

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.303/2019, 21/2020,
22/2020, 253/2020, 254/2020, 301/2020, 571/2021
O.A.ST.NO.1185/2019**

**DISTRICT:- JALNA, HINGOLI,
AURANGABAD, NANDED, JALGAON**

O.A.NO.303/2019

Shri Sukracharya s/o. Baban Tekale,
Age :28 years, Occ. Service as Constable,
Now dismissed from service,
R/o. Savkhed Bhoi, Tal. Deulgaon Raja,
Dist. Buldhana.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through: The Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Shahid Bhagatsing Marg,
Maharashtra State, Mumbai.
- 3) The Inspector General of Police,
S.R.P.F., Nagpur.
Tq. & Dist. Nanded.
- 4) The Commandant,
S.R.P.F., Gut No.3, Jalna.

...RESPONDENTS

APPEARANCE : Shri Kakasaheb B. Jadhav, Advocate
for Applicant.
: Shri M.P.Gude, Shri B.S.Deokar &
Shri I.S.Thorat, Presenting Officer for
the respondents in respective cases.

O.A.NO.21/2020

Dnyanoba s/o. Shivaji Kale,

Died on 01-05-2021.

Hence, through L.R. Smt. Meera w/o. Dnyanoba Kale,

Age: 32 years, Occ : Household,

At present R/o. Kalewadi, Post Shelgaon,

Tq. Paranda, Dist. Osmanabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Superintendent of Police,
Nanded, Tq. & Dist. Nanded.
- 3) Special Inspector General of Police,
Nanded Region, Nanded.
- 4) Director General of Police,
Shahid Bhagatsing Marg,
Colaba, Maharashtra State,
Mumbai-400 001.

...RESPONDENTS

APPEARANCE : Shri S.S.Jadhavar, Advocate for
Applicant.

: Shri B.S.Deokar, Presenting
Officer for the respondents.

O.A.NO.22/2020

Santosh s/o. Gangadhar Rane,

Age: 33 years, Occ :Service,

At present R/o. Bhavitaya Nagar,

Malegaon Road, Taroda (Kh.)

Tq. & Dist. Nanded.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) Superintendent of Police,
Nanded, Tq. & Dist. Nanded.

- 3) Special Inspector General of Police,
Nanded Region, Nanded.
- 4) Director General of Police,
Shahid Bhagatsing Marg,
Colaba, Maharashtra State,
Mumbai-400 001.

...RESPONDENTS

APPEARANCE : Shri P.B.Rakhunde, Advocate for
Applicant.

: Shri M.P.Gude, Shri B.S.Deokar &
Shri I.S.Thorat, Presenting Officer for
the respondents in respective cases.

O.A.NO.253/2020

Bapurao s/o. Fakira Bhosale,
Age :52 years, Occ. Nil (as Dismissed),
R/o. Plot No.9, Near Kalpatru Hospital,
Bhadgaon Roda, Challisgaon,
Tal. Challisgaon,Dist. Jalgaon.

...APPLICANTV E R S U S

- 1) The Special Inspector General of Police,
Nasik Range, Nasik,
Gadkari Chowk, Nasik.
- 4) The Superintendent of Police,
Jalgaon.

...RESPONDENTS

APPEARANCE : Shri K.G.Salunke, Advocate for the
Applicants.

: Shri M.P.Gude, Shri B.S.Deokar &
Shri I.S.Thorat, Presenting Officer for
the respondents in respective cases.

O.A.NO.254/2020

Gopal s/o. Gorakh Baldar,
Age :32 years, Occ. Nil (as Dismissed),
R/o. Shau Nagar, Bhadgaon Road,
Challisgaon, Tal. Challisgaon,
Dist. Jalgaon.

...APPLICANT

V E R S U S

- 1) The Special Inspector General of Police,
Nasik Range, Nasik,
Gadkari Chowk, Nasik.

- 4) The Superintendent of Police,
Jalgaon.

...RESPONDENTS

APPEARANCE : Shri K.G.Salunke, Advocate for the
Applicants.

: Shri M.P.Gude, Shri B.S.Deokar &
Shri I.S.Thorat, Presenting Officer for
the respondents in respective cases.

O.A.NO. 301/2020

Suresh s/o. Bajirao Patil,
Age : 55 years, Occ. Nil,
R/o. Thadi Ukkadgaon,
Tq. Sonpeth, Dist. Parbhani.

...APPLICANTV E R S U S

The Superintendent of Police,
Parbhani.

...RESPONDENT

APPEARANCE : Shri A.S.Deshmukh, Advocate for the
Applicant.

: Shri M.P.Gude, Presenting Officer
for the respondent.

O.A.NO.571/2021,

Shri Namdeo Baburao Dhakne,
Age : 40 years, Occ. Service as Constable,
At present Dismissed,
R/o. "Bhagyendra"
Jatwada Road,Aurangabad.

..APPLICANTV E R S U S

- 1) The State of Maharashtra,
Through: The Secretary,
Home Department,
Mantralaya, Mumbai-32.

- 2) The Director General of Police,
Shahid Bhagatsing Marg,
Maharashtra State, Mumbai.
- 3) The Special Inspector General of Police,
State Reserve Police Force,
Nagpur Region, Nagpur.
- 4) The Commandant,
State Reserve Police Force,
Gut No.14 (SRPF), Aurangabad. **...RESPONDENTS**

APPEARANCE : Shri Kakasaheb B. Jadhav, Advocate
for Applicant.

