

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.352 OF 2015

Sarjerao Laxmanrao Kale,
Age: 45 years, Occ: Service (Dismissed),
R/o. Narayan Nagar, Manwath, Tq. Manwath,
Dist: Parbhani.

...Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Director General of Police,
Maharashtra State, Mumbai.
3. The Special Inspector General of
Police (Nanded Range), Nanded,
Tq. & Dist. Nanded.
4. The Superintendent of Police,
Parbhani, Dist. Parbhani.

...Respondents

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Mr Avinash Barhate holding for Mr. S.S. Chapalgaonkar, Advocate for
the petitioner;
Mr. P.K. Lakhotiya, AGP for respondents

...

**CORAM: A.S. GADKARI &
S.G. MEHARE, JJ.**

(Date of Reserving the judgment: 10th JANUARY, 2022

Date of pronouncing the judgment: 28th JANUARY, 2022)

JUDGMENT (PER S.G. MEHARE, J.)

1. Rule. Rule made returnable forthwith. Heard finally by the consent
of the parties.

2. Petitioner/delinquent has impugned the order of dismissing his Original Application No. 52/2011 dated 08.02.2013 by the Maharashtra Administrative Tribunal at Aurangabad.

3. The brief facts of the case are that,

The delinquent was a police constable appointed on 18.08.1996 at Jalna. He then was transferred to Manwat Police Station in the Parbhani district. However, he did not join. It is alleged against him that he was absent from his duties unauthorizedly from 06.11.2004. He claimed that he was not feeling well. Hence, he proceeded on sick leave from 14.12.2004. He had submitted an appropriate application for sick leave; however, respondent no 4 served a suspension order to him on 14.02.2005. Thereafter, on 01.08.2005, the copies of the article of charges, the statement of the imputations of misconduct, the list of witnesses and documents were served on him. The charges against the petitioner were that, from 06.11.2004, he was on unauthorized sick leave; even after repeated intimations to join, he deliberately did not join on duties. He also did not join at the place of his transfer. By remaining absent from his duties, he was indirectly allowed to produce illicit/duplicate liquor supported illegal activities. He was protecting such illegal business by personally remaining present in the field wherein the said illegal activities were being carried out. He was also charged for an act of misconduct, that he deliberately did not inform the police about the said illegal business of manufacturing the duplicate liquor. In a raid by the police station, Buldhana the contraband worth ₹ 10 lakh was seized from his field. Therefore, the image of the police department was

lowered down. He was also charged for creating a fraudulent agreement in the name of his brother to pretend that, he has no concern with the said illegal business.

4. The Disciplinary Authority appointed an Inquiring Authority. The Inquiring Authority conducted a full-fledged departmental inquiry against the petitioner. After completing the inquiry, the petitioner was called upon to submit his final written statement, which he submitted on 29.11.2005. The petitioner stated that no repeated intimations to join the duty were given to him. He was not well and hence could not join his duty. He had submitted his medical certificates to his office. He had no concern with the illegal manufacturing of duplicate liquor. The factory was in the field of his brother's share. He also denied the remaining charges levelled against him. He further submitted that statements of the neighbouring agriculturist were not supplied to him. None of the charges was proved against him, and hence he may be exonerated.

5. The Inquiring Authority submitted his inquiry report to the Disciplinary Authority on 07.01.2006. The Inquiring Authority held that all the charges against the delinquent were proved. The Inquiring Authority proposed punishment of dismissal of the delinquent from the service. On 15.01.2016, the Disciplinary Authority served a show-cause notice on the delinquent, calling upon him to explain why the punishment of dismissal or removal from service shall be imposed on him. The delinquent submitted the same explanation that none of the charges had been proved against him. He was not involved in any illegal manufacturing of duplicate liquor. His absence was beyond his control.

The Inquiring Authority has not appreciated the evidence in proper perception. Hence, the inquiry report is liable to be dropped and, he is entitled to be exonerated.

6. The Disciplinary Authority, considering the explanation to the last show cause before by his order dated 31.05.2006, imposed a major penalty of dismissal upon the delinquent from his services as per Rule 3(1) of the Bombay (now Maharashtra) Police (Punishment and Appeal) Rules, 1956 and Maharashtra Civil Services (Discipline and Appeal) Rules, 1971. The dismissal order was given effect from the date of the receipt of the said order by a delinquent.

7. The delinquent had preferred an appeal before the Special Inspector General of Police (Nanded Range), which came to be dismissed on 28.08.2006.

8. The delinquent then preferred a revision before the Director General of Police, Maharashtra State Mumbai, which was also dismissed on 06.07.2007.

9. The delinquent then approached the Home Department, State of Maharashtra, with a mercy petition. However, by communication dated 22.02.2008, he was informed that his mercy petition could not be taken into consideration.

10. Lastly, the delinquent approached the Maharashtra Administrative Tribunal, which has passed the impugned order.

11. Learned Counsel for the delinquent would submit that none of the authorities has appreciated evidence led before the Inquiring Authority.

