



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 882/2023

Gajanan Mahadeo Satpute, Age 50 years, Occupation –
Nil, R/o Krushn Nagar, Ward No.13, Subhash Chandr
Bos Marg, Wardha, District – Wardha.

PETITIONER

.....VERSUS.....

1. Government of Maharashtra, Through Secretary,
Ministry of Home, Mumbai.
2. Police Superintendent, Wardha,
Police Headquarter, District – Wardha.
3. Special IGP, Nagpur Region, Nagpur, Sadar Police
Station, Civil Line, Nagpur – 440 001.
4. Adl. Director of Police (Administration),
Ministry of Home, State of Maharashtra, Main
Building II Floor, Hutatma Square, Secretariat,
Mumbai – 400 032.

RESPONDENTS

Shri T. Rahul, counsel for the petitioner.
Shri A.M. Deshpande, In-Charge Government Pleader for the respondents.

CORAM : **NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.**

DATE : **DECEMBER 04, 2023**

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith and heard finally
with consent of the learned counsel for the parties.

2. On April 07, 2010, the petitioner having facilitated the
escape of an undertrial namely Pramod Rewatkar was charge-sheeted
in Form-1 by the Authority.

3. Subsequent thereto, he was served with the charge-sheet
and an offence came to be registered against him *vide* Crime No.152 of
2010 for an offence punishable under Sections 224 and 225 of the
Indian Penal Code.

4. The petitioner thereafter was acquitted in the aforesaid criminal trial *vide* judgment dated September 16, 2019 delivered by the Judicial Magistrate First Class, (Court No.4), Wardha for an offence punishable under Sections 225 and 119 of the Indian Penal Code.

5. On June 08, 2010, the Disciplinary Authority framed the charges against the petitioner. The Disciplinary Authority held the petitioner guilty of the charges levelled against him. He was served with the final order dated May 15, 2018 of dismissal from service in exercise of powers vested under the Bombay Police (Punishments and Appeals) Rules, 1956 (for short, 'the Rules of 1956').

6. Forming the acquittal by the Criminal Court as basis, the petitioner approached the Appellate Authority. The Appellate Authority by an order dated September 29, 2018 confirmed the order of the Disciplinary Authority. The order of the Appellate Authority was upheld by the Additional Director General of Police (Administration) in the revision *vide* order dated July 01, 2019 thereby confirming both the orders.

7. The petitioner being aggrieved, preferred Original Application No. 738 of 2020 before the Maharashtra Administrative Tribunal which was dismissed on September 21, 2022. As such, this petition.

8. The contention of Shri T. Rahul, learned counsel for the petitioner is, perusal of the order of dismissal delivered by the Disciplinary Authority does not refer to the violation of any Rule or breach of statutory provision. According to him, the available material is not sufficient enough to order dismissal of the petitioner from service. His further contention is, appropriate opportunity of hearing was not offered by the Disciplinary Authority to the petitioner. So as to substantiate the aforesaid contentions, the learned counsel for the petitioner would invite our attention to the observations in the order of the Disciplinary Authority to urge that even though the enquiry was ordered against the four delinquents, it is only the petitioner who was punished in the present case thereby victimizing him.

9. The In-Charge Government Pleader would support the orders impugned. According to him, all the three Authorities so also the Maharashtra Administrative Tribunal has in detail considered the claim put forth by the petitioner and has reached to a conclusion that the petitioner is *prima-facie* involved in the act of facilitating the escape of an undertrial, who later on expired. According to him, merely non-mentioning of the provision does not render the orders illegal as long as it is not disputed that the powers vest with the Authorities to order termination. As such, he would urge that the petition is liable to be dismissed.

10. We have considered the rival claims based on the documents available on record.

11. It is not in dispute that the Appointing Authority of the petitioner is the respondent no.2-Superintendent of Police. The respondent no.2 accordingly issued the charge-sheet and after considering the material placed on record imposed punishment of dismissal from service on the petitioner. Such order is passed by the respondent no.2 in exercise of Rule 3(1), (A-2) and 3 of the Rules of 1956. A specific finding is recorded by the Disciplinary Authority that the conduct of the petitioner is quite serious as he has involved himself in the most irresponsible and *mala fide* act not befitting the status of a police official. In support of the said finding, the Disciplinary Authorities has appreciated the material available on record including that of the documentary evidence.

12. The Disciplinary Authorities accordingly imposed the punishment of dismissal from service vide final order dated May 15, 2018. The said order was challenged before the Appellate Authority viz. Special Inspector General of Police, Nagpur Range. The said Authority vide order dated September 29, 2018 reconsidered the entire claim of the petitioner, re-appreciated the evidence and factual matrix and has confirmed the order of the Disciplinary Authority.

13. Similarly, the Revisional Authority while dealing with the revision preferred by the petitioner has considered the evidence and the claim put forth by the petitioner in entirety. The said Authority was also sensitive to the statutory provisions and the proportionate punishment awarded to the petitioner as against the charges proved against him.

14. The petitioner thereafter approached the Maharashtra Administrative Tribunal questioning all the three orders. The Tribunal while considering the case of the petitioner has specifically recorded a finding that the petitioner's defence before the Disciplinary Authority was far away from truth as it was duly proved that the petitioner facilitated the escape of the undertrial since the petitioner's vehicle was used by the undertrial for escaping from the custody. Since based on the material placed on record, all the three Authorities have recorded a concurrent finding that the charges levelled against the petitioner are proved, this Court is not required to re-appreciate the entire evidence in the backdrop of defence raised by the petitioner. The undertrial who ran away from the custody of the Police with the help of the present petitioner was subsequently found to be dead.