: Shri M.P.Gude, Shri B.S.Deokar &
Shri I.S.Thorat, Presenting Officer for
the respondents in respective cases.

O.A.NO.1185/2019

Amit Shivanand Swami,
Age :28 years, Occ. Nil,
R/o. C/o. Shri Ulhas Kalgutkar,
Colony No.9, Laxmi Narayan Nagar,
Alandi Road, Near Saibaba Mandir,
Pune – 411 032.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner of Police,
Aurangabad City, Mill Corner,
Dr. Babasaheb Ambedkar Road,
Aurangabad. **...RESPONDENTS**

APPEARANCE : Shri Ajay Deshpande, Advocate for
Applicant.

: Shri M.P.Gude, Shri B.S.Deokar &
Shri I.S.Thorat, Presenting Officer for
the respondents in respective cases.

**CORAM :JUSTICE SHRI P.R.BORA,VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

Reserved on : 19-07-2022 & 01-08-2022
Pronounced on : 30-09-2022

C O M M O N O R D E R
(PER: JUSTICE SHRI P. R. BORA)

1. Applicants in all these matters have been dismissed by their respective disciplinary authorities in exercise of powers under Article 311(2)(b) of the Constitution of India. We have, therefore, heard all these matters together and we deem it appropriate to decide all these O.As. by a common reasoning.

2. Before advertng to the merits of the submissions advanced on behalf of the applicants as well as the respondents we would prefer to mention in brief the facts involved in each of these matters.

3. **O.A. NO. 303/2019** : The applicant was appointed on the post of Constable w.e.f. 15-03-2012. At the relevant time the applicant was working under the control of respondent no.4 i.e. Commandant, SRPF, Jalna. Applicant in the said matter has claimed that he did not have any criminal antecedents. On 25-04-2018, offence came to be

registered against the applicant in Vajirabad Police Station, Nanded for the offences punishable u/s.420, 465, 468, 471, 120-B &34 of the IPC. Thereafter, on the same allegations one another crime also came to be registered against him at Vanwadi Police Station, Pune on 01-05-2018. Third crime for the same offences came to be registered against the applicant at Hingoli, Police Station on 11-05-2018. Applicant was arrested on 02-05-2018 and was initially remanded in PCR and thereafter was sent in Magistrate Custody. On 27-04-2018, respondent no.4 in the said matter suspended the applicant from services with immediate effect. It is the contention of the applicant that the suspension order was not served upon him. On 28-04-2018, respondent no.4 issued another order and thereby dismissed the applicant from the SRPF service by exercising the powers under Article 311(2)(b) of the Constitution of India. It is the contention of the applicant in the said matter that he was falsely implicated in the offence registered against him. It is the further contention of the said applicant that, the dismissal order was passed against him and was served on him when he was in custody. According to the applicant the respondents have unilaterally held him guilty for offences registered against

him and without conducting due enquiry for his alleged misconduct, explicitly relying on the offences registered against him, respondent no.4 in the said matter has unlawfully dismissed the applicant from the police services.

4. **O.A. No. 21/2020 & 22/2020** : Applicant in O.A.No.21/2020 Dnyanoba s/o. Shivaji Kale has died during the pendency of the O.A. Wife of the deceased, namely, Smt. Meera Dnyanoba Kale is prosecuting the O.A. as legal representative of the deceased applicant. Applicants have been dismissed from Police Services while they were posted at Police Station Himayatnagar, Dist. Nanded. A common order has been passed against these applicants by the Special Inspector General of Police, Nanded Region. Both the applicants were named as accused in crime no.114/2019 registered at Himayatnagar Police Station for offences punishable u/s. 306, 511, 392, 323 of IPC. Both the applicants were alleged to have brutally beaten one Shaikh Sayyad Shaikh Ahmed and snatched one gold ring from him along with an amount of Rs.38,170/- because of which the said person on 14-07-2019 tried to immolate himself in the compound of the police station. Based on the said incident offence was registered against the applicant on 14-07-2019. Thereafter,

i.e. on 17-07-2019 Special Inspector General of Police, Nanded Region dismissed the applicants from the services.

5. **O.A. Nos. 253/2020 & 254/2020** : Applicants in these O.As. have been dismissed by a common order dated 28-05-2020 passed by Superintendent of Police, Jalgaon. Both the applicants have been dismissed by the S.P.Jalgaon by invoking powers under Article 311(2)(b) of the Constitution of India. On 23-05-2020 both the applicants were trapped in the anti-corruption matter and offence under the said Act bearing crime no. 175/2020 has been registered against them u/s.7 of the Prevention of Corruption Act at Police Station Chalisgaon City. The applicants were alleged to have demanded and accepted bribe from the complainant in the said matter for releasing one accused without taking any action against him though contrabands were found in his possession. The applicants have claimed themselves to be innocent and have taken a plea of false implication in the alleged crime.

6. **O.A.NO. 301/2020** : Applicant entered into the services of Police department on 01-02-1989 as a Police Constable. In the year 2007, applicant was designated as Police Naik. In the year 2011, the applicant was promoted

as Police Head Constable. At the relevant time i.e. in the year 2020, the applicant was posted at Police Station, Gangakhed as Police Head Constable. On 15-06-2020, FIR came to be registered at Police Station, Gangakhed, Dist. Parbhani against the applicant for offence under Section 7 of the Prevention of Corruption Act, 1988. Based on the offence so registered against the applicant, respondent dismissed the applicant from services by invoking powers under Article 311(2)(b) of the Constitution of India. Aggrieved by the said impugned order, applicant has filed the present O.A.

