

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 234 OF 2020

DISTRICT:- JALGAON

Pankaj S/o. Makram Rathod,
Age : 32 years, Occ. Nil,
R/o. Advi Line – 08, S.T. Colony,
Near S.T. Workshop, NH-6,
Jalgaon, Dist. Jalgaon.

...APPLICANT

V E R S U S

1. The Superintendent of Police,
Jalgaon.

.. 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]

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

2. The applicant has questioned the order dated
8.5.2020 whereby, the respondent, by invoking the

provision under Article 311(2)(b) of the Constitution of India, has dismissed the applicant from the Police services. The applicant was serving as a Police Constable at the relevant time. The applicant entered into the Police services on 22.10.2008.

3. In the month of April, 2020 along with some other Police persons the applicant was deputed for Bandobast at Malegaon. From the pleadings in the O.A., as well as, in the affidavit in reply filed on behalf of the respondents it appears that the applicant was alleged to have provided some adverse information to a correspondent by name Shri Sushant Kirve working for Daily Mahanagar (दैनिक महानगर), which was published in the said newspaper in its issue dated 1.5.2020. According to the respondents, because of publication of the alleged news item the image of the Police force was tarnished and a wrong message was spread increasing fear about Corona amongst the Police force. According to the respondent, the alleged conduct of the applicant has rudely shaken faith of the common man in the Police force, who is supposed to be their protector. It was also alleged that the applicant acted in most reprehensible manner, which is unexpected from the members of a disciplined Police force and it was extremely

prejudicial to the safety and security of a citizens. On the aforesaid ground it seems that the respondent thought it appropriate to dismiss the applicant from the services of the Police by invoking Article 311 (2) (b) of the Constitution of India.

4. The applicant has challenged the impugned order being wholly unjust, unfair and in violation of the principles of natural justice. According to the applicant, respondent neither in the impugned order nor in the reasons separately recorded by him has provided any justification for not holding the departmental enquiry in accordance with relevant rules.

5. In the affidavit in reply filed on behalf of the respondent, the respondent has supported the impugned order. As contended in the said affidavit in reply since at the relevant time Corona Pandemic was at peak and the nation-wide lockdown was in force, it was not reasonably practicable to hold the departmental enquiry against the applicant. It is further contended that a detailed report was received from the Superintendent of Police, Nashk (Rural), which was enough to reach to the conclusion that the applicant had provided information to the Daily Mahanagar

(दैनिक महानगर), which was published in the issue of the said newspaper on 1.5.2020. It is further alleged that by his alleged conduct, the applicant brought the Police force in disrepute.

6. Learned Presenting Officer submitted that the circumstances explained in the note separately written by the respondent it had become necessary to dismiss the applicant from services by invoking the provision under Article 311(2)(b) of the Constitution. Learned Presenting Officer further submitted that in COVID situation prevailing at the relevant time, it was not possible to call the witnesses and to hold the departmental enquiry into the charges against the applicant. According to the learned Presenting Officer, the respondent was thus fully justified in invoking the provision under Article 311(2)(b) of the Constitution in ordering dismissal of the applicant.

7. We have carefully considered the submissions advanced on behalf of the applicant, as well as, the respondent.

8. In the impugned order the respondent has stated that the reasons for not holding the departmental enquiry are separately recorded by him. The applicant, under

provisions of Right to Information Act, obtained the copy of the reasons so recorded by the respondent and has placed the said document on record. We have carefully perused the impugned order, as well as, the reasons separately recorded by the respondent. It is noticed that the contents in the order of dismissal and the note separately written by the respondent are substantially same. Even in the reasons separately recorded by the respondent we did not find any specific or additional material justifying the dismissal of the applicant without holding departmental enquiry against him.

9. Article 311(2) of the Constitution provides a guarantee to a person holding civil post (the Police Constable is a civil post) that he shall not be dismissed or removed or reduced in rank except after an 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, however, the second proviso to Article 311(2) is in the nature of exception and lays down that in the cases cataloged in clause A, B & C thereof the requirement of an enquiry can be dispensed with.

10. Thus, question for our consideration is, where such circumstances were in existence, which would sustain the

impugned order. We have observed hereinabove that neither in the order of dismissal nor in the reasons recorded separately by the respondent, he has elaborated the grounds for not holding the departmental enquiry against the applicant before invoking the powers under Article 311 (2) (b) of the Constitution. From the contents of the impugned order and the affidavit in reply filed on behalf of the respondent, it transpires that the respondent has held the applicant guilty of the allegations leveled against the applicant on the basis of the report received to him in that regard from the Superintendent of Police, Nasik (Rural). Based on the said report, respondent has unilaterally held the applicant guilty of charge that he provided the adverse information to the correspondent of Daily Mahanagar (दैनिक महानगर) and the news item which resultantly was published on the basis of the said information brought disrepute to the police force, tarnish the image of disciplined police force and also shaken the faith of the common man in the police force.

