

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

WRIT PETITION NO. 9808 OF 2015

Mr. Abhiraj S. Dhaware	...Petitioner
Versus	
The State Reserve Police Force and anr.	...Respondents

Appearances:

Mr. Nachiket Khaladkar I/b Mr. S.S. Phatale for the Petitioner.
Mr. C.P. Yadav, AGP for Respondent Nos.1 and 2 / State.

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

DATE OF RESERVING THE JUDGMENT	: 16 th JULY 2018.
DATE OF PRONOUNCING THE JUDGMENT	: 24 th JULY 2018.

JUDGEMENT:

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 22.07.2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing O.A. No. 356 of 2015 filed by the petitioner questioning his removal from service vide order dated 26.03.2013.

4] The petitioner was a Police Constable in the State Reserve Police Force (SRPF), when some time in July 2012, he was served with a charge-sheet alleging his involvement in the following acts of misconduct:

(a) The petitioner was harassing one Ms K. by making persistent calls to her and pressurising her to marry him;

(b) That after the petitioner was transferred from Chinchgad to Deori in order to avoid any untoward incident on account of petitioner's activities concerning Ms K., the petitioner, held out threats of suicide if he was not reposted to Chinchgad. In this manner, the petitioner, declined to discharge duties in Naxal affected area at Chinchgad;

(c) Though the petitioner had indicated that he was married, the petitioner, despite several requests, refused to furnish any details about his spouse and other family members. The petitioner gave his residential address at Vetar Nagar, Hingvane Nagpur,

but on enquiry, it was found that he was a native of Pargaon, Taluka Phaltan, Dist. Satara; and

(d) The petitioner misused his official accommodation by permitting a lady, who was not his wife to stay with him.

5] Since the petitioner denied the charges leveled against him, an enquiry officer was appointed to enquire into the charges. In the enquiry proceedings in all 15 witnesses came to be examined, including three witnesses proposed by the petitioner himself as defence witnesses. The enquiry officer has submitted report holding of charges as proved against the petitioner.

6] The petitioner was then afforded an opportunity of representing against the enquiry report and upon consideration of his representation, the disciplinary authority by order dated 27.8.2013 removed the petitioner from the Government service. The petitioner's appeal against the order dated 27.8.2013 was dismissed by the appellate authority by order dated 26.3.2014. Aggrieved by

the removal order and appeal dismissal order, the petitioner instituted O.A. No. 356 of 2015 before the MAT. It is this O.A., which has since been dismissed by the impugned judgment and order dated 22.07.2015. Hence, the present petition.

7] Mr. Nachiket Khaladkar, learned counsel for the petitioner, submits that there was no evidence in support of the charge that the petitioner had made any calls to Ms K. He points out that the call details were never furnished to the petitioner. He points out that even the call details, do not establish the contents of talk, if any, between the petitioner and Ms K. He submits that the call details would indicate that even Ms K., on occasions, had called up the petitioner. He submits that in any case, such charge relates to private affairs of the petitioner and cannot constitute any misconduct insofar as the petitioner's service as a Constable was concerned.

8] Mr. Khaladkar submits that in the present case, some preliminary enquiry had been conducted in the matter. He however points out that no proper opportunity was afforded

to the petitioner in the course of such preliminary enquiry. He points out that the petitioner was also not furnished with the copy of the preliminary enquiry report. He submits that all this constitute gross violation of principle of natural justice and fair play.

9] Mr. Khaladkar submits that the MAT, in the impugned judgment and order, has at several places, accepted the petitioner's contentions that the enquiry officer as well as the disciplinary authority has committed several illegalities. He points out that the impugned judgment and order itself records that the disciplinary authority has allowed itself the luxury of travelling beyond the charge and making some serious allegations against the petitioner, which were not even the subject matter of the charge-sheet issued to the petitioner. Despite this, the MAT, has exceeded its jurisdiction in upholding the penalty imposed upon the petitioner.

10] Mr. Khaladkar points out that the MAT in the impugned judgment and order has itself recorded that it was not satisfied with the manner of exercise of powers by the

disciplinary authority. He also points out that the MAT has found similar faults in the order made by the appellate authority. Despite all this, Mr. Khaladkar submits that the MAT has failed to exercise the jurisdiction vested in it and interfered with the penalty imposed upon the petitioner. Mr. Khaladkar submits that from this, it is apparent, that the impugned judgment and order suffers from perversity and non-application of mind.