It is the contention of the applicant that on 15-06-2020, vide C.R.No.288/2020, FIR came to be registered against him for offence u/s.7 of the Prevention of Corruption Act on the complaint of one Kabir Khan Vazir Khan Pathan. The applicant was arrested in the aforesaid crime on the same day i.e. on 15-06-2020. On 16-06-2020, the applicant was released on bail in the aforesaid offence. It is the contention of the applicant that he was falsely implicated in the crime and the respondent without giving an opportunity of being heard to the applicant, presuming the allegations made in the FIR to be true and genuine, dismissed the applicant from the Police Services by

exercising powers under Article 311(2)(b) of the Constitution of India.

It is the further contention of the applicant that before ordering his dismissal, respondent must have conducted enquiry and must have given an opportunity of hearing to the applicant and to submit his explanation as about the charges levelled against him. It is the further contention of the applicant that without adopting the due course, holding applicant unilaterally guilty of the charges levelled against him, respondent has dismissed him from the services. The applicant has, therefore, prayed for quashment of the impugned order.

7. **O.A. No. 571/2020** : The present applicant was appointed as an Armed Police Constable by Commandant SRPF, Jalna vide his order dated 24-02-2019. Subsequently, applicant was transferred to Aurangabad in the office of respondent no.4. While he was working in the said office, offence came to be registered against him on 25-04-2018 for the offence punishable u/s.420, 465, 468, 471, 120-B, 34 of the IPC. On 27-04-2018 respondent no.4 by exercising powers under Article 311(2)(b) of the Constitution of India dismissed the applicant from the

SRPF services. The applicant has raised the plea that he has been falsely implicated in the alleged crime. It is further alleged that without giving any opportunity of hearing the respondent has dismissed the applicant from the police services unilaterally holding him guilty of the alleged offences.

8. **O.A. St. No. 1185/2019** : This applicant entered into Police Services on 10-06-2016 being appointed as Police Constable by respondent no.2. After completion of training he was deployed as body guard/gunman for the Hon'ble Judge of the High Court. While performing the duty as aforesaid, on 06-01-2018, applicant met with an accident and suffered multiple injuries. It was revealed that at that time the applicant, who was in police uniform, had consumed alcohol. At the time of accident the service revolver possessed by him with 10 live cartridges was lost. On 09-01-2018, the applicant was placed under suspension in contemplation of departmental enquiry against him. However, on 20-01-2018, respondent no.2 invoked the provisions under Article 311(2)(b) of the Constitution of India and dismissed the applicant from the Police Services. The applicant has alleged the order of dismissal to be against the principles of natural justice and

in breach of the constitutional protection given to the civil servants. The applicant has claimed himself to be an innocent person. It is the contention of the applicant that the alleged accident had happened as the rickshaw driver lost control over his vehicle. It is his further contention that in the accident he had suffered injuries on his forehead, teeth and lips. There was an operation on his face and therefore he was taken to the Government Hospital. It is his further contention that in the meanwhile period, his service revolver got misplaced.

9. In all these matters, in the affidavits in reply filed on behalf of the respondents almost similar grounds are raised while opposing the contentions raised by the applicants in their respective O.As. and prayers made therein. Respondents have elaborated the misconducts allegedly committed by the applicants and have also provided the particulars of the criminal cases filed against the respective applicants with necessary particulars. It is noticed that in every matter, invariably, the respondents have tried to justify how it was not necessary to conduct any regular enquiry against the applicants before passing orders of their dismissal. Similarly, it is a general contention that the misconducts alleged against the applicants are of

serious nature and further that because of such conduct of the applicants the image of the Police Force has been lowered down in the eyes of the common citizens. Every affidavit in reply carries a statement that Police Force is a disciplined force and every police person owes a responsibility to ensure that the trust and confidence reposed by the citizens in the police force is not shaken. Further, one more common ground is taken in all the matters that the applicants being in police force, the witnesses are not likely to depose against the applicants out of fear even if the department holds the enquiry against the applicants into the misconduct alleged against them and that is the foremost ground which has been taken by the respondents to justify how it was not reasonably practicable to hold enquiry against the applicants before ordering their dismissal.

10. In so far as the contentions raised by the respondents in each of the aforesaid matters in regard to the specific misconduct alleged against the respective applicants therein are concerned, we would deal with the same hereinafter at the appropriate stage.

11. Heard Shri Avinash S. Deshmukh, Shri Ajay Deshpande, Shri K.G. Salunke, Shri Kakasaheb B. Jadhav, Shri S.S.Jadhavar & Shri P.B. Rakhunde, learned Counsel for the applicants in respective cases and Shri M.P.Gude, Shri B.S.Deokar & Shri I.S.Thorat learned Presenting Officers appearing for the respondents in all the cases.

