

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3700 OF 2023**

Mr. Parmeshwar Chandrashekhar
Kumbhar
V/s.

...Petitioner

1. The State of Maharashtra
and Ors.

....Respondents

Mr. Sumant Deshpande, Advocate for the petitioner.
Mr. P.P. Kakade, Government Pleader a/w. Mr. M.M.
Pabale, AGP for State.

CORAM : S.V. GANGAPURWALA, ACTING C.J.
SANDEEP V. MARNE, J.

DATE : 28TH MARCH, 2023.

P.C.

1. By this petition, petitioner assails judgment and order dated 07.07.2022 passed by the Maharashtra Administrative Tribunal (**Tribunal**) in Original Application (**O.A.**) No. 517 of 2021. The O.A. was instituted by petitioner challenging order dated 5.04.2019 imposing the punishment of dismissal from service, order dated 10.06.2020 rejecting appeal and order dated 30.03.2021 rejecting revision petition. By the judgment and order impugned before us, the Tribunal has proceeded to dismiss the Original Application.

2. Petitioner is an Ex-Serviceman. He was appointed as a Police Constable from Ex-Serviceman category by order dated 19.6.2014 and joined the services on 20.06.2014. There is some history to his appointment. He was required to approach the Tribunal by filing O.A. No. 143 of 2012 since he was not being appointed despite his selection. In pursuance of the Tribunal's order dated 12.12.2012, he was directed to be appointed. It is the petitioner's case that, despite the Tribunal's order, the Superintendent of Police, Solapur failed to appoint him, which led to filing of Contempt Application No. 78 of 2014 before the Tribunal. He came to be appointed only after Tribunal took cognizance of contempt proceedings. Petitioner contends that the Superintendent of Police was required to offer an explanation before the Tribunal for delay in implementation of the order by way of filing Affidavit-in-reply, which resulted in personal grudge against him on the part of Superintendent of Police, Solapur. That on this account, he was not sent for police constable training. It was alleged that petitioner remained unauthorisedly absent from duty from 10.04.2015 to 30.09.2015. FIR was lodged against him on 30.09.2015 under Sections 332, 353, 504 and 506 of the Indian Penal Code. He was placed under suspension by order dated 1.10.2015, which was revoked on 13.05.2016. Though he resumed duty on 2.06.2016, he again remained absent from duty from 3.06.2016 by submitting a sick memo.

3. Disciplinary proceedings were initiated against petitioner by issuance of Memorandum of Chargesheet dated 30.06.2018 alleging four charges. In the first charge, it was alleged that petitioner remained unauthorisedly absent since 3.06.2016 and despite being directed to remain present for examination before the Medical Board on 3.10.2016, he refused to accept the communication. In the second charge, it was alleged that he was unauthorisedly absent from 10.04.2015 to 30.09.2015, failed to report for examination before medical board and avoided to attend training. In the third charge, it was alleged that on being directed to remain present on 21.10.2016 to know the reason for his absence, he failed to remain present for such hearing, thereby disobeying the orders of the superior officers. In the fourth charge, it was alleged that upon being asked to remain present on 22.05.2018 for preliminary enquiry, petitioner failed to remain present.

4. Departmental enquiry was conducted under the provisions of the Maharashtra Police (Punishment and Appeals) Rules, 1956 (**the Rules**). Petitioner participated in the enquiry proceedings. The department examined three witnesses and petitioner also examined three defence witnesses. Enquiry Officer submitted report holding that, all charges, except one element of charge relating to absenteeism from 10.04.2015 to 30.09.2015, were proved. Enquiry Report was served on petitioner

along with a show cause notice, and he represented against the same. The Disciplinary Authority thereafter passed order dated 5.04.2019 imposing the punishment of dismissal from service. The Appeal preferred by the petitioner before the Special Inspector General of Police, Kolhapur came to be rejected on 10.06.2020. Petitioner preferred revision petition before the Director General of Police which was also rejected on 31.03.2021. Aggrieved by the punishment of dismissal from service, petitioner approached the Tribunal by filing Original Application No. 517/2021. By judgment and order dated 7.07.2022, the Tribunal has proceeded to dismiss the Original Application.

5. Appearing for petitioner, Mr. Deshpande the learned counsel would submit that the enquiry proceedings were conducted in gross violation of the Rules, as Presenting Officer was not appointed to present the case on behalf of the department. He would submit that petitioner has been dismissed from service on account of grudge in the mind of the Superintendent of Police, Solapur who reluctantly appointed him after contempt proceedings were initiated. He would submit that petitioner was mentally harassed by the Superintendent of Police, on account of which his health had deteriorated. Petitioner had therefore proceeded on medical leave. That before initiating departmental enquiry, petitioner should have been given an opportunity to show cause. He would further submit that part of charge no.2 relating to

absenteeism from 10.04.2015 to 30.09.2015 was not proved by the Enquiry Officer, whereas the Disciplinary Authority proceeded on assumption that all charges were proved while issuing the show cause notice. That the procedure for disagreement with the findings of the Enquiry Officer was not followed. Mr. Deshpande, has also made few submissions with regard to the correctness of findings recorded by the Enquiry Officer with regard to proof of the charges. Lastly, he would argue that the punishment imposed is shockingly disproportionate to the misconducted alleged and proved.