11] Mr. Khaladkar submits that Ms K was not examined in the course of preliminary enquiry. As a result, the petitioner was deprived of the opportunity to contradict the evidence of Ms K. in the departmental enquiry on the basis of statements recorded in the preliminary enquiry. He submits that the disciplinary authorities were in fact, required to record the statements of the witnesses in the course of preliminary enquiry so that such statements would be available to the petitioner for purpose of contradictions and omissions in the course of departmental enquiry. He submits that since this has not been done, there is failure of natural justice which vitiates enquiry report and the penalty which is based upon such enquiry report.

12] Mr. Khaladkar submits that commandant of SRPF, Group -2 was not competent to impose the penalty upon the petitioner, since the Commandant was not the appointing authority of the petitioner. Mr. Khaladkar submits that this reason as well as the order imposing penalty upon the petitioner is liable to be declared as nullity.

13] Finally, Mr. Khaladkar submits that the petitioner came to be appointed under the provisions of the Bombay State Reserve Police Force Act, 1951 (said Act). Mr. Khaladkar submits that this renders the entire enquiry proceedings as well as the penalty imposed upon the petitioner, a nullity. Mr. Khaladkar submits that the provisions of the Bombay Police Act, 1951 do not apply in the case of the petitioner at all and therefore, any action taken under the provisions of the Bombay Police Act is *ex facie, ultra vires*, illegal, null and void.

14] Mr. Khaladkar submits without prejudice that the charges against the petitioner are quite trivial and therefore, imposition of penalty of removal from service is shockingly disproportionate. He submits that the imposition

of such penalty defies the doctrine of proportionality, which is an essential concomitant of the non-arbitrariness in Article 14 of the Constitution of India. He, therefore, submits without prejudice that this court interferes with the penalty imposed upon the petitioner and reduce the same to some minor penalty.

15] For all the aforesaid reasons, Mr. Khaladkar submits that the impugned judgment and order made by the MAT warrants interference and the O.A. instituted by the petitioner is liable to be allowed and the penalty imposed upon the petitioner be set aside.

16] Mr. C.P. Yadav, learned AGP for the respondents-State, counters each of the contentions raised by Mr.Khaladkar in support of the present petition. He points out that the competent authority, who is, undoubtedly, superior to appointing authority has imposed penalty upon the petitioner. He points out that the provisions of the Bombay State Reserve Police Force Act, 1951 themselves provide that action is to be taken under the provisions of the Bombay Police Act, 1951. He points out that several

witnesses were examined in the course of enquiry and full opportunity was granted to the petitioner in the matter of his defence. He points out that such opportunity has been duly availed on by the petitioner. He points out that the findings recorded by the enquiry officer are backed by ample material/evidence on record.

17] Mr. C.P. Yadav, submits that the jurisdiction of the tribunal as well as this court in the matter of interference with the findings of fact recorded by the disciplinary authority is extremely limited. He submits that there is no jurisdictional error or perversity in the impugned judgment and order so as to warrant interference in the exercise of extra ordinary writ jurisdiction under Article 226/227 of the Constitution of India. He points out that the penalty imposed upon the petitioner is quite proportionate and the charges levelled against the petitioner certainly have a nexus with the decision of duties as a Constable in a disciplinary force like SRPF. For all these reasons, Mr. Yadav submits that this petition may be dismissed.

18] The rival contentions now fall for our determination.

19] There is absolutely no material to hold that the penalty in the present case came to be imposed upon the petitioner by an authority not competent to impose the same. The MAT, has quite correctly held that the Commandant, who imposed penalty is an officer superior to the appointing authority. In such circumstances, we cannot detect any violation of Article guaranteed under Article 301 of the Constitution of India.

20] The provisions of Bombay State Reserve Police Force Act, 1951 itself provides that a disciplinary action against the members of the force has to be taken under the provisions of Bombay Police Act, 1951 as and when occasion arises. Even otherwise, mere wrong mention of statutory provision does not vitiate the action, as long as power to take such action is available. Applying such principles, we are unable to agree with Mr. Khaladkar's contention that the enquiry proceedings stand vitiated on account of reference to Bombay Police Act, 1951.