12. Sum and substance of the arguments advanced on behalf of the applicants is that without giving the applicants any opportunity of hearing in regard to the misconducts alleged against them the respective disciplinary authorities have dismissed them from the police services. The applicants have heavily relied upon the provisions under Article 311(2) of the Constitution of India which envisages that no person holding civil post shall be dismissed or removed from service or reduced in rank except after an enquiry in which he has been informed about the charges against him and given a reasonable opportunity of being heard in respect of those charges. Learned Counsel for the applicants have relied upon the following judgments in support of their arguments:

- (i) Judgment of Hon'ble Apex Court in case of Jaswant Singh V/s. State of Punjab reported in [1991 AIR SC 385].

- (ii) Judgment of Hon'ble Apex Court in case of Risal Singh V/s. State of Haryana & Ors. [2014 (13) SCC 244].
- (iii) Judgment of Hon'ble Apex Court in case of Tarsem Singh V/s. State of Punjab [2006 (13) SCC 581].
- (iv) Judgment of Hon'ble Delhi High Court in case of Govt. of NCT of Delhi & Ors. V/s. Sudesh Pal Rana passed in W.P. (C) No.788/2010 & CM No.20322/2010.
- (v) Judgment of learned D.B. of the M.A.T., Mumbai in case of Shri Pralhad P. Patil V/s. Superintendent of Police, Raigad & Anr. passed in O.A.No.122/2016.
- (vi) Judgment of learned D.B. of the M.A.T., Nagpur in case of Ganesh Shriram Jogdand V/s. State of Maharashtra & Anr. passed in O.A.No.781/2019.

13. Learned P.Os. have reiterated the stand taken by the respondents in their respective affidavits in reply. Respondents have placed reliance on the judgment of the Hon'ble Apex Court in the case of **Ved Mitter Gill Vs. Union Territory Administration, Chandigarh and others [(2015(3) SLR 739 (SC))]**.

14. Before advertng to the facts as well as the arguments advanced on behalf of the parties, we would like to go through relevant provisions which are material for deciding the issues raised in these O.As. The orders of dismissal which are impugned in these O.As. have been passed by

the respective Disciplinary Authorities by exercising powers under Article 311(2)(b) of the Constitution of India, whereas applicants are relying on Article 311(2) of the Constitution of India. We deem it appropriate to reproduce entire Article 311 of the Constitution of India, which reads thus:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—

1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges 2:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is

satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

15. As held by the Hon’ble Supreme Court in the case of Jaswant Singh V/s. State of Punjab [AIR 1991 SC 385], following two conditions must be satisfied to sustain any action taken under clause (b) of proviso to Sub clause (2) of Article 311 of the Constitution of India, which are thus:

- (i) There must exist a situation which renders holding of any enquiry, “not reasonably practicable; and
- (ii) The disciplinary authority must record in writing its reasons in support of its satisfaction.

It is further held by the Hon’ble Apex Court that, the question of practicability would depend on the fact situation and other surrounding circumstances existing. The question of reasonable practicability, therefore, must be judged in light of the circumstances prevailing on the

date of passing of the order by the disciplinary authority. The Hon'ble Apex Court has also ruled that although clause 3 of Article 311 makes the decision of the Disciplinary Authority in this behalf final, such finality, can certainly be tested in a court of law and interfered with if action is found to be arbitrary or *mala fide* or motivated by extraneous considerations or merely on ruse to dispense with the enquiry.

16. In light of the law laid down by the Hon'ble Apex Court in the aforesaid judgment we will have to scrutinize the reasons as are assigned in each of the present matters for dispensing with the enquiry. As we have noted hereinabove there are certain common grounds which are raised in each of these matters. The foremost common ground is that the applicants being part of the police force, no witness was likely to come forward to depose against him out of fear. We have, however, noticed that the reason so assigned is wholly unsustainable in all these matters after having scrutinized the facts involved in all these matters in detail. What has been glaringly transpired from the contents of the impugned orders as well as the affidavits in reply filed by the respondents is the fact that in almost every matter, the respondents therein have tried to

justify how it was not at all necessary to conduct an enquiry against the applicants. Whether to conduct an enquiry or not to conduct is not within the discretion of the respondents. Article 311(2) unambiguously provides that no person holding civil post shall be dismissed or removed or reduced in rank except after enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. It is thus evident that to conduct an enquiry before ordering dismissal or removal of an employee is a rule and if that is to be deviated from two conditions which we have reproduced hereinabove from the judgment of the Hon'ble Apex Court need to be satisfied. Thus, the disciplinary authorities were expected to justify the grounds for dispensing with the enquiry and record in writing the reasons in support of their satisfaction in that regard. Viewed from this angle in all these matters only reason which has been assigned is as mentioned by us hereinabove that no witness was likely to come forward out of fear to depose against the applicants even if the departmental enquiry would have been held. According to us, the reason so assigned cannot be accepted having regard to the facts involved in each of these matters.

17. As some of the facts and circumstances in each of these matters are different, we have independently dealt with the said facts and circumstances for recording our conclusions on the issue whether dispensing with an enquiry in the said matters was for justifiable reasons or not.