6. We have also heard Mr. Kakade, the learned Government Pleader for the State who opposes the petition.

7. Petitioner faced four charges in the departmental enquiry. The Enquiry Officer has held all the four charges to be proved, except one element of charge no. 2 relating to absenteeism from 10.04.2015 to 30.09.2015. However, charge no.2 was not restricted to unauthorised absence during the period from 10.04.2015 to 30.09.2015. It was alleged in the second charge that, after revocation of his suspension, petitioner presented for duty on 2.06.2016 and demanded sick memo vide written report w.e.f. 3.06.2016. The sick memo was issued, but he failed to submit even a single Medical Certificate in support of his sickness. He was called upon to remain present before the Medical Board by

written communication. That he not only avoided to acknowledge such written communication, but failed to remain present for such medical examination. It was further alleged that he was deliberately avoiding completing the basic training of nine months. Thus, the absenteeism from 10.04.2015 to 30.09.2015 is just a minor element of charge no. 2. Except this minor element, all other allegations in charge no.2 are held to be proved by the Enquiry Officer. True it is that the Disciplinary Authority proceeded to assume as if all the four charges levelled against petitioner were proved while issuing show-cause notice dated 26.12.2018. Reason for this assumption apparently is on account of charge no.2 comprising of several elements. The Enquiry Officer has not held that the entire charge no.2 is disproved.

8. It is well settled position in law that if the Enquiry Officer exonerates a delinquent employee in respect of any charge and the Disciplinary Authority desires to disagree with the findings of the Enquiry Officer, the Authority is required to record reasons for disagreement and issue a show-cause notice calling upon the delinquent employee to make a representation against such reasons for disagreement. The law in this regard is well-settled by catena of judgments of the Supreme Court including the judgment in **Punjab National Bank Vs. Kunj Bihari Mishra (1998) 7 SCC 84**. In the present case, however, it is not that the entire charge no.2 is disproved in the enquiry. As observed above, charge no.2 comprised of

several elements and one of the minor elements being absenteeism from 10.04.2015 to 30.09.2015. Charge no.2 contained several other allegations such as non-submission of medical certificate, failure to remain present before the Medical Board, non-acceptance of written communication and avoidance of mandatory basic training in the Police Training Centre. The other elements of charge no.2 are proved. It is also pertinent to note that, while submitting his reply to the show cause notice on 09.01.2019, petitioner did not highlight this aspect of the element of charge no.2 relating to absenteeism from 10.04.2015 to 30.09.2015 not being proved in the enquiry. Considering these unique facts and circumstances, we do not think this to be a fit case where any interference is warranted by this Court on account of minor infraction on the part of Disciplinary Authority in assuming that the charge of absenteeism from 10.04.2015 to 30.09.2015 also stood proved.

10. So far as contention of Mr. Deshpande about the Enquiry Officer performing the role of Presenting Officer is concerned, we are not inclined to accept the same in absence of any prejudice being caused to petitioner. There is nothing on record to indicate that the petitioner objected to non-appointment of Presenting Officer during the course of enquiry proceedings. Petitioner's contention that show cause notice was required to be issued before initiating disciplinary proceedings is stated only to be rejected. There is no provision in the Rules for issuance of such

notice. Petitioner's contention about the disciplinary proceedings being initiated on account of grudge in the mind of Superintendent of Police, Solapur does not deserve acceptance. Petitioner did not implead any particular Officer as party in person for levelling allegations of malice. It is difficult to accept that any particular Officer had any grudge against petitioner on account of filing of proceedings by him before the Tribunal relating to his appointment. Petitioner does not dispute that he has remained absent from duty. Therefore, there is no question of the disciplinary proceedings being initiated out of any grudge as alleged. The contention in this regard therefore deserves to be rejected.

11. It must be borne in mind that petitioner had been recruited and joined the service as Police Constable on 20.06.2014. It was during training period that he remained unauthorisedly absent for unduly long period from 3.06.2016 till initiation of disciplinary proceedings on 30.06.2018. Petitioner was a member of a disciplined force and his conduct of remaining unauthorisedly absent for unduly long period of over three years is clearly unacceptable. Petitioner admittedly did not follow rules by submitting medical certificates in support of his alleged sickness from time to time or by for applying leave from the Competent Authority. The contention with regard to the deterioration of health on account of alleged harassment or torture is not supported by any documentary evidence and deserves summary rejection.

12. We find that the enquiry proceedings have been conducted by affording full and complete opportunity of defence to petitioner. Infact, the petitioner was yet to be confirmed in service and could have been simply discharged by passing an innocuous order on account of his absenteeism without holding any enquiry. Nevertheless, the Department followed the principles of natural justice before dismissing the petitioner from service. We do not find any major infraction of procedure warranting interference by this Court.

13. The last submission of Mr. Deshpande about punishment of dismissal being disproportionate to the misconduct alleged and proved, also does not appeal to us. As observed above, petitioner was a new recruit in the police department and remain unauthorisedly absent for unduly long period. He repeatedly showed disrespect to the authority of his superiors by refusing to acknowledge communications and by failing to remain present before the Medical Board and also before the superior officers. Such a conduct at the beginning of his career would clearly indicate to the incalcitrant attitude of petitioner. We therefore do not find that the penalty of dismissal from service imposed on him is in any manner disproportionate to the misconduct proved against him.

15. Resultantly, we do not find any error being committed by the Tribunal in dismissing petitioner's

Original Application. Writ Petition is devoid of merits. It is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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