

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.903 OF 2017

DISTRICT : MUMBAI

Shri Sunil Prakash Ranadive.)
Age : 30 Yrs., Working as Police Constable))
Buckle No.071221 attached to Armed)
Police Force, Naigaon, L.A-I, Mumbai-14.)
R/O. B.D.D. Chawl No.72, Room No.52,)
Bhagoji Waghmare Marg, Worli,)
Mumbai – 400 018.)...**Applicant**

Versus

1. The Director General & Inspector)
General of Police, M.S, Mumbai,)
Having Office at Old Council Hall,)
Shahid Bhagatsingh Marg,)
Mumbai 400 039.)
2. The Commissioner of Police, Mumbai))
Having Office at Mumbai Police)
Commissionerate, L.T. Marg,)
Opp. Crawford Market, Fort,)
Mumbai 400 001.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)

4. The Director.)
 Maharashtra Police Academy,)
 Having Office at Tryambak Road,)
 Nashik.)...**Respondents**

Mr. A.V. Bandiwadekar, Counsel for Applicant.

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

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

DATE : 02.02.2018

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Counsel for the Applicant and Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

2. The Applicant, a Police Constable has filed this Original Application for following main reliefs.

“(a) By a suitable order / direction, this Hon’ble Tribunal may be pleased to set aside the order dated 8.9.2017 passed by the Respondent No.1, whereunder he instructed the Respondent No.2 not to relieve the Petitioner so as to join the training course for the post of Police Sub

Inspector at M.P.A, Nashik despite the recommendation / selection of the Petitioner on merit and accordingly, the Petitioner be granted all the consequential service benefits, as if the impugned order has not been passed.

- (b) By a suitable order / direction, this Hon'ble Tribunal may be pleased to hold and declare that the minor penalty imposed upon the Petitioner vide order dated 5.8.2017 (Exhibit-A) passed by the Respondent No.2 of placing the Petitioner at the basic pay of a Police Constable for the period of 3 years shall not be treated as bar against the Petitioner to seek posting as Police Sub Inspector to join the Maharashtra Police Academy, Nashik for the Bar of 2017, as per the order of his selection dated 31.7.2017 (Exhibit-B) passed by the Respondent No.1 and accordingly the Petitioner be granted all the consequential service benefits, as if the impugned order had not been passed.”

He has also prayed that, Clause 4 of the order dated 31.07.2017 (Exh.'B', Page 28) passed by Respondent No.1 to the extent to which the Applicant is being denied the posting as Police Sub Inspector (P.S.I) for training in the Institute of

Respondent No.4 at Nashik on account of minor penalty imposed on him be quashed.

3. From the admitted facts, it seems that 828 candidates from the Police Constable cadre have been recommended by Maharashtra Public Service Commission (MPSC) for the post of P.S.I, since they were successful in the Limited Departmental Examination held in 2016. The result of the said examination was declared on 5.05.2017. In the list of successful candidates, the name of the Applicant appears, and therefore, he was entitled to be sent for training, which is a requisite condition for further promotion. Vide communication dated 31.07.2017 (Exb.'B', Page 28), the Special Inspector General communicated to all the concerned Officers to send the information in respect of the recommended candidates on or before 8.08.2017. Clause (4) of the said communication is material to decide this O.A, and therefore, the same is reproduced as under :

“४. यादीतील ८२८ उमेदवारांपैकी कोणाविरुद्ध विभागीय चौकशी / न्यायालईन प्रकरण / लाचलुचपत प्रकरण / निलंबन इत्यादी प्रतिकूल बाबी चालू असल्यास / प्रलंबित असल्यास अथवा ते शिक्षा भोगत असतील तर अशा उमेदवारांना प्रशिक्षणास पाठवण्यात येऊ नये तसेच त्यांच्याविरुद्धच्या प्रतिकूल बाबींची सविस्तर माहिती दि. ०७/०८/२०१७ पूर्वी न चुकता या कार्यालयास सदर करावी.”

