूर्णपणे सिद्ध होत आहेत. अपिलार्थीचे हे वर्तन महाराष्ट्र नागरी सेवा (वर्तुणूक) नियम १९७९ मधील नियम २६(२) चे भंग करणारे असून पोलीस दलाच्या प्रतिमेला बाधा पाहोचवणारे आहे. असे अणिलीय प्राधिकारी यांचे मत झाले आहे. यास्तव अपिलार्थी श्री. ज्ञानेश्वर बाळीबा आव्हाड यांना शिस्तभंग प्राधिकारी यांनी दिलेली 'सेवेतून बडतर्फ' ही शिक्षा कायम करण्याचा निर्णय अपिलीय प्राधिकारी तथा मा. राज्यमंत्री, गृह (शहरे) यांनी दिला आहे.”

12. The Applicant is now before this Tribunal being aggrieved by the order dated 17.03.2015 and claims that the said order be quashed and set aside.

13. The Respondent No.1 has filed an Affidavit-in-reply along with the documents pertaining to D.E. against the Applicant.

14. The Respondent No.1 has tried to justify the action taken against the Applicant. According to Respondent No.1, the witness Mr. Mangesh N. Patil (Jejurkar), who is Photographer has given a statement in the D.E. and has filed Photographs of the ceremony of “Gandharva-Vivah” of the Applicant at river Ganga (Godavari) in Naigaon Taluka. These Photographs were placed on record in the D.E. It is stated that the department has produced the evidence to show that the Applicant was residing with his second wife at Bodhalenagar on rent in the premises of one Mr. Pabale for two years.

15. The documents in the D.E. are placed on record along with the reply affidavit at Exb. ‘R-1’ (Page Nos.144 to 155) (both inclusive). The similar types of documents are placed on record by Respondent No.2 also along with its reply affidavit.

16. The learned Advocate for the Applicant submits that the enquiry carried out by the Respondent No.1 even after the remand order passed on 9.07.2014 by this Tribunal in

O.A.No.669/2011 is not as per the observations made by this Tribunal. Para Nos.7 and 8 of the order passed in O.A.No.669/2011 has already been reproduced in the earlier Paras. The plain reading of those Paras clearly shows that the State Government was to start proceedings against the Applicant *denovo* under Section 27(b) of the Bombay Police Act, 1951 and to render a decision afresh after affording an opportunity of being heard to the Applicant in accordance with the principles of natural justice. The State was also directed to remain guided by the directions given in the said O.A.

17. Para No.7 of the order in O.A.No.669/2011 on 9.07.2014, which has already been reproduced in the above Para clearly shows that the remand was ordered with expectation that the post remand decision under Section 27(b) of the Bombay Police Act must reflect proper application of mind and precisely, reasoning howsoever long or short to justify whatever decision is rendered.

18. As already stated, the Respondent No.1 was to initiate *denovo* proceedings under Section 27(b) of the Bombay Police Act, 1951. The relevant Section 27(b) of the Bombay Police Act reads as under.

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

Government or the Director General and Inspector 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 27-A, when any new material or evidence which could not be produced or has 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.”

19. The aforesaid Section will make it crystal clear that the review of any order passed by the Government is permissible if any new material or evidence which could not be produced or has not been made available at the time of passing of the order under review and which has the effect of changing the nature of the case has come or has been brought to the notice of the authority.

20. The perusal of the impugned order dated 17.03.2015 passed by the competent authority i.e. Respondent No.1, nowhere makes it clear as to what was the new material which was brought to the notice of competent authority, so as to review its earlier decision. It is also not known as to whether the new material was really available or it was either brought to the notice of competent authority or was not earlier available and what was the reason of review.

21. The Respondent No.1 while passing the impugned order dated 17.03.2015 has observed that the Applicant has married with Sau. Jijabai under the form “Gandharva-Vivah” and that this is his second marriage. It is further stated that the Applicant and said Jijabai had been proved to be residing for two and half years and while they were residing as such at Budhalenagar, the Applicant again came in contact with his first wife and thereafter, they started harassing Jijabai. It is not known as to on what basis these conclusions are drawn by the Respondent No.1. It is also not clear as to whether a *denovo* enquiry was initiated against the Applicant as directed by this Tribunal. It is also not clear as to what charges were framed in the said *denovo* trial by the Respondent No.1 and whether any new witnesses were examined or whether any additional evidence which was not available to the Respondent No.1 against the Applicant was brought on record. It is also not clear as to whether the Applicant was given an opportunity to cross-examine any witnesses or whether he was given opportunity to put up his case before the Respondent No.1.

22. If the conclusions drawn by the Respondent No.1 vide impugned order dated 17th March, 2015 are drawn on the same evidence which was available earlier, it is not known as to how the Respondent No.1 came to totally indifferent conclusions as against the earlier decision. While quashing the order of dismissal, it has come to the conclusion that there

was no evidence that the Applicant had entered into second marriage.

23. The perusal of the impugned order dated 17.03.2015 shows that the Respondent No.1 came to the conclusion that the conduct of the Applicant was against the provisions of Rule 26(2) of the Maharashtra Civil Services (Conduct) Rules, 1979. Rule 26 of the Conduct Rules of 1979 reads as under.

“26. Contracting of marriage.- (1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person :

Provided that the Government may permit a Government servant to enter into, or contract, any such marriage as it referred to in clause (1) or clause (2), if it is satisfied that –

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of Indian Nationality shall forthwith intimate the fact to the Government.”