18. **O.A.NO.303/2019** : It was the allegation against the applicant that he entered into criminal conspiracy with some of the candidates aspiring for their selection in the recruitment of Police for Nanded District and prepared false documents and accepted illegal gratification from the said candidates and ensured the selection of the said candidates by adopting the aforementioned illegal means. In so far as the allegations are concerned, no doubt, they are serious in nature. The documents on record reveal that in connection with the alleged scam of recruitment in Nanded District Police recruitment drive, criminal case was filed at Vajirabad Police Station, Nanded for the offences punishable u/s.420, 465, 468, 471, 120-B r/w. 34 of the IPC on 25-04-2018. The record further reveals that similar offences were registered against the applicant at Vanwadi Police Station, Pune on 01-05-2018 as well as at Police

Station, Hingoli on 11-05-2018. Applicant was, however, dismissed before the registration of the offence at Police Station, Vanwadi and at Police Station, Hingoli. Thus, the dismissal of the applicant is based on the offences registered against the applicant at Vajirabad Police Station, Nanded. As noted above, offence was registered on 25-04-2018 and the applicant came to be dismissed on 28-04-2018. In the order of dismissal 2 reasons are mentioned by the Disciplinary Authority for dismissing the applicant without conducting an enquiry against him; first reason is that, having regard to the conduct of the applicant revealing involvement in the organized crime which is injurious to the working of the police force even if the decision would have been taken to conduct an enquiry against him no witnesses were likely to come forward to depose against the applicant, second reason revealing from the impugned order is that without giving an explanation in regard to the alleged misconduct since the applicant got absconding, it was not reasonably practicable to hold the departmental enquiry against him.

19. As we have noted hereinabove, prima facie, though the charges levelled against the applicant appear to be serious, we are not convinced with the reasons which have

been assigned for not conducting an enquiry into the said charges levelled against the applicant. Though we may not indulge in making any elaborate discussion in regard to the criminal cases filed against the applicant along with other accused persons, broadly, it can be stated that the majority evidence in the matter was in the form of documents and the witnesses on whose evidence charges against the applicant could have been proved were the witnesses because of whom the alleged scam was exposed and there was no likelihood of these witnesses not coming to depose before the Enquiry Officer. Further, the criminal case was registered on 25-04-2018 i.e. just 3 days prior to the order of dismissal. It is quite evident that when the offence was registered on 25-04-2018, investigation in the said crime must be in progress. It is not the case of the respondents that the investigation was completed by 28-04-2018 and that chargesheet was filed against the applicant along with other accused involved in the alleged scam. It is thus evident that the respondent has held the applicant guilty of the offence which was still in the legal process with a presumption of innocence.

20. Apart from the aspects as aforesaid, what is most important to justify the dismissal under Article 311(2)(b) of

the Constitution of India is to satisfy that there existed a situation which rendered holding of an enquiry not reasonably practicable. As has been discussed by us hereinbefore, the reasons as are recorded by the Disciplinary Authority for dispensing with the enquiry are wholly unacceptable.

21. **O.A.No.21/2020 & 22/2020** : It is the allegation against the present applicants that they without accepting the report / complaint of one Shaikh Sayyed Shaikh Ahmed brutally beat him and snatched from him gold ring weighing 5 gms. and the cash amount of Rs.38,170/- and humiliated the said complainant because of which on 14-07-2019, he set himself on fire in the premises of the Police Station and attempted to commit suicide. It is further alleged that after the said ghastly incident, by not co-operating the Investigating Officer, the applicants have committed serious misconduct and shown the irresponsible attitude unbecoming of a police officer. It is further recorded that in premise of the facts and circumstances as noted in the order if the decision is taken to conduct an enquiry against the applicants, because of criminal nature and conduct of the applicants no witness will come forward to depose against them and as such it was not reasonably

practicable to conduct an enquiry against the applicants before ordering their dismissal.

22. Perusal of the order of dismissal apparently reveals that the Disciplinary Authority has conclusively held the applicants guilty of the offences alleged against them for which a criminal case has also been filed and which is still under investigation with presumption of innocence. The only reason stated for not conducting the regular enquiry is that, no witness will come forward to depose against the applicants. Such reason, apparently cannot be accepted. The record reveals that dying declaration of the complainant Shaikh Sayyed Shaikh Ahmed has been recorded that could be substantial evidence in the present matter against both the applicants. It further does not appear to us that the legal heirs of the deceased complainant would refrain themselves from deposing before the Enquiry Officer as about the alleged misconduct of the present applicants. The son of the deceased has lodged report against the applicants and on the basis of the said report the investigation was commenced. When the son of the deceased can lodge report against the applicants, it cannot be accepted that he will not depose before the Enquiry Officer out of fear of the applicants. In the present

matter, it was quite possible for the Disciplinary Authority to conduct an enquiry against the applicants instead of passing the order of dismissal against them by invoking powers under Article 311(2)(b) of the Constitution of India.

23. **O.A.NO.253/2020 & 254/2020** : Allegation against both these applicants is that they accepted illegal gratification from one Shri Sumit Ashokrao Bhosale for not implicating the servant of said Shri Sumit A. Bhosale, who was found to be involved in sale of contrabands like cannabis and to release him. Shri Bapurao S/o. Fakira Bhosale, applicant in O.A. No. 253/2020 was alleged to have demanded Rs. 8,000/- (Rs. eight thousand only), whereas Shri Gopal S/o. Gorakh Baldar, applicant in O.A. No.254/2020 was alleged to have demanded Rs. 10,000/- (Rs. ten thousand only). Shri Sumit Ashok Bhosale had, therefore, launched complaint in the Anti-Corruption Bureau (for short 'ACB'). On his complaint the offence under Section 7 of the Prevention of Corruption Act was registered against both the applicants at Police Station, Chalisgaon on 24.5.2020 vide C.R. No. 175/2020. On the basis of the offence so registered against the applicants respondent No. 2 dismissed the applicants from the Police Services by exercising power under Article 311(2)(b) of the

Constitution of India. In the order of dismissal two reasons are mentioned by the disciplinary authority for dismissing the applicants without conducting an inquiry against them. First that the applicants are criminal minded and their retention in Police Department would be detrimental to the entire Police Force and also to the State. It is also contended that retention of the applicants in the Police Force would adversely affect the image of the disciplined police force, and the second that it would be reasonably not practicable to hold the enquiry against the applicants.

