MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 195 OF 2020

DISTRICT:- HINGOLI

Nandkishor S/o. Uttamrao Mhaske,
Age : 43 years, Occ. Nil,
R/o. Building No. 1, Quarter No. 1,
Navin Police Vasahat, Hingoli,
Dist. Hingoli. .. **APPLICANT**

V E R S U S

1. The Superintendent of Police,
Hingoli. .. **RESPONDENT.**

APPEARANCE : Shri Avinash S. Deshmukh, learned counsel for the applicant.

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

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

DATE : 14.07.2022

O R D E R

[Per : Hon'ble Justice P.R. Bora, Vice Chairman]

By filing the present Original Application the applicant has challenged the order dated 25.5.2020 passed by respondent, whereby the respondent has dismissed the

applicant from Police Services by exercising the powers under Article 311 (2)(b) of the Constitution of India.

2. The applicant entered into the Police Services as a Police Constable on 13.9.2000. In the year 2014 he was promoted to the post of Naik Police Constable. On 25.5.2022 FIR came to be registered at Hingoli Gramin Police Station against the applicant, wherein he was alleged to have committed an offence under Section 7 of the Prevention of Corruption (Amendment) Act, 2018. On the same day i.e. on 25.5.2020 itself respondent dismissed the applicant from the Police Services on the basis of the offence registered against the applicant under Section 7 of the Prevention of Corruption Act by exercising the power under Article 311(2)(b) of the Constitution of India. Aggrieved by, the applicant has preferred the present Original Application.

3. It is the contention of the applicant that without giving an opportunity of hearing to the applicant and even without issuing any show-cause-notice to him, the respondent has dismissed the applicant from the Police Services on the ground that offence is registered against the applicant at Hingoli Police Station under Section 7 of the Prevention of

Corruption (Amendment) Act, 2018. According to the applicant action so taken against him is against the settled principles of law and also against the principles of natural justice. It is the further contention of the applicant that in spite of the mandate under Article 311 (2) of the Constitution of India that no person holding civil post can be dismissed or removed from the services or reduced in rank without conducting enquiry into the charges leveled against the said employee by giving an opportunity of hearing to the said employee to defend the charges so leveled against him, making undue haste respondent has wrongfully dismissed the applicant without giving him an opportunity of hearing. The applicant has therefore prayed for quashment of the impugned order.

4. Respondent has resisted the original application by filing affidavit in reply. It is the contention of the respondent in his written statement that the applicant did commit an offence of serious nature of taking undue advantage of his post in the police force. The respondent has alleged that the applicant was trapped while accepting the bribe of Rs. 10,000/-, whereupon criminal (special) case has been

registered against the applicant u/s 7 of the Prevention of Corruption (Amendment) Act, 2018. It is further contended that since strong prima-facie evidence was available against the applicant showing his involvement in commission of the alleged crime, immediate and strict action was required against the applicant so as to ensure that faith of the common man in the police force is not lost. It is further contended that the applicant being in the services of the police even though the departmental enquiry would have been initiated against the applicant perhaps no witness would have come forward to depose against the applicant before the Enquiry Officer, and as such, it was not reasonably practicable to hold the departmental enquiry against the applicant. According to the respondent, no error has been committed by him in dismissing the applicant from the Police Services by exercising powers under Article 311(2)(b) of the Constitution of India. Respondent has, therefore, prayed for dismissal of the application.

5. Heard Shri Avinash S. Deshmukh, learned counsel for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents.

6. Learned counsel appearing for the applicant relied upon following judgments in support of his 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.

7. Referring to the law laid down in the aforesaid judgments, the learned Counsel has argued that powers under Article 311(2)(b) are to be sparingly used. It has been further argued that there must exist a situation which would render holding of an enquiry not reasonably practicable. Learned Counsel has submitted that in the impugned order respondent has not discussed any such reason which would justify the dismissal of the applicant without conducting enquiry against him. According to the learned Counsel,

respondent has arbitrarily exercised the power vested in him. Learned Counsel has, therefore, prayed for setting aside the impugned order.

8. Learned P.O. appearing for the respondent supported the impugned order. The learned P.O. reiterating the contentions raised in the affidavit in reply submitted that ample *prima facie* evidence was existing against the applicant. He further argued that having regard to the nature of offence committed by the applicant, the image of the Police Force has been tarnished and the faith of the common man in the Police is shaken. Learned P.O. further submitted that applicant being police person, no witness would have dared to depose against the applicant and as such, it was not reasonably practicable to hold enquiry against the applicant. Learned P.O., therefore, prayed for dismissal of the O.As.

9. We have carefully considered the submissions advanced by the learned Counsel appearing for the applicant and the learned P.O. appearing for the respondent. We have also perused the documents filed on record.