4. According to the Applicant, in the Departmental Enquiry (D.E), the Applicant was found guilty for the

misconduct and an order of punishment was passed against him on 5.08.2017 as per Exb.'A' (Pages 25 to 27). The relevant conclusions drawn by the competent authority and the final order passed in the D.E. is as under :

“सदर विभागीय चौकशीच्या कागदपत्राचे अवलोकन केले असता, विभागीय चौकशी अधिकाऱ्यांनी सदरची विभागीय चौकशी नियमानुसार पुर्ण करताना अपचाऱ्यास बचावार्थ सर्व विहित संधी उपलब्ध करून दिली आहे. तसेच अपचारी पो.शि.क्र.०७-१२२१/सुनिल प्रकाश रणदिवे यांचे विरुद्धच्या विभागीय चौकशीतील दोषारोप क्र.१,२,३,४,५,६,७,८ आणि ९ निर्विवादपणे सिद्ध झाले असून सिद्ध झालेले दोषारोप गंभीर स्वरूपाचे आहेत. अपचाऱ्याची सचोटी व चारित्र्य संशयास्पद असून अपचाऱ्याची कृती ही देशाच्या सुरक्षिततेस धोका पोहचवणारी असल्याचे त्यांचे एकंदरीत वर्तणूकीवरून स्पष्ट होत आहे, असे विभागीय चौकशी अधिकारी यांनी आपल्या निष्कर्षात स्पष्टपणे नमुद केले आहे. अपचारी पो. शि. क्र. ०७-१२२१/सुनिल प्रकाश रणदिवे, तत्कालीन नेमणूक विशेष शाखा-२, गु.अ.वि., मुंबई सध्या सशस्त्र पोलीस नायगांव, मुंबई यांनी केलेल्या कसुरीच्या अनुषंगाने विभागीय चौकशी अधिकारी व पोलीस निरीक्षक, विशेष शाखा-२, गु.अ.वि., मुंबई यांच्या निष्कर्षाशी पोलीस उप आयुक्त, विशेष शाखा-२, गु.अ.वि. मुंबई हे सहमत असल्याने अपचा-यास 'पोलीस शिपाई पदाच्या मूळ वेतनावर तीन वर्षाकरीता ठेवणे ' हि शिक्षा का देण्यात येवू नये या प्रस्तावित शिक्षेची कारणे दाखवा नोटीस का.आ. क्र. ४१/पोउआ/विशा-२/विचौ/२०१७, दि. ०१/०३/२०१७ अन्वये पोलीस उप आयुक्त, विशेष शाखा-२, गु.अ.वि., मुंबई कार्यालयाकडून त्यांना देण्यात आलेली आहे.

मी संजय पाटील, पोलीस उप आयुक्त, सशस्त्र पोलीस, नायगांव मुंबई असे आदेश देतो की, अपचारी पो.शि.क्र.०७-१२२१/सुनिल प्रकाश रणदिवे, सशस्त्र पोलीस, नायगांव, मुंबई, यांच्या उक्त कसुरी प्रकरणी 'पोलीस शिपायाच्या मूळ वेतनावर तीन वर्षाकरीता ठेवणे ' ही शिक्षा देण्यात येत आहे.

अपचारी जर या आदेशाने व्यथित होत असतील तर, ते हे आदेश स्विकारल्याच्या दिनांकापासून ६० दिवसांचे आत मा. पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांचेकडे अपील अर्ज सादर करू शकतात.”

Admittedly, the Applicant has filed an appeal against the order in the D.E. and the appeal was also dismissed.

5. The learned Counsel for the Applicant Shri A.V. Bandiwadekar submits that, on 6.08.2016, the Applicant was allowed to participate in the competitive examination for the post of P.S.I. in the year 2016. A very minor punishment has been awarded to the Applicant and the Applicant is ready to undergo that punishment in the higher pay scale of promotional cadre. The learned Counsel also invited my attention to one Judgment passed in **O.A.No.824/2012 passed by this Tribunal in the case of Dhanraj P. Chavan Vs. Government of Maharashtra & Anr. on 26th February, 2013**. In the said case, the Respondents were directed to include the name of the employee in the select list of Superintendent of Police / Deputy Commissioner of Police and also to issue an appropriate promotion order and the employee therein was directed to pay entire amount as indicated by Respondent No.2 towards the minor punishment.

6. The learned Counsel for the Applicant submits that the Applicant is ready to undergo minor punishment, and therefore, there is absolutely no reason to deny an opportunity of undergoing requisite training to the Applicant.

7. The Respondents have filed reply affidavit and submitted that the Applicant was punished in the D.E. as per the provisions of Maharashtra Police (Punishment and Appeal) Rules, 1956 and as per Rule 3(1)(i) of the said Rules, reduction in rank, grade or pay or removal from any office or withdrawal of any special emoluments is a major punishment. The Applicant has been punished after conducting the D.E.