24. Though there appears *prima facie* substance in the allegations levelled against the applicants, we are not convinced with the reasons which are assigned for not conducting an enquiry into the charges levelled against these applicants and to dismiss them without conducting an enquiry by exercising the power under Article 311(2)(b) of the Constitution. In the order of dismissal the disciplinary authority has stated that he has recorded the reasons separately for reaching to the conclusion that it may not be reasonably practicable to hold the regular enquiry against the applicants. The reasons recorded as such are placed on record by the respondents with their common affidavit in reply. We have carefully gone through

the reasons so recorded by the disciplinary authority i.e. respondent No. 2 in the Original Applications. In the reasons so recorded the intercepted conversation occurred between the applicants and the complainant before filing of the ACB case has been referred to. On the basis of the said conversation the disciplinary authority has recorded a conclusion that it is proved that the applicants demanded the bribe from the complainant. The disciplinary authority has further recorded that because of such conduct of the applicants the image of the police force has been maligned in the eyes of the common man. The disciplinary authority has further recorded that in the period of lockdown the applicants by abusing their position in the Department have brought disrepute to the police department. In the last paragraph it is stated that it would be harmful to retain the applicants in the services of the Police Department having regard to the serious misconduct of the applicants and it also may not be reasonably practicable to hold a regular enquiry against them before ordering the dismissal.

25. In the reasons recorded by the disciplinary authority it has elaborated the acts allegedly committed by the applicants. From the intercepted conversation it can be *prima facie* said that there may be substance in the

allegations made against the applicants but the applicants cannot be unilaterally held guilty of the said charges without giving opportunity of hearing to them. From the reasons recorded by the disciplinary authority it is apparent that it has conclusively held the applicants guilty of the offences alleged against them which are still in the legal process with a presumption of innocence. In the present matter no cogent reasons are provided by the disciplinary authority for dispensing with the regular enquiry against the applicants. Without giving opportunity of hearing to the applicants the disciplinary authority could not have dismissed the applicant from the Police services. From the material on record it was quite obvious that it was very much possible to conduct the regular enquiry into the misconduct alleged against the applicants.

26. **O.A.No.301/2020** : As is revealing from the order of dismissal one Kabir Khan Vazir Khan Pathan had made a complaint against the applicant alleging that for helping the said complainant and his family members, to ensure their discharge from one NC No. 269/2020 registered against them the applicant had accepted bribe of Rs. 1,000/-. On the basis of the aforesaid complaint launched against the applicant, he has been dismissed from the Police services.

In the dismissal order it is further stated that the applicant on the concerned date left the office without permission and gave a false assurance to said Kabir Khan Vazir Khan Pathan and by creating fear in his mind about the Police Station and the police custody, tarnished the image of the Police force. It is further contended that though the misconduct committed by the applicant is of a serious nature, the applicant being in the services of the Police no witnesses were likely to come forward to depose against him if the department decides to hold enquiry against the applicant into his aforesaid misconduct. It is further contended that possibility of the applicant bringing pressure on the witnesses was also there and as such it was not reasonably practicable to hold enquiry against the applicant.

27. We have carefully perused the dismissal order. As is apparently revealing from the contents of the aforesaid order, the respondent has unilaterally held the applicant guilty of the offence registered against him on complaint of one Kabir Khan Wazir Khan Pathan, which was then still under investigation with presumption of innocence. The order further reveals that the applicant was also alleged to have demanded and accepted bribe of Rs.1000/- from one

Kabir Khan for ensuring amicable settlement of the NC No.269/2020 filed against the said Kabir Khan.

28. From the facts on record, it cannot be accepted that the witnesses would not have deposed against the applicant in the departmental enquiry. When complainant Kabir Khan can approach the Police Station and file the FIR and can further ensure that trap is led and the applicant is successfully caught, the said witness would have certainly deposed before the Enquiry Officer also. Further, the Government officers are the witnesses for the panchnamas prepared in the Anti-Corruption Case. In the present matter also the said officers are cited as witnesses. These witnesses are not likely to refuse to depose in the enquiry proceeding before the Enquiry Officer. Sum and substance is that, it was quite possible for the respondents to conduct regular departmental enquiry into the charges levelled against the applicant by giving him an opportunity to put forth his explanation in respect of those charges.

29. It appears to us that respondent has recorded reasons justifying how it is not necessary to conduct the enquiry. In fact, it is not within the discretion of the Disciplinary Authority to dispense with the enquiry. The Disciplinary

Authority is expected to justify how and why it would not be reasonably practicable to hold enquiry. In the instant matter, Disciplinary Authority has not assigned any cogent and sufficient reason so as to hold that it was not reasonably practicable to hold the enquiry against the applicant and to dismiss him from the police services by exercising powers under Article 311(2)(b) of the Constitution of India.