10. It is not in dispute that on 25-05-2020 FIR was registered against the applicant for the offences punishable

u/s. 7 of the Prevention of Corruption (Amendment) Act, 2018. In the FIR, it has been alleged against the applicant that the applicant demanded bribe of Rs.25,000/- from one Deelip B. Nayak for taking action against one Vikram Waman and his sons who were alleged to have made encroachment on the agricultural land of complainant Deelip Nayak. It is also alleged that the applicant has also promised complainant Deelip to remove the encroachment allegedly made by Vikram Waman. Applicant was alleged to have demanded bribe of Rs.20,000/- in the name of Police Inspector at Police Station, Hingoli namely, Angad Sudke and Rs.5,000/- for himself. It is further alleged that the applicant demanded Rs.10,000/- from the complainant as first installment of the entire bribe amount and was trapped while accepting the said amount of Rs.10,000/- by the Anti Corruption Squad on 24-05-2020. The applicant was then arrested by the ACB Squad and the C.R.No.206/2020 was registered against the applicant at Hingoli Gramin Police Station u/s.7 of the Prevention of Corruption Act. The FIR with the aforesaid contents came to be registered at Police Station Hingoli Gramin at 02:50 hours and on the same day, vide impugned order the respondent dismissed the applicant from the police services by invoking

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

11. We deem it appropriate to reproduce hereinbelow the impugned order as it is in vernacular, which reads thus:-

"दिनांक:- २५.५.२०२०

<u>विषय:- भारतीय संविधान, १९५० मधिल अनुच्छेद क्रं. ३११ (२)(ब) अंतर्गत सेवेतुन बडतर्फीचे आदेश.</u>

<u>आदेश</u>

ज्याअर्थी माझे असे निदर्शनास येत आहे की, पोना/५५९ नंदकिशोर उत्तमराव मस्के नेमणुक पोस्टे हिंगोली ग्रामीण, आपण पोलीस कर्मचारी असुन कायद्याचे रक्षण करणे व गुन्हयास प्रतिबंध करणे हे आपले कायदेशीर कर्तव्य असतानासुध्दा, खालीलप्रमाणे गैरवर्तणुक केलेली आहे.

आमचे असे निदर्शनास आले आहे की, फिर्यादी नामे दिलीप बाबासाहेब नायक रा. माळशेलु ता.जि.हिंगोली यांनी पोस्टे हिंग्ग्राली ग्रामीण येथे दिनांक १०/५/२०२० रोजी दिलेल्या तक्रारीवरुन गैरअर्जदार नामे विक्रमा वामन व त्यांचे मुलावर कायदेशीर कार्यवाही करण्यासाठी व तक्रारदार यांचे माळशेलु येथील गट क्र. १८९ मधील जमिनीवरील अतिक्रमण काढून देण्यासाठी पोलीस निरीक्षक / अंगद सुडके नेमणुक पोस्टे हिंगोली ग्रामीण यांचेसाठी रु. २०,०००/- व स्वत:साठी रु. ५०००/- अशी एकुण रू. २५,०००/- रकमेच्या लाचेची मागणी करुन तडजोडीअंती लाचेच्या रकमेचा पहिला हप्ता म्हणुन रू. १०,०००/- आणण्याचे तक्रारदारास सांगून ती लाचेची रक्कम रू.१०,०००/- दिनांक २४/०५/२०२० रोजी लाच लुचपत प्रतिबंधक विभाग, हिंगोली यांचेकडून करण्यात आलेल्या सापळा कार्यवाही दरम्यान दुपारी १४.१२ वाजताचे सुमारास माळशेलु गावचे जवळ माळशेलु माळहिवरा फाटा रोडवर स्विकारली म्हणुन आपणाविरुध्द पोस्टे हिंगोली ग्रामीण गुरनं २०६/२०२० कलम ७ भ्रष्टाचार प्रतिबंध अधिनियम १९८८ अन्वये गुन्हा नोंदविण्यात येवून दिनांक २५/०५/२०२० रोजी आपणास अटक करण्यात आली आहे. सदरचे कृत्य विकृत व घृणास्पद असुन पोलीस खात्याच्या शिस्तीस बाधा आणणारे आहे.

आपण पोलीस स्टेशन अंतर्गत बिट अंमलदार पदाचा कार्यभार स्विकारला असताना, बिट हददीतील दाखल तक्रारी अर्जावर उचित कायदेशीर कार्यवाही करणे आवश्यक असताना, तक्रारदार यांनी दिलेल्या तक्रारीप्रमाणे त्यांचे मौजे माळशेलु येथील गट क्र. १८९ मधील जमिनीवरील अतिक्रमण काढण्याकरीता व गैरअर्जदार व त्यांच्या मुलांवर कायदेशीर कार्यवाही न करता, जाणीवपुर्वक तक्रारदाराकडे कायदेशीर कार्यवाहीकरीता पैशांची मागणी करुन, ती लाचेची रक्कम स्विकारतांना तुम्हाला लाचलुचपत प्रतिबंधक विभागाने रंगेहाथ पकडले.