11. In the affidavit in reply it is nowhere contended that report so received from the Superintendent of Police, Nashik (Rural) was brought to the notice of the applicant and explanation of the applicant was called for. The said

report is not placed on record by the respondent in the present proceedings also. It appears to us that the report on the basis of which the respondent reached to the conclusion that the applicant was required to be dismissed from the services without conducting any enquiry against him must have been filed in the present case, so as to see the nature of allegation made against the applicant in the said report, as well as, material available in the said report in respect of allegations so made against the applicant.

12. The newspaper in which the alleged news item was published is also not filed on record by the respondent. In fact, the copy of the said newspaper must have been filed by the respondent before the Tribunal and if not the newspaper, at least the text of the news item published in the said newspaper. None is filed on record by the respondent.

13. Respondent seems to have reached to the conclusion that it was the applicant who provided the alleged information to the correspondent of Daily Mahanagar (दैनिक महानगर) on the basis of the call reports obtained of the mobile phone of the said correspondent, as well as, of the mobile of the applicant. As contended in the affidavit in reply of the

respondent, the statement of the said correspondent was recorded by the Police and in his report the said correspondent stated that the alleged news item was published on the basis of the information provided to him by the applicant. It appears that the statement allegedly given by the said correspondent is accepted by the respondent as a complete truth without giving any opportunity of hearing to the applicant. It is not the case of the respondent that conversation occurred between the applicant and the said correspondent was at any point of time intercepted by the police. Thus, there is absolutely no authentic information about the facts allegedly disclosed by the applicant to the said correspondent. Merely on the basis of information as to number of calls between the applicant and said correspondent may be useful to the extent that the applicant and the said correspondent had talked to each other on several occasions. However, in absence of the details of the conversation which had occurred between the said correspondent and the applicant it would be quite unsafe to hold that the alleged information published in the Daily Mahanagar (दैनिक महानगर) on 1.5.2020 was given by the applicant.

14. The fact apart that in absence of any material placed on record by the respondent, we are constrained to hold that the conclusion recorded by the respondent holding the applicant guilty of the alleged charges cannot be sustained, the moot question is whether the order of dismissal could have been passed by the respondent by invoking the provisions under article 311(2)(b) of the Constitution and if yes, whether there is any material brought on record by the respondent to justify his stand. We have already recorded that neither in the order of dismissal nor in reasons separately recorded by the respondent any reason has been given by the respondent to justify the conclusion recorded by him that it was not reasonably practicable to hold the departmental enquiry against the applicant before ordering his dismissal from police services.

15. Moreover, the question was not whether or not to conduct any enquiry. In ordinary course and as mandated under the Article 311(2) of the Constitution, the respondent could not have removed the applicant from the Police services without giving him an opportunity of hearing by conducting due enquiry into the charges leveled against him. The respondent, if was to invoke the Article 311(2) (b), it was incumbent on his part to justify the reasons in

support of his conclusion that it was not reasonably practicable to hold the departmental enquiry against the applicant before ordering his dismissal. In the affidavit in reply, a lame attempt has been made in submitting that at the relevant time the Covid Pandemic was on its peak and in the said period it was not possible to call the witnesses for holding the enquiry against the applicant. The reason so assigned is liable to be rejected at the threshold. When the Superintendent of Police, Nashik (Rural) can conduct a preliminary enquiry and submit its report to the respondent, there was no reason for not conducting regular enquiry in accordance with law against the applicant by giving him due opportunity to defend the charges leveled against him.

16. In the instant matter, even show cause notice was not issued to the applicant before ordering his dismissal. We reiterate that merely on the basis of the call record evidencing that the applicant several times had talked to the correspondent of Daily Mahanagar (दैनिक महानगर), could not be said to be sufficient evidence against the applicant unless nature and details of actual conversation are provided/placed on record. Further, without giving any opportunity to the applicant to explain whether information

as has appeared in the Daily Mahanagar (दैनिक महानगर) was provided by him or otherwise the respondent should not have reached to any conclusion. The respondent has grossly erred in not following the course of law.

17. As contended in paragraph 22 of the affidavit in reply filed by the respondent that the applicant abet the commission of offence by Sushant Kirve, the correspondent working for a Daily newspaper namely आपलं महानगर. It is however, significant to note that no offence has been registered against the applicant nor his name has been impleaded in the crime registered against the said Kirve as a abettor to the offence committed by said Kirve. The respondent has not explained why the aforesaid action has not been taken against the applicant.

18. 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 disciplinary authority 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 reasonably practicable, therefore, has to be judged in light of the circumstances prevailing in that particular case at the date of passing of the order.

19. In the instant matter, as we have elaborately discussed hereinabove, no such circumstance or situation is brought on record rendering holding of any enquiry not reasonably practicable. Secondly, the disciplinary authority i.e. 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.

20. 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. 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.

21. 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