

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.532 OF 2017**

**DISTRICT : SATARA**

Shri Vasant V. Gaikwad )  
Age : 51 Yrs., Occu.: Police Constable, )  
R/at At and Post Vathar, Kiroli, Tal.: Koregaon, )  
District : Satara – 415 002. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032. )
2. The Superintendent of Police, Satara, )  
Malhar Peth, Satara. )
3. The Inspector General of Police, )  
Kolhapur Range, Kolhapur. )
4. The Addl. Director General of Police, )  
Shahid Bhagatsing Marg, M.S, Mumbai – 1. )...**Respondents**

**Mr. R.M. Kolge, Counsel for the Applicant.**

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

**CORAM : SHRI J.D. KULKARNI (VICE-CHAIRMAN)**

**DATE : 07.09.2018**

**JUDGMENT**

1. Heard Mr. R.M. Kolge, learned Advocate for the Applicant and Mrs. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The Applicant has challenged the order dated 30.04.2015 issued by Respondent No.2 and the order dated 27.08.2015 issued by Respondent No.3 be quashed and set aside and similarly, the order dated 13.04.2017 issued by Respondent No.4 be also quashed and set aside.

3. Vide order dated 30.04.2015 (Annexure 'E'), Superintendent of Police, Satara was pleased to pass following order.

“तुम्ही पोशि.१७८ व्ही.व्ही. गायकवाड ने.के.डी.व्ही.एस.कोयनानगर तुम्ही पाटण पोलीस ठाणेस कार्यरत असताना पूर्वी झाली अपघाताचे कारण दाखवून वायरलेस, रोटेशन, इतर लेखणीचे काम असलेल्या ड्यूट्या दिल्या असता त्या ड्यूट्या नाकारून सिकमध्ये जाणे, पोलीस खात्यातील कोणतेही काम मन लावून न करणे, वैदयकीय रजेवर असताना बाह्यरुग्ण असताना सिक हजेरीवर गैरहजर, जनतेशी असभ्य व उध्दटपणाची वागणूक, गुन्हेगारी पार्श्वभूमी असलेल्या लोकांशी संबंध ठेवून पोलीस दलाचे शिस्तीविरुद्धचे वर्तन करून पोलीस दलाची प्रतिमा मलीन केलेची कसूरी केल्याने तुमची सपोनि ढेबेवाडी पोलीस ठाणेमार्फत प्राथमिक चौकशी करण्यात आलेली आहे.”

4. Being aggrieved by the above order, the Applicant preferred an appeal before the Special I.G, Kolhapur Division. In the appeal, the order was modified and instead of stopping the increments for three years, the same was stopped for two years only. The said order has been passed on 27<sup>th</sup> August, 2015 as per Annexure 'G' (Page Nos. 55 and 56). The Applicant then filed Review Petition against the order dated 27<sup>th</sup> August, 2015 and in the Review Petition, the competent authority maintained the order passed by the appellate authority, that is dated 27<sup>th</sup> August, 2015. It is the claim of the Applicant that, all these orders be quashed and set aside.

5. According to the learned Counsel for the Applicant, stoppage of increments either for three years or for two years is improper, illegal, arbitrary and no full-fledged enquiry was conducted against the Applicant. The principles of natural justice have not been followed. No departmental enquiry (DE) was initially and in fact, stoppage of increments for three years is a major penalty for which enquiry is needed.

6. The learned Counsel for the Applicant also submitted that, there was no evidence at all against the Applicant and all the fars of preliminary enquiry has been conducted to punish the Applicant.

7. The Respondent No.2 has filed Affidavit-in-reply and justified the action taken by the competent authority. The Respondents have also filed on record a copy of the preliminary enquiry report.

8. The learned Counsel for the Applicant submits that, since initially, the stoppage of increments for three years was ordered, such penalty falls under the head "major penalty" and for such enquiry, DE is necessary. The learned Counsel placed reliance on Rules 3 and 4 of the Bombay Police (Punishment & Appeal) Rules, 1956. The said Rules read as follows :

**"3. (1)** Without prejudice to the provisions of any law for the time being in force, the following punishments may be imposed upon any Police Officer, namely:-

(a-1) [\*\*\*]

(a-1) suspension;

- (i) reduction in rank, grade or pay or removal from any office of distinction or withdrawal of any special emoluments;
- (i-a) compulsory retirement;
- (ii) removal from service which does not disqualify from future employment in any Department other than the Police Department;
- (iii) dismissal which disqualifies from future employment in Government service.

