

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.696 OF 2016**

**DISTRICT : MUMBAI**

Shri Suhas Vishram Raut, )  
Ex-Driver in the office of Respondent No.1, )  
Since deceased by his heirs and legal representatives: )

1a) Smt. Shital Suhas Raut, )  
Age 63 years, occ. Housewife, )

1b) Shri Sushant Suhas Raut, )  
Age 32 years, occ. Private Service, )

1c) Ms. Sapna Suhas Raut, )  
Age 34 years, Occ. Private Service, )

All R/o Worli, B.D.D. Chawl No.53, Room No.16, )  
Opp. Jambhori Maidan, Worli, Mumbai 400018 )..Applicants

Versus

1. The Managing Director, )  
Maharashtra State Police Housing & Welfare )  
Corporation, 89, Sir Pochkhanwala Road, )  
Worli, Mumbai 400030 )

2. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, Mumbai 400032)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicants

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
Smt. Medha Gadgil, Member (A)

DATE : 2<sup>nd</sup> August, 2023

### **J U D G M E N T**

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicants and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The applicant challenges the order dated 6.5.2011 passed by Respondent No.1 removing him from service as a Driver. He further challenges the order dated 31.5.2016 passed by the appellate authority i.e. respondent no.2 confirming the order dated 6.5.2011. The applicant prays that these orders are to be quashed and set aside as being illegal and he be granted all consequential service benefits. He also prays that the period of suspension undergone by the applicant from 4.9.2009 to 18.4.2010 is to be treated as duty period and he is to be granted all consequential service benefits of that period.

3. The applicant has filed this OA on 12.7.2016 and during pendency of this OA the applicant expired on 13.9.2018. Thereafter his heirs and legal representatives i.e. his wife, son and daughter were brought on record with the leave of the Tribunal by order dated 27.3.2019.

4. The applicant who was working as a Driver did not attend the duty on 3.6.2009 on account of his personal work and therefore on the next day he requested the Chief Accounts Officer to approve his leave.

However, he did not and when he came out of the residence of the officer, he abused one Sepoy. He placed leave application in the office and left the office without waiting for approval of leave. On the next day i.e. 4.6.2009 the suspension order was issued between 11.30 a.m. and 12.00 noon and after receipt of the order of suspension, he came in the uniform and poured kerosene on himself and tried to commit suicide. He, therefore, was served with charge sheet on 4.9.2009. The Departmental Enquiry (DE) was conducted and he faced the DE. The enquiry officer submitted his report undated and copy is served on the applicant on 25.3.2011. In the said report out of 5 charges, charge no.5 of committing suicide was held to be proved and other charges like charge no.1, 3 & 4 are held not proved. Charge no.2 was partly proved. The said charge was that when General Manager asked him to stop, he ignored him and went towards the canteen and this was proved.

5. Ld. Advocate for the applicant submits that the impugned order dated 6.5.2011 passed by the respondent no.1 is illegal. It is passed without application of mind and deserves to be quashed and set aside, ex facie.

6. Ld. PO while defending the impugned order of the respondents i.e. the disciplinary authority submitted that charge no.2 and 5 are proved as he has tried to commit suicide and therefore the punishment of removal from service was rightly imposed.

7. We have read the report of the enquiry officer as well as the disciplinary authority. Glaring illegality we came across in the order passed by the disciplinary authority is in para 3 of the order dated 6.5.2011, which reads as under:

“३. एकंदरीत अपचारी श्री. एस.व्ही.राऊत यांचेविरुद्ध आलेले दोषारोप क्रमांक १,३,४ व ५ हे पूर्णतः सिध्द झालेले आहेत व दोषारोप क्रमांक २ अशंतः सिध्द झाल्याच्या या निष्कर्षाप्रत मी आलेलो आहे.”

8. Thus, the disciplinary authority has started with the foundation that the charges no.1, 3, 4 & 5 are fully proved. While in the report, the enquiry officer has stated contrary to it that; after considering the evidence tendered before him the charges no.1, 3 & 4 are not proved. In respect of charge no.2 it is partly proved and charge no.5 is proved. Thus, it is an example of ex facie non application of mind and the approach of the disciplinary authority appears very cavalier towards this enquiry. He has committed factual and legal error and therefore on this basic point alone the decision of the disciplinary authority deserves to be quashed and set aside. The disciplinary authority has authority to show disagreement with the decision given by the enquiry officer. However, it is necessary for the disciplinary authority to be factually correct. If at all such disagreement is expressed then it is the duty of the disciplinary authority to give reasons of disagreement with the opinion of the enquiry officer and then to pass a different order. No such reasoning is mentioned in the order. It is a major procedural flaw and on this ground the impugned order is quashed and set aside.

9. The charge filed was held as proved by the enquiry officer and so also similar view is taken by the disciplinary authority. However, it is difficult to understand whether the punishment is given only for charge no.5 or punishment of removal is a cumulative effect of holding all charges as proved. We have in fact restrained ourselves from commenting on merits of the charges leveled against the applicant and the seriousness of the same. Charge no.5 is for attempt to commit suicide in the office premises by the applicant. However, it was necessary on the part of the

enquiry officer and also the disciplinary authority to take into account the sequence and the reason of this particular act. True, to commit suicide is an offence; however, it is not clear from the order and the reasoning whether for that offence of charge no.5 the applicant is given the punishment of removal from service. We take it that the disciplinary authority has taken into account the charges no.1, 3 & 4 as proved along with charge no.5 and considering overall effect according to him the seriousness he imposed this punishment. Thus, there is deviation from the principles of natural justice and the decision is arbitrary. Hence, indulgence is required.

10. The applicant is to be reinstated in service notionally, since the applicant has expired on 13.9.2018 and he would have superannuated on 31.5.2017. He is entitled to back wages.

11. Thus, we pass the following order:

A) The Original Application is allowed and the impugned removal order dated 6.5.2011 is quashed and set aside.

B) The applicant is to be notionally reinstated in service from the date when he was removed i.e. 6.5.2011.

C) The period of suspension from 4.9.2009 to 18.4.2010 is to be treated as duty period for all purposes.

D) The applicant is entitled to back wages from 6.5.2011 till the date of retirement i.e. 31.5.2017. It is to be noted that applicant expired on 13.9.2018.

E) The respondents are directed to pay the back wages and all other consequential service benefits to the applicants within one month from today and if it is not paid within one month, then interest at the rate of 8% will start running from the date of the order.

F) No orders as to cost.

Sd/-

**(Medha Gadgil)**  
**Member (A)**  
**2.8.2023**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**2.8.2023**

Dictation taken by: S.G. Jawalkar.