21] The contentions of Mr. Khaladkar that statements of all the witnesses including, the statement of Ms K. had to be

recorded in the course of preliminary enquiry, so that such statements would be available to the petitioner for recording contradictions and omissions in the regular departmental enquiry do not commend to us. Such contentions proceed on the basis of equating departmental proceedings to a criminal trial. Obviously, there is substantial difference between the two proceedings. The object of a criminal trial is to establish a guilt which might result in imposition of severe restrictions upon the liberty of the accused. The standard of proof required in a criminal trial is therefore, that of proof beyond reasonable doubt. However, the object of departmental proceedings is quite different and the standard of proof expected is preponderance of probabilities. Besides, the objective of a preliminary enquiry is not to establish the guilt of delinquent official, but merely to consider whether circumstances exist for initiating a departmental enquiry.

22] In the present case, no less than 15 witnesses were examined in the course of departmental enquiry. The petitioner himself, examined three witnesses as defence witnesses. The MAT has taken note of six witnesses

deposing to the issue of blackmail by the petitioner by way of threatening suicide. Two ladies, including Ms K. came to be examined in the course of departmental proceeding. At least 3 witnesses came to be examined on the issue of the petitioner staying with a lady who was not his wife in his official accommodation. Even the father of the petitioner came to be examined in the course of enquiry with regard to the incorrect addresses furnished by the petitioner. The petitioner, was given full opportunity to cross-examine such witnesses. The MAT has recorded that the petitioner despite afford of opportunity, failed to cross-examine some of the witnesses, where the petitioner was not confident of making any dent in the testimony of such witnesses.

23] The MAT has indeed made certain observations with regard to the disciplinary authority traveling beyond the charges in the chargesheet. However, the MAT has noted that the material on record more than amply establishes the charges referred to in the chargesheet. The MAT has also held that even if the charge of staying with a lady was admittedly not the petitioner's wife in the official accommodation is excluded from the charges, remaining

charges not only stand proved but certainly have a nexus with the discharge of duties by the petitioner. The petitioner, as we have noted, is a Constable in a disciplined force and therefore, we see no merit in Mr. Khaladkar's contention that the charge, even if proved, would have no nexus with discharge of his official duties. The petitioner was posted at a sensitive station and the petitioner's indulgence in such activities is bound to have affected not only discharge of his own duties, but impacted the issue of discipline at such sensitive posting.

24] According to us, penalty imposed upon the petitioner also cannot be regarded as disproportionate, in the facts and circumstances of the present case. The petitioner has virtually defied the transfer order by holding out threats of suicide. The petitioner has misused his official accommodation as also his official position as a Constable in a disciplined force. In such circumstances, if the disciplinary authority as well as the appellate authority, come to the conclusion that the petitioner deserves to be removed from service, we cannot say that the penalty imposed is shockingly disproportionate or in breach of the

doctrine of proportionality.

25] The scope of judicial review with the findings recorded by the disciplinary authority is quite limited. In ***Union of India & Ors. vs. P. Gunasekaran - AIR 2015 SC 545***, the Hon'ble Supreme Court has made it clear that in disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. Therefore, in the exercise of writ powers under Article 226/227 of the Constitution of India, the High Court shall not venture into reappraisal of the evidence. The High Court can only see whether the enquiry is held by a competent authority; in accordance with procedure prescribed in that behalf; issues of law; violation of the principles of natural justice ; the considerations of extraneous evidence ; influenced by irrelevant or extraneous considerations or whether the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion. The High Court can also examine whether the disciplinary authority had erroneously failed to admit the admissible and material evidence admitted inadmissible evidence which is influenced the

finding or whether the finding of fact is based on no evidence.

26] The Hon'ble Supreme Court, in *P.Gunasekaran (supra)*, after positively stating what the High Court, in the exercise of its powers under Article 226/227 of the Constitution of India can do in a matter dealing with disciplinary proceedings, has further, in clear and unambiguous terms set out, what the High Court, in exercise of powers under Article 226/227 of the Constitution of India cannot do while exercising powers of judicial review in disciplinary proceedings. It is held that the High Court shall not re-appreciate the evidence, interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law, go into the adequacy of the evidence; go into the reliability of the evidence, interfere, if there be some legal evidence on which findings can be based; correct the error of fact however grave it may appear to be; go into the proportionality of punishment unless it shocks its conscience.

27] Applying the aforesaid principles to the facts and circumstances of the present case, we see no good ground to interfere with the impugned judgment and order. This petition is therefore, dismissed. Rule is discharged. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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by Dinesh
Sadanand Sherla
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