(1-A) (i) The appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place, a Police Officer under suspension where-

- (a) an inquiry into his conduct is contemplated or is pending, or
- (b) a complaint against him of any criminal offence is under investigation or trial:

Provided that, where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made.

*Explanation-* The suspension of a Police Officer under this sub-rule shall not be deemed to be a punishment specified in clause (a-2) of sub-rule (1).

(ii) A Police Officer who is detained in custody whether on a criminal charge or otherwise, for period longer than forty-eight hours shall be deemed to have been suspended by the appointing authority under this rule.

(iii) An order of suspension under sub-rule (1) may be revoked at any time by the authority making the order or by any authority to which it is subordinate.

(2) The following may also be imposed upon any Police Officer if he is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which does not require his suspension or dismissal or removal:-

- (i) Caution
- (ii) A reprimand (to be entered in the service book)
- (iii) Extra drill
- (iv) Fine not exceeding one month's pay
- (v) Stoppage of increments
- [(vi) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.]:

Provided that –

- (a) the punishment specified in clause (iii) shall not be imposed upon any officer above the rank of Constable;
- (b) the punishment referred to in clause (iv) shall not be imposed upon an Inspector.

*Explanation.-* For this purposes of this rule,-

- (1) a Police Officer officiating in a higher rank at the time of the commission of the default for which he is to be punished, shall be treated as belonging to that higher rank;
- (2) the reversion of a Police Officer from a higher post held by him in an officiating capacity to his substantive post does not amount to reductions;
- [(3) the discharge of a probationer, whether during or at the end of the period of probation, on grounds arising out of the specific conditions laid down by the appointing authority, e.g. want of vacancy, failure to acquire prescribed special qualifications or to pass prescribed tests, does not amount to removal or dismissal;

- (4) the discharge of a probationer, whether during or at the end of the period of probation, for some specific fault or on account of his unsuitability for the service amount to removal.]

[3-A. Notwithstanding anything contained in clauses (ii) and (iii) of sub-rule (1) of rule 3, the State Government may, for reasons to be recorded in writing remove the disqualification incurred under the said clauses by any Police Officer removed or dismissed from service.]

4. [(1)] No punishment specified in clauses [\*\*\*](a-2), (i), (I-a), (ii) and (iii) of sub-rule (1) of rule 3 shall be imposed on any Police Officer unless a departmental inquiry into his conduct is held and a note of the inquiry with the reasons for passing an order imposing the said punishment is made in writing under his signature.

[(2) Without prejudice to the foregoing provisions, no order imposing the penalty specified in clauses (i), (ii), (iv), (v) and (vi) of sub-rule (2) of rule 3 on any Police Officer shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation, if any, has been taken into consideration before the order is passed:

Provided that, the requirements of this sub-rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and where they can be waived without injustice to the officer concerned.

**Note.-** The full procedure prescribed for holding departmental enquiry before passing an order of removal need not be followed in the case of probationer discharged in the circumstances described in paragraph (4) of the Explanation to rule 3. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against his discharge after being apprised of the grounds on which it is

proposed to discharge him and his reply (if any) is duly considered before orders are passed.]”

9. The perusal of the aforesaid Rules clearly shows that the punishment of stoppage of increments is minor penalty and as per Rule 4(2), adequate opportunity of making representation is sufficient before passing any order. However, the competent authority has to take into consideration the representation filed by the delinquent before coming into any conclusion.

10. I have perused the report of enquiry in this case. The said report is placed on record at Paper-book Page No.76. It is dated 23.08.2014. It seems that, in the preliminary enquiry, the Assistant Police Inspector (API) has observed that the conduct of the Applicant was not proper. This report was submitted to the S.P, Satara, but vide communication dated 20.09.2014 (Paper-book Page No.78), the S.P. was not satisfied and found that the report was vague, and therefore, he directed re-enquiry and accordingly, re-enquiry was carried out and the report of re-enquiry is at Paper-book Page Nos.79 and 80. The material findings given by the Enquiry Officer (E.O.) are as under :-

“सदर चौकशीचे अनुषंगाने निलंबित पो.कॉ.ब.नं.१७८ व्ही.व्ही. गायकवाड यांनी अद्याप पावेतो झालेल्या सेवा कालावधीत १) पाटण पोलीस ठाणे येथे कर्तव्यात असताना ठरावीक कर्तव्ये (गार्ड ड्युटी) वगळता इतर कर्तव्ये नाकारणे, २) पोलीस ठाणे प्रभारी अधिकारी यांचे आदेश न मानणे, ३) सिक कालावधीत पोलीस ठाणे त हजेरी न देणे असे प्रकार करून बेशिस्त वर्तने केल्याचे एकंदर चौकशीवरून दिसून येते.”