24. The reading of the charge against the Applicant, nowhere reveals that a specific charge under Rule 26(2) of the M.C.S.(Conduct) Rules was framed against the Applicant.

25. Considering the Judgments delivered by this Tribunal in O.A.No.439/2010 and O.A.No.669/2011 coupled with the fact that the Respondent No.1 had already quashed the order of dismissal of the Applicant in the appeal on 20th October, 2009 with a specific observation that the Applicant has not re-married while having marital tie in existence, the charges framed against the Applicant should have been quite different when the Respondent No.1 is punishing the Applicant under Rule 26 of the M.C.S.(Conduct) Rules, 1979. The ingredients of the charge should have been as regards contracting of marriage as required under that Rule. Even the Respondent No.1 could have framed charge alleging that because of the conduct of the Applicant in residing together with a woman other than his wife was such that the prestige of the Police Department has lowered down in the society in general. In any case, it was necessary for the Respondent No.1 to initiate fresh enquiry or *denovo* enquiry as directed by this Tribunal in O.A.No.669/2011 or to show that, there was sufficient evidence so as to review earlier order of quashing of dismissal of the Applicant. It seems that without applying the mind, the impugned order dated 17th March, 2015 has been issued. The Respondent No.1 seems to have relied on some of the findings arrived by the Enquiry Officer in his report and

formed the opinion. It seems that the Respondent No.1 has not considered the very purpose of the order dated 9.07.2014 in O.A.No.669/2011 so also the order passed in O.A.No.439/2010 on 13.05.2010.

26. The learned Advocate for the Applicant submits that the Applicant in this case is being run from pillar to post, as has been observed by this Tribunal and is getting tossed between dismissal and reinstatement. The learned Advocate for the Applicant submits that the charge for which the Applicant was prosecuted in criminal trial i.e. for the offences under Sections 504 and 506 of the Indian Penal Code, he had been acquitted by the competent court. Considering all these aspects, the matter may not be again remanded for fresh trial.

27. The learned Advocate for the Applicant has placed on record written notes of submission on behalf of the Applicant. The said notes are marked Exb. 'X' for the purposes of identification. In the said written notes, the history of litigation is given. It is stated that the penalty imposed on the Applicant is like capital punishment i.e. the order of dismissal and the same is totally dis-proportionate to the charges leveled against the Applicant. The learned Advocate for the Applicant submits that the Applicant has served for more than 15 years and has two sons and one daughter and all of them are studying in School. It is stated that, their entire career would depend upon the Applicant and that the Applicant is the only bread-earner

for the family, and therefore, lenient view may be taken against the Applicant.

28. The learned Advocate for the Applicant submits that, though it is alleged that the Applicant has performed Gandharva-Vivah during the subsistence of first marriage, there is no evidence in this regard.

29. I have perused the papers of enquiry, which have been kept on record. Even though the second marriage alleged to be performed by the Applicant might not have been proved as per the legal provisions, there is sufficient evidence on the record to show that the Applicant was residing with one Jijabai for about two and half years in the rented premises of one Somnath Pabale. There are photographs also on the record to show that there must have been some relations like husband and wife between the Applicant and Jijabai. It is, however, true that the subject matter of said enquiry is no more in existence since the Applicant was exonerated in the D.E. when his appeal was allowed against the order of punishment awarded in the D.E. The mitigating circumstances as stated in the written notes of submission filed by the Applicant, however, can be considered along with the findings given by the Enquiry Officer in the D.E.

30. The learned P.O. submits that the Applicant is a Police Constable and the conduct of the Applicant has

definitely lowered down the image of the Department in the eyes of society in general, and therefore, the Applicant may not be reinstated in the service.

31. Considering the pros and cons of the case, so also the fact that the Applicant is being tossed from dismissal to the reinstatement from time to time and also considering the fact that this is the third round of litigation, it may not be proper and in the interest of justice, to again remit the case for re-trial for not complying with the directions issued by this Tribunal in the O.A.No.669/2011. It may take another long period for completing such enquiry and considering the history of the litigation, it may not be in the interest of justice to again sent the case for re-trial i.e. for *denovo* enquiry.

32. Considering all these aspects, I am satisfied that the Respondent authorities have not conducted the *denovo* enquiry against the Applicant as directed by this Tribunal in O.A.No.669/2011 and it will not be proper to remit the case again to the Respondent authorities. Since the impugned order dated 17th March, 2015 is not as per the directions issued by this Tribunal in O.A.No.669/2011, it is required to be set and quashed aside and hence, the following order.

ORDER

The Original Application No.519 of 2015 is partly allowed.

The impugned order dated 17th March, 2015 passed by Respondent No.1 whereby the order of punishment of dismissal has been confirmed by the Respondent No.1 is quashed and set aside.

The Respondents are directed to issue suitable order to reinstate the Applicant in service with immediate effect and in any case, within one month from today.

It is, however, made clear that the Applicant will not be entitled to any pay and allowances including arrears for the period from which he was lastly dismissed till the date of reinstatement. However, his service during the date of last dismissal till reinstatement, may be considered as continued service for the purposes of pensionary benefits, if any. No order as to costs.

**Sd/-
(J.D. Kulkarni)
Vice-Chairman
31.01.2018**

Mumbai
Date : 31.01.2018
Dictation taken by :
S.K. Wamanse.

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