

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.1110/2021(S.B.)**

Ku. Jyoti Prakash Jadhav,
Aged 34 years, Occ – Service,
R/o Quarter no. 292, Building Police Line,
Near Rural Police Station, Buldhana.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary department of Home,
Mantralaya, Mumbai-32.
- 2) The Inspector General of Police Amravati Range,
Near Maltekadi, Amravati.
- 3) The Superintendent of Police Buldhana,
Dist Buldhana.

Respondents

Shri R.V.Shiralkar, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri M.A.Lovekar, Member (J).

Dated: -10th October, 2024.

JUDGMENT

Judgment is reserved on 07st October, 2024.

Judgment is pronounced on 10th October, 2024.

Heard Shri R.V.Shiralkar, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. On 08.08.2011 Crime No.57/2011 was registered against the applicant, P.C. Vishal Jadhav and one more person *inter alia* under Section 306 r/w 34, I.P.C. at Police Station Dongaon on complaint of one Hiralal alleging that they had abetted commission of suicide by his daughter Chhaya, wife of P.C.Vishal Jadhav. By order dated 09.09.2011 (Annexure A-1) the applicant and P.C. Vishal Jadhav were placed under suspension. They were served with a charge sheet dated 02.05.2012 (Annexure A-2). The charge *inter alia* stated that the applicant and P.C. Vishal Jadhav had developed illicit relations and this had driven wife of Vishal Jadhav to commit suicide. After assessing the evidence led during the enquiry the Enquiry Officer held the charge to be proved against the applicant and the co-delinquent by observing as follows-

सदर जबाबा वरुन दोन्ही कसुरदार हे मोबाईल वर संभाषणा वरुन सतत एकमेकांचे संपर्कात होते ही बाब सिध्द होते तसेच दोन्ही कसुरदार हे आमचे मध्ये बहीण भावाचे नाते असल्या बाबत सांगतात परंतु त्यांचे संभाषणाचा वेळ मुख्यता सायकाळ / रात्रीचा असल्याचे दिसुन येते वरुन दोन्ही कसुरदार यांचे मधील वेळी अवेळी व दिर्घकाळ होणारे भ्रमणध्वनी वरील भाष्य यामुळे पोर्को विशाल जाधव यास त्याची पत्नी सौ छाया ही विरोध करीत होती त्यामुळे तिला कसुरदार पोर्को विशाल जाधव यांचे, कडुन शारीरीक व मानसीक त्रास दिल्या जात होता या त्रासाला कंटाळुनच तिने आत्महत्या केली.

By Judgment dated 27.04.2016 (Annexure A-8) the applicant, P.C. Vishal Jadhav and one more co-accused were acquitted of all the offences. In para 23 of the Judgment it was observed that material witnesses had turned hostile. In para 28 it was concluded that the case of the prosecution was not proved beyond reasonable doubt. After charge against her was held to be proved by the Enquiry Officer, the applicant was served with a show cause notice as to why punishment of removal from service be not imposed to which she gave reply dated 20.12.2017 (Annexure A-6). The Disciplinary Authority, respondent no.3, then passed the order dated 29.11.2018 against the applicant as well as P.C. Vishal Jadhav as follows-

आपण पोशि/१२३ विशाल जाधव व मपोशि १९२७ ज्योती जाधव नेमणुक पो. मु.बुलडाणा आपल्या कर्तव्यात केलेल्या कसुरी बाबत आपले विरुद्धच्या विभागीय चौकशीमध्ये आपलेवर लावण्यात आलेले दोषारोप पुर्णपणे सिध्द झाल्याने आपणास मुंबई पोलीस (शिक्षा व अपील) नियम १९५६ मधील नियम ३(१) (१-अ) प्रमाणे पोलीस शिपाई पदाचे मुळ वेतनावर तीन वर्ष ठेवणे ही शिक्षा देण्यात येत आहे. तसेच निलंबन कालावधी दि.०८.०९.२०११ ते दि.०१.०३.२०१६ जसाचा तसा (As Such) गणण्यात येत आहे.

सदर आदेशाने आपण व्यथीत होत असल्यास हा आदेश प्राप्त झाल्याचे दिनांकापासुन ६० दिवसाचे आत योग्य मार्फतीने विशेष पोलीस महानिरीक्षक, अमरावती परिक्षेत्र अमरावती यांना अपील अर्ज सादर करु शकतात.

On 21.09.2019 the applicant filed appeal (Annexure A-9).