11. On the basis of such report, a show cause notice was issued to the Applicant. The said show cause notice is at Paper-book Page No.14 (Annexure 'C'). In the said notice, the Applicant was directed to explain as to why his one increment shall not be stopped for three years. The show

cause notice, therefore, clearly shows that, even without asking for the explanation, the competent authority came to the conclusion that, one increment of the Applicant shall be stopped for three years. Thus, the competent authority seems to have made up his mind, even before inflicting punishment. The Applicant accordingly replied the said show cause notice as per Annexure 'D' and the first final order was passed by S.P, Satara by order dated 30.04.2015. It is material to note that, in the said order, it is mentioned that the Applicant was in contact with hardcore criminal Salim Shaikh @ Salya Chepya and his wife.

12. The report of the enquiry, as already stated which is at Paper-book Nos.79 to 80 shows that the allegations proved against the Applicant does not show such allegations. On the contrary, the report shows that there was no evidence to show that the Applicant was in contact with hardcore criminal and his wife. The show cause notice thus seems to have been issued without application of mind.

13. So far as the other allegations to be proved against the Applicant are as under :-

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All these allegations are vague and it is not known as to from what evidence, the E.O. came to the conclusion that these allegations were proved. The names of the witnesses who were alleged to be interrogated

are not mentioned in the enquiry report. Had it been fact that the Applicant was really in contact with hardcore criminal and his wife, it was necessary for the Respondent authority to conduct regular enquiry against the Applicant since such charges were very serious in nature.

14. The earlier preliminary enquiry report dated 23.08.2014 was considered by the S.P. and he did not agree with the said report saying that it was vague. However, in the communication dated 20.09.2014 (Paper-book Page No.78), it is disclosed such reasons for not agreeing with the enquiry report and it is not known as to why re-enquiry was directed.

15. I have also perused the order passed by the appellate authority in appeal i.e. dated 27<sup>th</sup> August, 2015 and the reviewing authority dated 13.04.2017 (Paper-book Page No.59). It seems that the appellate authority and reviewing authority has considered the allegations against the Applicant that he was in contact with hardcore criminal and the said point was discussed. However, it is material to note that the said allegations are not proved at all. The inference drawn by the appellate authority is as under :-

“अपिलार्थी पोशि/१७८, वसंत विष्णू गायकवाड, यांनी फेर अपील अर्जात उपस्थित केलेले मुद्दे, त्यावर पोलीस अधीक्षक यांनी सादर केलेले मुद्देनिहाय अभिप्राय, प्राथमिक चौकशीचा अहवाल इत्यादींचा बारकाईने काळजीपूर्वक विचार केला असता, असे दिसून येते की, पोशि/गायकवाड यांनी अद्यापपावेतो झालेल्या सेवा कालावधीत १) पाटाण पोलीस ठाणे येथे कर्तव्यात असतांना ठराविक कर्तव्ये (गार्ड ड्युटी) वगळता इतर कर्तव्ये नाकारणे, २) पोलीस ठाणे प्रभारी अधिकारी यांचे आदेश न मानणे, ३) सिक कालावधीत पोलीस ठाण्यात हजेरी न देणे असे प्रकार करून बेशिस्त वर्तन केल्याचे चौकशीकरून दिसून येते. म्हणून मी खालीलप्रमाणे आदेश देत आहे.”

16. The perusal of the entire record, however, shows that all the allegations alleged to be proved are vague allegations and there is nothing on record as to what evidence, the Department has brought on record even

during preliminary enquiry on such allegations. I am, therefore, satisfied that the impugned orders of punishment by S.P, Satara as well as appellate authority have been passed without application of mind and the defence taken by the Applicant as well as evidence on record was not considered at all and in fact, there seems to be no evidence at all against the Applicant and the entire report seems to be on vague allegations made against the Applicant.

17. Hence, in view of the discussion in foregoing Paras, I pass the following order.

**ORDER**

The Original Application is allowed in terms of prayer clauses (a), (b) and (c). No order as to costs.

Sd/-

**(J.D. KULKARNI)**  
**Vice-Chairman**  
**07.09.2018**

Mumbai

Date : 07.09.2018

Dictation taken by :

S.K. Wamanse.