There was no incriminating or even probable evidence against the delinquent to hold him guilty for the offence of manufacturing duplicate liquor in his field. His explanation for his absence from the duty is also not correctly appreciated by the authorities. On surmises, the Inquiring Authority wrongly concluded that the delinquent had indirectly supported the illegal manufacturing of duplicate liquor. None of the Appellate Authorities has paid heed to the factual aspect and the material before the Inquiring Authority. Therefore, the findings recorded by them are against the principles of law. He further argued that the charges against the delinquent were not so grave to impose punishment of dismissal, and it is not commensurate with the alleged charges. In the circumstances, at the most, the punishment of removal from service with other benefits would be commensurate with the alleged charges.

12. Per contra, the learned AGP for the State would argue that no proof beyond reasonable doubt as required in criminal trials is needed in a departmental inquiry. The preponderance of probabilities is sufficient to prove the charges against the delinquent. The High Court is not supposed to re-appreciate the evidence as it has limited power of judicial review. The three authorities below have taken a consistent view of committing serious misconduct by the delinquent. It was not expected from police to indulge in the illegal business of manufacturing duplicate liquor which may cause harm to the life of the consumer. The punishment imposed is based on the well-settled principles of law. The delinquent has no substantial ground to seek a lenient view and convert the punishment from dismissal to the removal with other retiral benefits.

The petition is devoid of merit. Hence, it is liable to be dismissed.

13. Before adverting to the case of the delinquent and dealing with the submissions of his learned counsel, we find it appropriate to consider first the law relating to the jurisdiction of the High Court to interfere with the orders in departmental inquiries.

14. The Hon'ble Apex Court in Union of India and others vs. P. Ganeshkarnan. (20015) 2 SCC 616 has laid down the broad parameters for the exercise of the jurisdiction of judicial review. It is held thus;

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on charge I was accepted by the disciplinary authority and was also endorsed by the Central administrative tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of the first appeal. The High Court, in the exercise of its power under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High court can only see whether;

- a) the enquiry is held by competent authority;*
- b) the enquiry is held according to the procedure prescribed in that behalf;*
- c) there is a violation of the principle of natural justice in conducting the proceedings;*
- d) the authorities have disabled themselves from reaching a fair conclusion by some consideration extraneous to the evidence and merits of the case;*
- e) the authorities have allowed themselves to be*

influenced by irrelevant or extraneous considerations;

f) the conclusion on the very face of it is wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g) the disciplinary authority has erroneously failed to admit the admissible and material evidence;

h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i) the finding of fact is based on no evidence.

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not;

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which finding can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the probe proportionality unless it shocks the conscience”

15. In Union of India vs. H.C. Goel AIR 1964 SC 364, the Hon'ble Apex Court has held at page 728, that “if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from the patent error on the face of the record or based on no evidence at all, writ of certiorari could be issued.”

16. Bearing in mind the above principles laid down by the Hon'ble Apex Court, we have examined the record and found that the principle

of natural justice by giving an opportunity of being heard has been followed by the Inquiring Authority as well as the Disciplinary Authority. The delinquent also has not contended that no hearing was granted to him. Secondly, the Disciplinary and Inquiring Authorities have conducted the enquiry as per the procedure as contemplated in the Bombay Police (Punishment and Appeal) Rules, 1956 and the Maharashtra Civil Services (Discipline and Appeal) Rules, 1971. There is nothing to suggest that the Disciplinary Authority has erroneously admitted the inadmissible evidence that influenced the findings. We do not find any material to believe that the Disciplinary Authority had a bias against the delinquent. The delinquent could not point out any patent error on the face of the record. We also did not find perversity in the conclusions of the Disciplinary Authority. On merit also, we did not find substance in the petition to review the impugned order under Articles 226/227 of the Constitution of India.

17. The law is settled that the quantum of punishment should be commensurate with the gravity of the misconduct and, any penalty disproportionate to the gravity of misconduct will be violative of Article 14 of the Constitution of India. Serious misconduct of indulging in the illegal manufacturing of duplicate liquor by providing part of the land by the delinquent with his knowledge and creating a document to camouflage his indulgence in unlawful business has been proved against the delinquent.

18. Producing or manufacturing duplicate liquor is harmful to the life of its consumer. The delinquent was a police constable. Being a police

constable, he had a duty to prevent crime and discourage illegal activities. Unfortunately, instead of supporting the State, he was acting against the State. The prime duty of the police is to prevent crime and disorder and, they are entrusted with the duty of maintaining peace and harmony of the society. The highest duty of the police is to maintain respect for the rule of law by proper enforcement thereof. The Hon'ble Apex court in Union of India vs. Naraiyan Singh (2002) 5 SCC 11 has observed that "the court must not lightly interfere with the sentence passed after properly conducted enquiry where the guilt is proved. Reduction of a sentence, particularly in the military, paramilitary, or police service, can have a demoralizing effect and would be a retrograde step so far as the discipline of this services is concerned."

19. In the case at hand, after having regard to the charges proved against the delinquent, we are of the considered view that the delinquent was most indisciplined and had no respect for the law. If we reduce the punishment of the delinquent as imposed by the Disciplinary Authority, in that case, it may have a demoralizing effect and would be a retrograde step, as observed by the Hon'ble Apex Court in the above case. Discipline is the backbone of the Police Department, and anyhow, it must be maintained.

20. We do not find any reason to take a lenient view to reduce the punishment imposed by the Disciplinary Authority on the delinquent. The petition is devoid of any merits.

21. In view of the above, the petition is dismissed. Rule discharged.

(S.G. MEHARE, J.)

(A.S. GADKARI, J.)

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