15. The conduct of the petitioner was found to be undisciplined, irresponsible, illegal and not befitting the status of a Police Officer and

as such he was served with the order of dismissal from service by the Disciplinary Authority which was maintained by the Appellate as well as the Revisional Authority.

16. As far as the contentions of the petitioner that; (a) vague charge was levelled against him, (b) the punishment awarded is not proportionate to the charges levelled, (c) the orders do not refer to the violation of which provision of the Rules of 1956 and (d) the violation of principles of natural justice by the Disciplinary Authority are concerned, the fact remains that the orders of all the three Authorities i.e. the Disciplinary, Appellate and Revisional Authorities in categorical terms offer a complete opportunity of hearing to the petitioner in the matter of defending his case in the disciplinary proceedings. The order in categorical terms not only deals with the case against the petitioner but also analyzes the evidence against the petitioner in the light of defence raised by the petitioner. The petitioner is unable to demonstrate from the record that at which stage of the proceedings he was denied the opportunity of hearing by all the three Authorities.

17. The fact remains that in the orders impugned, there is specific reference to the provisions under which the petitioner is being proceeded against and also the serious default committed by him regarding his conduct which is unsuitable for the status as a Police official. From the perusal of the impugned order, it is clear that the

petitioner was asked to show cause as to why the punishment specified under Rule 3 of the Rules of 1956 be not imposed upon the petitioner. The perusal of the said Rules depicts that it provides for penalty of dismissal from service. As such, there exist a provision which empowers the Authority to impose punishment of dismissal from service after conducting a departmental enquiry. The conduct of the petitioner helping an accused to flee away from the custody of the police comes within the category of grave misconduct and the same amounts to loss of confidence of the employer. The petitioner has failed to demonstrate any specific instance of violation of the principles of natural justice or denial of opportunity of hearing. The charge levelled against the petitioner has to be viewed as a serious one and rightly so the misconduct of the petitioner has been held to be proved by the Disciplinary Authority. In the aforesaid background, the punishment of dismissal from service imposed upon the petitioner cannot be said to be disproportionate to the misconduct committed.

18. Merely because the petitioner is acquitted by the Criminal Court that by itself would not make the petitioner entitled to seek relief of reinstatement from this Court as both the proceedings i.e. the domestic enquiry and the criminal prosecution cannot be considered to be at par with each other. In the proceedings of domestic enquiry the provisions of the Evidence Act, 1872 do not apply. However, the

enquiry is required to be conducted in a fair and reasonable manner and the presence of reasons for reaching to a conclusion in an enquiry report with regard to the charges levelled against the delinquent is mandatory. Whereas, the Evidence Act, 1872 is *stricto-sensu* applicable to the criminal trials. To justify the aforesaid, reliance can be placed on the judgment of the Hon'ble Apex Court in *Mohd. Yunus Khan Versus State of Uttar Pradesh & Others* [(2010) 10 SCC 539], particularly paragraph 16 thereof which reads as under :-

“16. ... Though the technical rules of procedure contained in the Code of Civil Procedure, 1908 and the provisions of the Evidence Act, 1872 do not apply in a domestic enquiry, however, the principles of natural justice required to be observed strictly. Therefore, the enquiry is to be conducted fairly and reasonably and the enquiry report must contain reasons for reaching the conclusion that the charge framed against the delinquent stood proved against him. It cannot be an ipse dixit of the enquiry officer. Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice. (See *Bachhittar Singh v. State of Punjab*, *Union of India v. H.C. Goel*, *Anil Kumar v. Presiding Officer*, *Moni Shankar v. Union of India* and *Union of India v. Prakash Kumar Tandon*.)”

19. Apart from above, merely because the provisions under which the punishment is imposed is not explicitly referred in the order, that by itself will not disentitle the Authorities to impose punishment or render the order of imposing punishment illegal as long as the

Statute confers such lawful right on the Authority. So as to substantiate the aforesaid, support can be drawn from the judgment of the Hon'ble Apex Court in the matter of *P.K. Palanisamy Versus N. Arumugham & Another* [(2009) 9 SCC 173], and more particularly paragraphs 27, 28 and 29 which read as under :-

“27. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the Code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court an/or statutory authority had the requisite jurisdiction therefor.

28. In *Ram Sunder Ram v. Union of India* it was held : (SCC pp. 260-61, para 19)

“19. It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.

‘9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not

vitiates the exercise of power so long as the power does exist and can be traced to a source available in law.’ (See N. Mani v. Sangeetha Theatre, SCC p. 280, para 9)

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.”

29. *In N. Mani v. Sangeetha Theatre it is stated : (SCC p. 280, para 9).*

‘9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

20. In the aforesaid background, if we consider the issue as regards awarding of disproportionate punishment, the fact remains that the evidence on record in categorical terms establishes that the petitioner, a Police Constable, by providing his personal vehicle and also with the help of other logistic support, facilitated escape of an undertrial who was in the custody of the Police Authorities. Such an act of the petitioner is proved in the departmental proceedings. Once, the aforesaid act of the petitioner of facilitating the escape of an undertrial is proved, it cannot be said that the award of punishment of

dismissal from the service can be said to be a disproportionate punishment. The Revisional Authority has also gone through the entire record to observe the hardships likely to be suffered by the petitioner to feed his family and has still maintained the punishment of dismissal from service.

21. In the aforesaid background, we are of the view that all the Authorities including the Maharashtra Administrative Tribunal have recorded the concurrent findings. It cannot be said that there is an illegality or irregularity noticed in the orders impugned which warrant interference in extraordinary jurisdiction.

22. That being so, no case for causing interference is made out. The writ petition as such is dismissed. Rule stands discharged. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)