On 08.09.2020 the Appellate Authority, respondent no.2, passed the following order-

अपिलार्थी मपोशि/१९२७ ज्योती जाधव, नेमणुक पोलीस मुख्यालय बुलढाणा यांना पोलीस अधीक्षक, बुलढाणा यांनी त्यांचे आदेश क्र. पोअबु / विचौ / पी६७ (१)/अं आ./संयुक्त/२०१८/१५९५३ / दि.२९.११.२०१८ अन्वये दिलेली "पोलीस शिपाईचे पदाचे मुळ वेतनावर तीन (०३) वर्ष ठेवणे" या शिक्षेमध्ये अंशतः बदल करुन "पुढील देय वार्षिक वेतनवाढ दोन (०२) वर्ष (अपरिणामकारक) रोखणे" ही शिक्षा देण्यात येत आहे.

त्यांची इच्छा असल्यास ते हा आदेश प्राप्त झाल्याचे दिनांकापासुन ६० दिवासाचे आंत मा. पोलीस महासंचालक म.रा. मुंबई यांचेकडे योग्य मार्फतीने फेर अपील अर्ज सादर करु शकतात.

The Appellate Authority, however, did not specify whether period of suspension of the applicant was to be treated as duty period or it was to be treated "as such".

By application dated 29.12.2020 the applicant prayed that since minor punishment was imposed, her period of suspension from 08.09.2011 to 01.03.2016 be treated as duty period. By order dated 04.10.2021 (attached to Annexure A-10) respondent no.2 passed the following order –

मपोशि/१९२७ ज्योती जाधव यांना या कार्यालयाचे दि.०८.०९.२०२० चे आदेशान्वये "पोलीस शिपाई पदाचे मुळ वेतनावर तीन (०३) वर्ष ठेवणे" या शिक्षेमध्ये अंशतः बदल करुन "पुढील देय वार्षिक वेतनवाढ दोन (०२) वर्ष (अपरिणामकारक) रोखणे" ही शिक्षा देण्यात आलेली आहे. त्यामुळे त्यांचे

निलंबन म.ना..से. (पदग्रहण अवधी, स्वीयेत्तर सेवा आणि निलंबन, बडतर्फी व सेवेतुन काढुन टाकणे यांच्या काळातील प्रदाने) नियम १९८१ च्या ७२ (३) मधील तरतुदीनुसार असमर्थनिय ठरत नाही. त्यामुळे, त्यांचा ०८.०९.२०११ ते ०१.०३.२०१६ पर्यंतचा निलंबन काळ कर्तव्यकाळ गणणे बाबतची विनंती अमान्य करण्यात येत आहे.

Hence, this O.A..

3. Respondents 2 and 3 have supported the orders passed by them. By filing a rejoinder the applicant has maintained that the impugned orders are passed without properly evaluating evidence.

4. There are two distinct aspects of the matter - the first relates to sustainability of orders imposing punishment and the second relates to how the period of suspension of the applicant was to be treated.

5. It was submitted by Shri R.V.Shiralkar, learned Advocate for the applicant that the conclusion reached by the Enquiry Officer was based on “no evidence”. I have quoted said conclusion. It is apparent that it was based on evidence which was adduced during enquiry. Clearly this was not a case of “no evidence”. In **B.C.Chaturvedi Vs.**

Union of India (1995) 6 SCC 749 it is held:-

“The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co- extensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be

canvassed before the Court/Tribunal. In Union of India v. H.C. Goel, this Court held at SCR p. 728 (AIR p. 369, para 20) that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

It is further held:-

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

6. It was further submitted by Advocate Shri R.V.Shiralkar that the Appellate Authority failed to consider the evidence independently. This submission is not supported by record. The Appellate Authority did consider evidence and scaled down the punishment.

7. The second aspect relates to period of suspension. The applicant was under suspension from 08.09.2011 to 01.03.2016. Judgment of acquittal was passed on 27.04.2016. Rule 72(3) of the Maharashtra Civil Services (Joining time, Foreign Service and Payments

During Suspension, Dismissal and Removal) Rules, 1981 which is relevant reads as under-

72. *Re-instatement of a Government servant after suspension on specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty.*

(1) X X X

(2) X X X

(3) *Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provision of sub-rule(8), be paid the full pay and allowances to which he would have been entitled, had he not be suspended:*

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) to (9) X X X

The words used in this provision are “wholly unjustified”.

In departmental enquiry charge against the applicant was held to be proved. In criminal case she was acquitted because case of the prosecution was not proved beyond reasonable doubt. It was not a case

of honourable acquittal. On facts, it will have to be held that respondent no.3 exercised the discretion vested in him properly by directing that period of suspension was to be treated “as such” and respondent no.2 did not commit any error by maintaining it by order dated 04.10.2021.

8. For all these reasons no interference with any of the impugned orders is warranted. The O.A. is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 10/10/2024.
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 10/10/2024.

and pronounced on

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