ज्याअर्थी माझयासमोर सादर केलेल्या पुराव्यावरुन माझी अशी खात्री झाली आहे की, पोना/५५९ नंदकिशोर उत्तमराव मस्के नेमणुक पोस्टे हिंगोली ग्रामीण आपणास कायद्याचे सर्वंकष ज्ञान असुनही तक्रारदार इसमाशी जाणुनबूजुन संपर्क करुन संशयास्पद वर्तन करुन, त्यांना लाचलुचपत प्रतिबंधक विभागाकडे तक्रार करण्यास वाव दिला व वरिष्ठांच्या आदेशाची अवहेलना केली. आपण शासकीय सेवेत असताना संशयास्पद वर्तन

व गंभीर कृत्य केले. ही बाब शासकीय सेवक म्हणुन अशोभनिय आहे. तुमचे सदरचे वर्तन बेशिस्त, बेजबाबदार व पोलीस खात्याच्या शिस्तीला व प्रतीमेला तडा बसणारे असुन पोलीसांची जनमानसातील प्रतीमा मलिन करणारे आहे. तुमच्या कृताकृत कसुरीचे गांभीर्य विचारात घेता, आपणास पोलीस दलासारख्या शिस्तबध्द खात्यात ठेवणे हे जनहितार्थ योग्य होणार नाही. व विभागीय चौकशी करणे देखील व्यवहार्य होणार नाही असे माझे ठाम मत झाले आहे. ज्याअर्थी, मी ***योगेश कुमार, पोलीस अधीक्षक हिंगोली*** *मला भारतीय संविधनाच्या अनुच्छेद ३११(२)(ब) अन्वये पोना/५५९ नंदकिशोर उत्तमराव मस्के यांचे नियुक्ती प्राधिकारी या नात्याने, आपणांस शासकीय सेवेतून बडतर्फ करणे, शासकीय सेवेतून काढून टाकणे किंवा पदवनत करणेबाबत प्राप्त अधिकाराव्दये सक्षम आहे.*

ज्याअर्थी मला अशी खात्री आहे की, आपणास शासकीय सेवेत ठेवणे हे हितावह होणार नाही त्यामुळे आपणास सेवेतून बडतर्फ करणेच योग्य आहे असेही माझे ठाम मत आहे.

त्याअर्थी, मी ***योगेश कुमार, पोलीस अधीक्षक हिंगोली*** *मला प्रदान करण्यात आलेल्या प्राधिकाराचा वापर करुन पोना/५५९ नंदकिशोर उत्तमराव मस्के नेमणुक पोस्टे हिंगोली ग्रामीण यांना भारतीय संविधान १९५० मधील अनुच्छेद ३११(२)(ब) अन्वये सदर आदेश प्राप्त झाल्याचे दिनांकापासून* ***"सेवेतून बडतर्फ" (Dismissal from Service)*** *करीत आहे.*

सही/-

(योगेश कुमार)
पोलीस अधीक्षक हिंगोली"

12. From the contents of the aforesaid order, it is evident that the respondent has conclusively held that the applicant is guilty of the offence which was still in the legal process with the presumption of innocence. As stated hereinbefore, the FIR came to be registered at 02:50 hours on 25-05-2020 at Hingoli Gramin Police Station and on the basis of the said FIR crime came to be registered against the applicant for the offence punishable u/s. 7 of the Prevention of Corruption Act. It, thus, appears that before commencement of investigation in the said crime, respondent held the applicant guilty of the allegations made against him in the said FIR.

13. It is a matter of common knowledge that the Police do not submit chargesheet against an accused unless the entire investigation is completed and unless sufficient material is collected evincing culpability of the said accused in committing crime alleged against him. Many times, it happens that if no sufficient incriminating material is collected against the said accused, the police prefer not to file the charge sheet in the said matter. For completing the investigation and for filing the charge sheet in the court, time is provided of 60 days, 90 days and 180 days, as the case may be, under the provisions of Criminal Procedure Code. In the instant matter, respondent, however, reached to the conclusion that the applicant is guilty of the offence on the same day on which the offence is registered against the applicant. The respondent, thus, has held the applicant guilty of the offence which was still in legal process with a presumption of innocence. When investigation was not even commenced, on what basis respondent reached to the conclusion and held the applicant guilty of the offence, is not explained by the respondent. It is obvious that respondent has held the applicant guilty relying on the sole document i.e.

