

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 419 OF 2019
(Subject – Police Patil)**

DISTRICT : PARBHANI

Shri Bhimrao s/o Giramji Wahvale,)
Age : 46 years, Occu. : Police Patil,)
R/o Wadgaon (Station), Tq. Sonpeth,)
Dist. Parbhani.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through it's Secretary,)
Department of Home,)
Mantralaya, Mumbai -32.)
- 2) **The Collector,**)
Parbhani, Tq. and Dist. Parbhani.)
- 3) **The Sub Divisional Officer,**)
Pathri, Tq. Pathri, Dist. Parbhani.)

.. **RESPONDENTS**

APPEARANCE : Shri Dhananjay Mane, Advocate holding for
Shri N.R. Pawade, Advocate for the Applicant.

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

CORAM : **B.P. PATIL, ACTING CHAIRMAN.**

RESERVED ON : **27.09.2019.**

PRONOUNCED ON : **03.10.2019.**

O R D E R

1. The applicant has challenged the impugned order dated 12.10.2018 passed by the Sub Divisional Officer, Pathri

dismissing him from the post of Police Patil of village Wadgaon (Station), Tq. Sonpeth, Dist. Parbhani, by filing the present Original Application.

2. The applicant was working as Police Patil of village Wadgaon (Station), Tq. Sonpeth, Dist. Parbhani. On 11.08.2017, as per the direction of Tahsildar Sonpeth, the applicant had lodged First Information Report (FIR) No. 326/2017 under Section 379 of the IPC against one Mr. Nitin Baburao Khandare alleging that on 13.06.2017 the Talathi of village Wadgaon had conducted the panchanama in respect of illegal sand and handed over the possession of sand to the applicant till the auction of the said sand. On 11.08.2017, in the morning session the confiscated sand was stolen by Shri Nitin Khandare and therefore, he communicated the said fact to the Tahsildar, Sonpeth. The Tahsildar, Sonpeth informed the applicant to lodge the complaint against the accused and accordingly, the applicant has filed complaint against the accused by filing FIR No. 326/2017. Thereafter, the Police made investigation in the crime and filed charge sheet against the accused in the Court of Judicial Magistrate First Class, Sonpeth. The trial in the said case has been commenced and the case is still pending. During the pendency of the said case, the respondent No. 3 passed the

impugned order dated 12.10.2018 and dismissed the applicant from the post of Police Patil of village Wadgaon (Station), Tq. Sonpeth, Dist. Parbhani on the ground that the applicant turned hostile in the criminal case pending before the JMFC, Sonpeth. It is contention of the applicant that the said action has been taken by the respondent No. 3 on the ground that Ld. JMFC, Sonpeth informed the respondent authorities that the applicant had turned hostile in the judicial proceeding and therefore, there is possibility of causing monetary loss caused to the Government. It is contention of the applicant that the respondents ought to have proceeded against him in view of the provisions of the Maharashtra Village Police Act, 1967 and passed the appropriate order, but the respondent No. 3 has passed the order of dismissal, which is disproportionate to the charges leveled against him. It is contention of the applicant that the act on the part of respondent No. 3 is illegal and therefore, he has prayed to quash and set aside the impugned order by allowing the present Original Application.

3. The respondent No. 3 has filed his affidavit in reply and resisted the contentions of the applicant. He has admitted the fact that the applicant was appointed as Police Patil of village Wadgaon (Station), Tq. Sonpeth, Dist. Parbhani and his services

were terminated by the order dated 12.10.2018. He has denied the fact that the opportunity of hearing was not given to the applicant and the order has been passed without following the due procedure of law. He has admitted the fact that the applicant has filed FIR No. 326/2017 for the offences punishable under Section 379 against one Shri Nitin Khandare on 11.08.2017 alleging that he committed theft of sand, which has been seized by the Talathi of viallge Wadgaong. He has admitted the fact that the impugned order has been issued on the ground that he turned hostile in the criminal case before the JMFC, Sonpeth on the basis of the confidential letter received from JMFC, Sonpeth. It is his contention that the applicant was negligent while discharging his duties and due to his negligence monetary loss has been caused to the State. The applicant has not protected the Government property i.e. confiscated sand. The applicant had informed Tahsildar, Sonpeth that Shri Nitin Khandare has stolen sand and thereafter, he had filed FIR with the Police station against Shri Nitin Khandare. He had supported in the prosecution in the trial before the JMFC and he turned hostile. As the applicant failed to discharge his duties, the impugned order has been passed in view of the provisions of Maharashtra Village Police Act, 1967. There is no illegality in the impugned order and therefore, he has supported the same.

