

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2196 OF 2024

Dhiraj Shankarrao Patil

Age 43 years, Occu. Service
Residing at Police Training Center,
Turchi, Tasgaon, Dist. Sangli

...Petitioner

Versus

1. The State of Maharashtra

Through The Additional Chief Secretary,
Home Department, Maharashtra State
Having office at Mantralaya, Mumbai.

2. X.Y.Z.

Address- Neha Residency, 2102
21st Floor, Shri Ram Tekdi,
Sewree, Mumbai

...Respondents

Mr. Satyavrat Joshi i/by Sumant R. Deshpande Advocate for
Petitioner.

Mr. M. P. Thakuar, AGP for the State.

Mr. Raj Patel a/w Ankit Ujjwal i/by Lex Legal & Partners for
Respondent No.2.

**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.**

DATE : 13th MARCH 2024

P.C.:-

1. The petitioner is aggrieved by order dated 24th January 2024 passed by Maharashtra Administrative Tribunal, Mumbai in O.A. No.79 of 2024 wherein the order dated 9th January 2024 passed by Respondent No.1 was upheld.

2. The petitioner was selected for the post of Police Sub-Inspector in 2008. Subsequently, in 2009 he was selected to the post of Deputy Superintendent of Police. In 2018, he was promoted to the rank of Superintendent of Police and was posted as Additional Superintendent of Police at District Satara. The Respondent No.2 filed complaint to the Director General of Police, Maharashtra State. Preliminary enquiry was initiated against the petitioner. It was completed and report was submitted. Petitioner was served with suspension order dated 2nd March 2022. Departmental charge-sheet was served upon him on 7th March 2022. The petitioner filed an application before the Maharashtra Administrative Tribunal challenging the order of suspension. The application was allowed vide order dated 26th July 2022. The suspension of the petitioner was revoked. Respondent No.2 filed Writ Petition in this Court. The said petition was dismissed vide order dated 18th August 2022. The Maharashtra Administrative Tribunal vide order dated 26th July 2022 had directed the Respondent No.1 to complete the Departmental Enquiry within a period of three months. The petitioner's suspension was revoked and he was reinstated in the service and currently posted as Police Training Center at Sangli.

3. The petitioner contended that the place of Departmental Enquiry was changed from Pune to Navi Mumbai. The enquiry commenced before new

Presenting Officer. Two witnesses were examined. Respondent No.2 is the third witness to be examined. The previous defence assistant has communicated to the petitioner his inability to represent him. The petitioner moved an application dated 11th September 2023 before the Respondent No.1 to allow him to appoint Mr. Sambhaji Patil (Retired Dy. S.P. and Advocate) as his defence assistant. Application dated 17th October 2023 was rejected by order dated 9th January 2024. The petitioner filed O.A. No. 79 of 2024 challenging aforesaid order. The Tribunal vide order dated 24th January 2024 dismissed the application.

4. Learned Advocate for Petitioner submits that the order dated 9th January 2024 passed by Respondent No.1 is without application of mind and without assigning any reason. Newly appointed presenting Officer is trained officer in law having knowledge of law. Appointment by the petitioner of defence assistant having good knowledge of law is justifiable. The petitioner will have to deal with several laws and required qualified legal assistance. The proposed defence assistant of the petitioner is only law graduate and he is not practicing Advocate although he is registered with Bar Council of Maharashtra and Goa. Respondent No.2 is practicing Advocate. Her statement was recorded in English before officer, who had conducted preliminary enquiry. The defence assistant of the petitioner must be proficient in English having knowledge of law. Mr. Sambhaji Patil is

retired Dy. S. P. and after his retirement he had registered with the Bar Council of Maharashtra and Goa. Except two matters, he has not filed his vakalatnama in any other matters. The Tribunal has failed to consider that the witness No.3/Respondent No.2 is practicing Advocate. The petitioner is entitled to engage defence assistant to espouse cause. The charges framed against the petitioner involves intricacies of law.

5. Learned AGP submits that, order passed by Respondent No.1 has been confirmed by Maharashtra Administrative Tribunal. There is no reason to interfere in impugned orders.

6. Learned Advocate for Respondent No.2 submits that Maharashtra Administrative Tribunal has considered the issues raised by petitioner. To be represented by legal practitioner cannot be claimed as matter of right.

7. Petitioner is facing departmental enquiry for various charges. The Respondent No.1 has rejected the application of the petitioner for appointing Shri.Sambhaji Patil as his defence assistant without assigning any reason. The Maharashtra Administrative Tribunal has rejected the application preferred by petitioner challenging the order dated 9th January 2024 on the ground that Mr. Sambhaji Patil had taken *sanad* in 2018 and registered as Advocate with Maharashtra and Goa Bar Council. The prayer sought by the petitioner was rejected by relying upon Sub-Rule (a) of Rule 8 of Maharashtra Civil Services (D & A) Rules 1979.

8. Sub-rule (a) of Rule 8 of Maharashtra Civil Services (D & A) Rules 1979 reads as under:

“8(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner or, the disciplinary authority, having regard to the circumstance of the case, so permits”

(emphasis placed)

9. We find that, the order dated 9th January 2024 is cryptic. It does not assign any reason for refusing the request of the petitioner. Rule 8(a) indicate that, the Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner or, the disciplinary authority, having regard to the circumstance of the case, so permits. In the absence of the reason in the order dated 9th January 2024 without expressing further on the merits of the case, we are inclined to set aside the impugned order dated 9th January 2024 and subsequent order dated 24th January 2024 and relegate the matter to the First Authority/Respondent No.1 to decide the application/representation of the petitioner afresh and pass appropriate order.

ORDER

- (i) Impugned order dated 9th January 2024 passed by Respondent No.1 and order dated 24th January 2024 passed by Maharashtra Administrative Tribunal are set aside.
- (ii) The proceedings are remitted to Respondent No.1 for deciding afresh, the application of the petitioner for appointing Shri.Sambhaji Patil as defence assistant by assigning reasons.
- (iii) The Respondent No.1 shall pass appropriate order within a period of three weeks from the date of uploading this order.
- (iv) Till the decision is taken by respondent No.1 in respect to the application preferred by petitioner, the enquiry officer shall defer the hearing of Departmental proceedings.
- (v) Writ Petition stands disposed off.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)