8. The Respondents submitted that, earlier the Government of Maharashtra has issued Circular dated 2.04.1976 and G.R. dated 22.04.1996 whereby a procedure was framed to consider the cases of employees for promotion who were undergoing punishment. However, both these Circulars have been cancelled vide G.R. dated 15.12.2017 and in the G.R. dated 15.12.2017, a procedure has been laid down as to what action shall be taken when the delinquent employee is undergoing punishment.

9. The Respondents also stated that the reasons for not sending 16 candidates including the Applicant for training are various such as Offences registered against them or they are facing D.Es. or they are facing punishment of stoppage of increments or they are undergoing major penalty of reduction in pay after completion of regular D.E. like the Applicant or their absence period to be treated or they have not submitted Caste Validity Certificate, etc.

10. The perusal of the impugned order whereby the Applicant has been denied opportunity to undergo training is at Exh.'R-1' (Page 72), dated 7.08.2017. In the said letter, it has been clearly stated that the Applicant has been punished in the D.E. and the action taken in the D.E. has been confirmed by the appellate authority and his pay has been reduced at the basic pay of a Police Constable for three years, and therefore, in view of the G.R. dated 31.07.2017, he has not been considered for the training.

11. The perusal of Para No.4 of the G.R. dated 31.07.2017, as already referred above, clearly shows that the persons who were undergoing punishment in the D.E. or against whom, crime has been registered under Prevention of Corruption Act, etc. or who were under suspension, were not to be considered for sending for training. This letter has been issued in view of the G.R. dated 15.12.2017. The said G.R. is placed on record at Exh.'R-5' (Page Nos.87 to 98 (both inclusive)) clearly shows that the earlier two G.Rs. dated 2.04.1976 and 22.04.1996 have been cancelled by the Government and this new G.R. has been issued. The said G.R. clearly shows that, those employees who have been punished in the D.E. such as reduction in rank, reduction in pay scale for a particular period are not to be considered for promotion till the period of punishment is over. In clause 13(b), it has been clearly stated that, if such Officers are eligible for promotion, they shall be considered for promotion only after

they undergo the punishment in the D.E. The said clause specifically states as under.

“(ब) एक किंवा अधिक वर्षे वेतनवाढ रोखण्याची किंवा विनिर्दिष्ट कालावधीसाठी वेतनश्रेणीतील वेतन खालच्या टप्प्यावर आणण्याची शिक्षा झाल्यास तदर्थ पदोन्नती संपुष्टात आणावी. एखाद्या प्रकरणात अधिकारी/कर्मचा-यांना दिलेल्या शिक्षेचा अंमल त्या निवडसूची वर्षाच्या कालावधीतच संपाणार असल्यास व शिक्षेचा कालावधी संपुष्टात येण्याच्या आधीच विभागीय पदोन्नती समितीची बैठक होणार असल्यास, त्या बैठकीत संबंधीत अधिकारी/कर्मचा-याचा पदोन्नतीसाठी विचार करावा व गोपनीय अहवालाच्या आधारे असे अधिकारी पात्र ठरत असल्यास, त्यांना शिक्षेचा कालावधी संपल्यानंतर पदोन्नती देण्यात यावी. मात्र अन्य प्रकरणात अधिकारी/कर्मचा-यांच्या शिक्षेचा कालावधी संपल्यानंतर विभागीय पदोन्नती समितीच्या पुढील नियमित बैठकीमध्ये, अशा अधिका-यांच्या पदोन्नतीचा प्रताव इतर अधिकारी/कर्मचा-यांसोबत विचारार्थ ठेवावा व ते पदोन्नतीस पात्र ठरत असल्यास त्यांना पदोन्नती देण्यात यावी.”

12. From the facts of the case, it seems that the Applicant along with 15 others have been denied opportunity to undergo training for various reasons as already stated. It is not that the Applicant along is denied such opportunity. No *mala-fides* are proved against the Respondents authority and it seems that the Respondents have just followed the guidelines issued vide G.R. dated 15.12.2017 (Exh.‘R-5’), and therefore, no *mala-fides* can be attributed against the Respondents for not allowing the Applicant to undergo training.

13. The learned Counsel for the Applicant invited my attention to the fact that the punishment ordered in the D.E. in this case has been awarded by Assistant Commissioner of

Police, Naigaon (Armed). The learned Counsel submits that, in fact, the said authority was having no legal power to punish the Applicant in the D.E. The Applicant has placed on record Schedule-I under Rule 5 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1956. This Schedule prescribes the competent authorities who can award punishments of different kinds. In my opinion, the question as to whether the Assistant Commissioner of Police, Naigaon was empowered to punish the Applicant or not, is not in dispute in this O.A. The Applicant has already filed appeal against the order of punishment and the said appeal has already been dismissed, and therefore, the competence of the authority to punish the Applicant has no relevance so far as the claim of the Applicant is concerned.