30. **O.A.No.571/2021** : Applicant in the present application has alleged to have prepared false and forged documents by entering into conspiracy with the candidates in Nanded District Police Recruitment-2018 and minted money out of that from the said candidates. The impugned order reveals that for the said alleged misconduct a criminal case has also been filed against the applicant in which he was arrested and then released on bail.

31. Insofar as dispensing with the regular enquiry the only reason which has been assigned is that having regard to conduct of the applicant of having involved in organized crime, the witnesses are not likely to come forward to depose against the applicant.

32. The reason which has been assigned is wholly unsustainable. By simply saying that the witnesses may not come forward to depose against the applicant is not enough. In every criminal matter such fear exists. However, there are ways and means to overcome the said apprehension. What efforts are made by the disciplinary authority to give protection to the witnesses, who may depose the facts in the present matter before the enquiry officer, has not been disclosed. Even the names of the witnesses have also not been disclosed. Further, the persons who dared to file the report against the applicant in the Police Station, are not likely to have any fear in their mind if called to depose in the enquiry proceeding. The reasons, which are assigned, therefore, cannot be held sufficient for justifying the decision taken by the disciplinary authority to dispense with the regular enquiry against the applicant and to dismiss the applicant from the Police services without conducting the regular enquiry.

33. **O.A.St.No.1185/2019** : In the impugned order of dismissal the following allegations are made against the applicant :

- i) was found under the influence of liquor in uniform of the Police;
- ii) narrated a false concocted story that in the accident the Pistol in his possession along with 10 live cartridges got lost;
- iii) that there was an apprehension that the applicant was involved in anti-national activities and there was scope to believe that the said Pistol might have been provided with live cartridges by the applicant to anti-nationals;
- iv) by not keeping Pistol in his safe custody the applicant has demonstrated his irresponsible and criminal attitude.

34. For not conducting the regular enquiry against the applicant the only reason which has been mentioned is that the witnesses to the alleged incident have shown their inability to depose openly before the enquiry officer and hence the enquiry was dispensed with being not reasonably practicable. We are not convinced with the reasons which are assigned for not conducting the regular enquiry against the applicant before ordering his dismissal. The alleged incident had occurred on 6.1.2018 and the impugned order of dismissal was passed on 20.1.2018 i.e. two weeks after occurrence of the alleged incident. It is not in dispute that

on 6.1.2018 while the applicant was travelling through an auto-rickshaw bearing No. MH-20-BT 7380, the said rickshaw met with an accident in Akashwani Square on Jalna Road at Aurangabad. The said auto-rickshaw was alleged to have turned turtle. The applicant was alleged to be in uniform at the relevant time and was alleged to be under the influence of liquor. In the said accident Pistol with live 10 cartridges in possession of the applicant was alleged to be stolen and the complaint was lodged in that regard by the applicant on the next day i.e. on 7.1.2018. It was however, the allegation from the Police Department that lodging of such complaint by the applicant was a farce and from the conduct of the applicant there was an apprehension that the applicant was involved in anti-national activities and was suspected to have provided the said Pistol with live cartridges to the anti-national elements.

35. The respondents along with their affidavit in reply have placed on record a copy of FIR dated 5.4.2018. It was filed against the unknown persons. It was in respect of an attempt to rob the cash kept in ATM of SBI. It was noticed that the lock of the ATM center was attempted to be broken by firing two rounds through Pistol. Two empty cartridges were found on the spot. In the investigation it was revealed

that accused by name Ajay Jitendra Kande and Shubham Rameshwar Todke had attempted to break open the said ATM machine. After completing the investigation charge-sheet came to be filed against the said accused persons on 31.8.2019 for offences punishable under Sections 461, 380, 511 r/w Sections 3/25 & 27 of the Arms Act. The copy of the said charge-sheet is also placed on record by the respondents. While arresting the accused Ajay Kande on 7.12.2018, in his body search the Pistol and some live cartridges were found and the same were seized. The said seizer panchnama has also been placed on record by the respondents. It is the same Pistol which was in the custody of the present applicant and was stolen according to the complaint lodged by the applicant. Accused Ajay Kande from whose possession the said Pistol and the live cartridges were seized, in his statement has disclosed that he found the said Pistol in Akashwani Chowk at the place where the Auto-rickshaw was turned turtle in January, 2018.

36. From the facts and the documents as aforesaid the apprehension expressed in the order of dismissal against the applicant that he was involved in anti-national activity and was suspected to have provided the said Pistol to anti-

nationals has been proved to be baseless. On the contrary, the contention of the applicant that in the alleged accident his Pistol was lost and he had the suspicion that somebody must have stolen the same, is noticed to be true.