FIR filed by Deelip. The course adopted by the respondent is apparently unconscionable and impermissible. The fact apart that in absence of any convincing material placed on record by the respondents, we are constrained to hold that the conclusion recorded by the respondent holding the applicant guilty of the alleged charges only on the basis of the FIR filed against the applicant, cannot be sustained, the moot question is whether the respondent has recorded the reasons to justify that it was not reasonably practicable to hold the enquiry against the applicant before ordering his dismissal ? and the next question would be, if such reasons are recorded, whether they are sustainable ?

14. In the order of dismissal respondent has not provided any reason for not holding the enquiry against the applicant before ordering his dismissal. In the Written Statement, however, it is stated that the applicant being police person, nobody was likely to give statement against the applicant. It is further contended that the applicant being serving in the police department was likely to influence the witnesses. For the aforesaid two reasons, according to the respondent, it was not reasonably practicable to hold the departmental enquiry against the applicant. The contentions which are raised as

above in the Written Statement are not reflected in the order of dismissal. The reasons which are stated in the Written Statement are also apparently unsustainable. When the aggrieved person did not fear in lodging the report against the applicant was not likely to have any fear in coming forward to depose against the applicant even in the departmental enquiry. Secondly, a bare statement that witnesses were not likely to depose against the applicant is not sufficient. It is not disclosed who were such witnesses who may not have come forward out of fear of the applicant or influenced by the applicant. We are therefore, not convinced with the defence raised in the affidavit in reply by the respondent. We reiterate that the fact remains that in the order of dismissal respondent has not provided any reason for not holding the departmental enquiry against the applicant, except the bare statement that it may not be reasonably practicable to hold the departmental enquiry. In our opinion, it was quite possible to hold the regular enquiry against the applicant before ordering his dismissal.

15. The Hon'ble Apex Court has consistently ruled that in order to invoke clause (b) of Article 311 (2) of the

Constitution, following two conditions must be satisfied to sustain any action taken thereunder. These are: -

(i) There must exist a situation which renders holding of any enquiry, "not reasonably practicable; and

(ii) The respondent must record in writing its reasons in support of its satisfaction.

The question of practicability would depend on the existing fact, situation and other surrounding circumstances. The question of reasonable practicability, therefore, has to be judged in light of the circumstances prevailing in that particular case on the date of passing of the order.

16. In the instant matter, as we have elaborately discussed hereinabove, no such circumstance or situation is brought on record rendering holding of an enquiry not reasonably practicable. Secondly, the respondent has not recorded any convincing reason in support of his satisfaction while reaching to the conclusion that it was not reasonably practicable to hold the enquiry against the applicant before ordering his dismissal.

17. It has to be stated that, in the order of dismissal an attempt has been made by the respondent to demonstrate how it was not necessary to conduct an enquiry against the

applicant. Whether to conduct an enquiry or not to conduct an enquiry is not within the discretion of the respondent. The law is well settled that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or merely in order to avoid holding of an enquiry. According to us, the reasons as have been canvassed by the learned Presenting Officer are neither objective nor reasonable in the facts of the present case. It appears to us that the respondent has adopted a wrong and illegal method in ordering dismissal of the applicant from the police services. The order so passed by the respondent is in utter disregard of the principles of natural justice. As has been held by the Hon'ble Apex Court in the case of **Jaswant Singh Vs. State of Punjab [1991 AIR (SC) 385**, the decision to dispense with the departmental enquiry cannot be rested solely on the *ipse dixit* of the concerned authority. The Hon'ble Apex Court has further held that when the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those, who support the order to show that satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. The respondent has utterly failed in convincing us that any such circumstance

was prevailing so as to dispense with the enquiry envisaged by Article 311(2) of the Constitution. The respondent has, thus, arbitrarily exercised the power vested in him. Though the learned Presenting Officer has 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)]**, the facts in the said matter were altogether different than the facts involved in the present matter.

18. In view of the fact that no material has been placed by the respondent to establish that it was necessary to dispense with a normal enquiry against the applicant in terms of proviso (b) appended to clause (2) of Article 311 of the Constitution, we are of the opinion that the impugned order cannot be sustained and deserves to be set aside. It is accordingly set aside. The respondent is directed to reinstate the applicant in service within one month from the date of this order. However, in view of the discussion made by us in the body of judgment it would be open to the respondent to initiate the departmental enquiry against the applicant if he so desires. Payment of back-wages shall abide by the result

of the said enquiry. Such enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of passing of this order and shall be completed within six months from its commencement. The applicant shall ensure that the enquiry proceedings are not delayed or protracted at his instance.

The Original Application is allowed in the aforesaid terms. There shall be no order as to costs.

MEMBER (A) **VICE CHAIRMAN**

O.A.NO.195-2020 (DB)-2022-HDD