14. The learned Counsel for the Applicant further submits that the Applicant was allowed by the Respondent authorities to appear for the competitive examination for the promotional post, and therefore, denying an opportunity to undergo training, having successful in the said examination is illegal. It is material to note that the permission granted to the Applicant for appearing in the examination is at Exb.'D' (Page 34) dated 6.08.2016. It was clearly stated in the said order that the permission to appear for the examination will be subject to D.E. as well as on condition that the appointment will be subject to condition that the candidate can be held ineligible at any stage.

15. The learned Counsel for the Applicant further submits that, no D.E. was pending against the Applicant when the information was called as per Circular dated 31.07.2017 (Exb.'B'). He submits that this Circular was issued on 31.07.2017 whereas the Applicant has been punished in the D.E. on 5.08.2017. However, it is material to note that the D.E. was pending on the date of such Circular against the Applicant and the information was to be submitted on or before 8.08.2017 and the Applicant was already punished in the D.E. on that date. Therefore, there is no substance in this submission of the learned Counsel for the Applicant.

16. The learned Counsel for the Applicant further submits that the Applicant has been punished with a very minor punishment and punishment awarded can in no sense can be treated as major punishment. He submitted that, there is no definition of the words "minor punishment or major punishment" under Bombay Police (Punishment and Appeal) Rules, 1956. The learned Counsel also invited my attention to the fact that, under Article 311(2) of the Constitution of India, the major penalty includes dismissal, reduction in rank or removal from service. He invited my attention to Rule 5(vi) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 wherein major penalty and minor penalty have been defined and reduction in pay scale is not major penalty.

17. As against this, the learned C.P.O. invited my attention to the provisions of Bombay Police (Punishment and Appeal) Rules, 1956. She has invited my attention, particularly to Rule 3(1) which deals with punishment that may be imposed on the Police Officer such as suspension, deduction in rank, grade or pay or removal from any office of distinction or withdrawal of any special emoluments, compulsory retirement, removal from service which does not disqualify from future employment and dismissal. She submitted that, in all such punishments, the D.E. is must and these punishments can be passed only after the D.E. She further submits that, as per Rule 3(2), the punishment like Caution, a reprimand, extra drill, fine not exceeding one month's pay, stoppage of increments, recovery from pay of the whole or part of any pecuniary loss caused to Government can be inflicted even without enquiry. The learned C.P.O. submits that the punishment of reduction in grade pay, therefore, can be presumed to be major punishment.

18. On going to the arguments of the learned Counsel for the Applicant as well as the learned C.P.O, I am of the opinion that the question of punishment whether it is minor or major, has not much relevance as stated by the learned Counsel for the Applicant. What is required to be considered is whether the Applicant's name has not been considered for sending to the training as per G.R. dated 15th December, 2017. The said G.R. clearly shows that those who are undergoing

punishment and D.E, shall not be considered for promotion till such period of punishment is over. The Respondents are not denying the right of promotion to the Applicant and the like persons. The only decision taken by the Government is that, under certain circumstances, the employee shall not be considered for promotion for the time being, if he is undergoing punishment or facing criminal trial, etc. and also considering the allegations against the employee.

19. The Applicant has not challenged the legality of the G.R. dated 15th December, 2017, and therefore, it is only necessary to see as to whether the impugned order falls within ambit of G.R. dated 15th December, 2017.

20. Admittedly, the Applicant's order of punishment in D.E. passed on 5th August, 2017 by the Assistant Commissioner of Police (Armed) has been confirmed by the appellate authority. The allegations made in the said enquiry are serious and admittedly, the Applicant is undergoing such punishment for three years and the punishment period is for three years, and therefore, the Respondents have rightly denied an opportunity to the Applicant to under training.

21. As already stated, the Applicant is not only the person who has denied such opportunity and it is not the case that the Respondents are not considered the Applicant for promotion. The Respondent appointing authority has to accept

the recommendation of the MPSC, but that does not mean that all the persons recommended by the MPSC shall be sent for training forthwith. It seems that the Respondent authorities have taken a conscious decision not to send the Applicant along with other persons for training and I do not find any illegality, since the said decision is as per the Circular dated 31.07.2017.

22. In the result, I find no merit in the Original Application. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

**Sd/-
(J.D. Kulkarni)
Vice-Chairman
02.02.2018**

Mumbai
Date : 02.02.2018
Dictation taken by :
S.K. Wamanse.