37. The allegations against the applicant that he was found under the influence of liquor while in Police uniform and that he, therefore, could not protect his Pistol with live cartridges are no doubt of the serious nature. However, mere serious nature of the offence will not absolve the respondents from conducting a regular enquiry against the applicant. From the tenor of the order of dismissal it can be discerned that the disciplinary authority has tried to justify how it was not necessary to conduct an enquiry against the applicant before ordering his dismissal, whereas the disciplinary authority was supposed to justify why it was not reasonably practicable to hold enquiry against the applicant before ordering his dismissal. The only reason which has been assigned by the disciplinary authority for not conducting the regular enquiry is that the witnesses, to be examined to prove the misconduct alleged against the applicant have expressed their inability to openly depose in the enquiry proceedings against the applicant. In the affidavit in reply filed on behalf of the respondents, the

same reason has been reiterated. We are not convinced with the reasons as are assigned. In the present matter having regard to the allegations against the applicant the witnesses who could have been examined were the Police Officers who reached on the spot of accident and who have attempted to get examined the applicant whether he was under the influence of liquor or otherwise and whether at that time he was in Police Uniform. There was no reason for those witnesses not to depose against the applicant in the departmental enquiry proceedings. It has now become clear that apprehension which was expressed in the order of dismissal that the applicant was suspected to be having some links with anti-national elements and was further suspected to have provided his Pistol and live cartridges to the said anti-national elements was baseless. In the present matter it was quite possible for the respondents to conduct a regular enquiry against the applicant before ordering his dismissal.

38. As mentioned hereinabove having regard to the law laid down by the Hon'ble Supreme Court in the case of **Jaswant Singh V/s. State of Punjab** (cited supra), we have minutely scrutinized whether the situation existed in respective matters, rendering holding of an enquiry not

reasonably practicable and whether the disciplinary authorities in the respective matters have recorded in writing the reasons in support of their satisfaction on the conclusion drawn by them that it was not reasonably practicable to hold an enquiry. As recorded by us, in every matter it was possible for the disciplinary authorities to hold a Departmental Enquiry against the respective applicants before ordering their dismissal by exercising power under article 311(2)(b) of the Constitution. We reiterate that in most of the matters the disciplinary authorities have tried to justify how there was no need of conducting any enquiry against the respective applicants before dismissing them from the Police Force instead of making out reasons to substantiate how it was not reasonably practicable to hold such enquiry. On this sole ground the impugned orders deserve to be set aside and quashed.

39. Further it is well settled legal position that a constitutional right conferred upon delinquent cannot be dispensed with lightly or arbitrarily or merely in order to avoid holding of an enquiry. The Hon'ble Supreme Court way back in the year 1985 in the case of Union of India Vs.

Tulsiram Petel, 1985 AIR (SC) 1416 has ruled that, “the disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the Government servant is weak and must fail”.

40. It has been noticed by us that in all these matters disciplinary authorities have conclusively held the applicants guilty of the offences only on the basis of FIRs filed against them. At the relevant time the crimes so registered were still in legal process with a presumption of innocence.

41. The Hon'ble Supreme court has time and again laid down that the departmental enquiry is a rule and deviation from this principle is exception. It is laid down that the power conferred on the disciplinary authority under Article 311(2)(b) cannot be exercised in a routine manner and before exercising such power the disciplinary authority is bound to satisfy itself whether there are reasons sufficient to record a finding that it is not reasonably practicable to hold enquiry.

42. After having considered the facts and circumstances in each of the present case, we have reached to the conclusion that at the first instance the disciplinary authorities have recorded the reasons how the enquiry itself was not required before ordering the dismissal of the respective applicants, which is irrelevant and unwarranted. Secondly, though an attempt has been made to state the reasons for dispensing with the enquiry, the reasons recorded are neither objective nor reasonable. It appears that a shortcut method has been adopted to avoid the departmental enquiry. It is an arbitrary exercise of the power. For the reasons stated above, the following order is passed:

ORDER

In view of the fact that no material has been brought on record by the respective respondents in all these O.As. to satisfy that it was not reasonably practicable to hold enquiries against the respective applicants before ordering dismissal of these applicants from the police services in terms of proviso (b) appended to clause (2) of Article 311 of the Constitution of India, in our opinion, the impugned orders cannot be sustained and deserve to be set aside. We accordingly set aside the orders impugned in all these O.As.

The respondents are directed to reinstate the applicants in service within one month from the date of uploading of this order on the official website of the Tribunal. However, in view of the discussion made by us in the body of this order it would be open to the respondents to initiate departmental enquiries against the applicants, if they so desire. If so decided, such enquiries must be initiated as expeditiously as possible and not later than 2 months from the date of uploading of this order on the official website of the Tribunal and shall be completed possibly within 6 months from their commencement. The applicants shall ensure that the enquiry proceedings are not delayed or protracted at their instance. Payment of backwages shall abide by the result of the said enquiries.

If the Disciplinary Authority forms an opinion that enquiry against the applicant is not likely to be conducted fairly by keeping the applicant on the same post from which he was dismissed, it would be open for the Disciplinary Authority to take necessary measures, like assigning any other work to the applicant or to suitably transfer him to some other branch or take other similar measures during the period of enquiry.

In so far as the O.A.No.21/2020 is concerned, since the applicant has expired during the pendency of the O.A., in the said case, there may not be a question of reinstating the applicant or initiation of any departmental enquiry against him. However, in view of the fact that his order of dismissal has been set aside, the said applicant shall be deemed to be in service at the time of his death and his legal heirs may claim the benefits, payable to the Government servant dying while in service.

All the above O.As., thus, stand allowed in the aforesaid terms, however, without any order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
VICE CHAIRMAN

Place : Aurangabad
Date :30th September, 2022

OPERATIVE ORDER IS UPLOADED ON 30TH SEPTEMBER, 2022.

ARJ HDD YUK O.A. NO.303, 1185 of 2019, 21, 22, 253, 254, 301 of 2020 and 571.21 PRB