

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3938 OF 2016

The State of Maharashtra
Through the Secretary & Ors. ...Petitioners
Versus
Mr. Popat Krishna Khade ...Respondent

Mr. Rajan Pawar, AAGP for the Petitioners – State.
Mr. Manoj A. Patil, Advocate for Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 30th July, 2018.
Date of Pronouncing the Judgment : 03rd August, 2018.

JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] By order dated 09.01.2017 this Court passed following order :-

“1. Heard. Rule. In the meanwhile, the execution and operation of the order passed by the Maharashtra Administrative Tribunal in Original Application No. 55 of 2012 on 3rd March, 2015 shall remain stayed. Mr. Patil waives notice for Respondent.”

- 3] At the request of and with the consent of the learned Counsel for the parties, the matter is taken up for final disposal.

4] The challenge in this petition is to the judgment and order dated 03.03.2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai, partly allowing the Original Application No. 55 of 2012 instituted by the respondent.

5] The respondent had instituted OA No. 55 of 2012 to question the order dated 30.06.2009 made by the disciplinary authority imposing the penalty of removal from service on account of unauthorized absence for 75 and 174 days respectively between the periods from 25.05.2004 to 07.08.2004 and 11.08.2004 to 31.01.2005. By the impugned judgment and order, the MAT has upheld the finding of unauthorized absence recorded by the disciplinary authority but has inferred that the penalty imposed upon the respondent and substituted the penalty of removal with the penalty of compulsory retirement from service.

6] Mr. Rajan Pawar learned AAGP for the petitioners-State submits that, this was the second instance when

departmental enquiry had to be instituted against the respondent for unauthorized absence. He submits that the respondent had remained unauthorizedly absent for 249 days and taking into consideration that the respondent had been appointed as a Police sepoy, the penalty imposed upon the respondent could not have been said to be disproportionate and interfered with. He submits that such interference with the penalty is in excess of the jurisdiction vested in the MAT and the impugned judgment and order should therefore be set aside.

7] Mr. Patil, the learned Counsel for the respondent submits that, the first departmental enquiry has no nexus whatsoever with the penalty now imposed by the petitioners. He submits that the respondent's absence is attributable to some mental problems suffered by the respondent. He points out that, the respondent had put in over 25 years of service and penalty of removal under such circumstances, has rightly been regarded as shockingly disproportionate by the MAT. For all these reasons, Mr. Patil submits that this petition may be dismissed.

8] Rival contentions now fall for our determination.

9] The MAT, in the impugned judgment and order has taken into consideration variety of factors including *inter alia* the extent of the unauthorized absence, the reasons for such absence and above all, to the fact that the respondent, on the date when the penalty of removal was imposed upon him had put in over 25 years of service. On basis of such factors, the MAT has concluded that the penalty of removal of service imposed upon the respondent was shockingly disproportionate.

10] Since, we have been called upon to exercise the powers of judicial review of the matter of the impugned judgment and order made by the MAT, we do not in the peculiar facts and circumstances of the present case, deem it appropriate to interfere with such a conclusion recorded by the MAT. This is not as if the matter is coming before us for the first time to determine whether the penalty imposed is indeed shockingly disproportionate or not. Further taking into consideration, Mr. Patil's defence that, respondent was suffering from some mental problems, on account of which

he failed to attend to his duties, as also the circumstance that the penalty of removal from service affects not only the respondent but also his family members, we refrain from interfering with the view taken by the MAT on the aspect of penalty.

11] However, it is almost settled position in law that even where a Court or Tribunal comes to the conclusion that the penalty imposed by the disciplinary authority is shockingly disproportionate, ordinarily the Court or the Tribunal will not itself substitute the penalty with some other lessor penalty. Ordinarily, the matter has to be then remanded to the disciplinary authority to reconsider the penalty imposed. This is because the quantum of punishment in disciplinary matters is something that lays primarily with the disciplinary authority.

12] In ***Dev Singh Vs. Punjab Tourism Development Corpn. Ltd.; (2003) 8 SCC 9***, the Hon'ble Supreme Court has held that a Court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion of penalty, however, if the

punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, then the Court would appropriately mould the relief either by directing disciplinary authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof.

13] In the facts and circumstances of the present case, we are of the opinion that, the MAT was not justified in making a departure from the normal rule that the issue of quantum of punishment be remanded to the disciplinary authority for reconsideration in the light of all relevant facts and circumstances of the matter. This cannot be said to be some rare cases justifying departure from the normal rule in such matters.

14] Accordingly, we set aside the portion of the impugned judgment and order to the extent, it substitutes the penalty of removal imposed upon the respondent with the penalty of compulsory retirement and we remand the matter to the disciplinary authority for reconsideration on the issue on

quantum of punishment. The respondent is granted liberty to make a fresh representation within four weeks from today, restricted to the issue of quantum of punishment only. Thereafter, the disciplinary authority is directed to reconsider the issue of quantum of punishment as expeditiously as possible and in any case within a period of four months from the date of receipt of the representation from the respondent.

15] The rule is disposed of in the aforesaid terms. There shall however be no order as to costs.

16] All concerned to act on basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)