4. I have heard Shri Dhananjay Mane, learned Advocate holding for Shri N.R. Pawade, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

5. Learned Advocate for the applicant has submitted that the applicant has filed FIR against Shri Nitin Khandare as per the direction of the Tahsildar, Sonpeth and he had deposed true fact before the JMFC Sonpeth. Only because he has been declared as hostile and the confidential letter issued by the Ld. JMFC, Sonpeth to the Tahsildar Sonpeth, the respondent No. 3 issued the impugned order and terminated the services of the applicant. He has argued that the appropriate punishment as provided under Section 9 of the Maharashtra Village Police Act, 1967 ought to have been imposed on the applicant for alleged loss caused to the Government. He has submitted that the respondent No. 3 has passed the impugned order without giving an opportunity of hearing to the applicant. The principles of nature justices have not been followed by the respondent No. 3 while passing the impugned order. Therefore, he has prayed to quash and set aside the impugned order by allowing the present Original Application.

6. Learned Presenting Officer has submitted that the applicant is a public servant. He is complainant in the criminal case, but he has not supported the prosecution and he turned hostile. The applicant has failed to discharge his duties as Police Patil of village Wadgaon (Station), Tq. Sonpeth, Dist. Parbhani. He has submitted that the JMFC Sonpeth by the confidential letter dated 28.09.2018 informed the respondent No. 3 to take appropriate action against the applicant under Section 9 and 11 of the Maharashtra Village Police Act, 1967. On the basis of the said letter, the S.D.O. Pathri, Dist. Parbhani passed the impugned order and terminated the services of the applicant in view of the provisions of Section 9 of the Maharashtra Village Police Act, 1967. There is no illegality in the impugned order and therefore, he has supported the same and prayed to dismiss the present Original Application.

7. On perusal of the record, it reveals that on the basis of complaint filed by the applicant against one Shri Nitin Khandare FIR No. 326/2017 for the offences punishable under section 379 has been registered. Thereafter, charge sheet has been filed against Shri Nitin Khandare in the Criminal Court. The applicant was complainant in the said case. His statement has been recorded in the trial, but the applicant had not

supported the prosecution and turned hostile. As the applicant turned hostile, the JMFC, Sonpeth by the confidential letter 28.09.2018 informed the District Collector and Tahildar, Parbhani to take appropriate action against the applicant as per the provisions of Maharashtra Village Police Act, 1967. On the basis of said letter, the respondent No. 3 passed the impugned order of termination of the applicant.

8. It is material to note here that, during the course of hearing, the respondent No. 3 by the communication dated 12.09.2019 informed the Presenting Officer, M.A.T, Bench at Aurangabad that before passing the impugned order, he had not issued notice to the applicant. The punishment of dismissal, which is major punishment, has been imposed on the applicant by the respondent No. 3 by the impugned order. No Departmental Enquiry has been initiated against the applicant. No opportunity of hearing was given to the applicant. No opportunity of defending the applicant from the alleged charges has been given by the respondent No. 3. Without following the procedure and provisions of Section 9 of the Maharashtra Village Police Act, 1967, the respondent No. 3 passed the impugned order of dismissal of the applicant, which is a major punishment. The respondent No. 3 has also not followed the principles of

natural justice before passing the impugned order. In these circumstances, in my view, the impugned order is not in accordance with the procedure and provisions of Section 9 of the Maharashtra Village Police Act, 1967 and it is against the principles of natural justice. Therefore, it requires to be quashed and set aside by allowing the present Original Application and to remand the matter to the respondent No. 3 to make fresh enquiry as per the provisions of the Maharashtra Village Police Act 1967 by giving an opportunity of hearing to the applicant.

9. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The impugned order dated 12.10.2018 dismissing the services of the applicant is hereby quashed and set aside. The respondent No. 3 is directed to make fresh enquiry in the matter by giving an opportunity of hearing to the applicant. The respondent No. 3 shall take the decision afresh within a period of two months from the date of this order. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 03.10.2019.

(B.P. PATIL)
ACTING CHAIRMAN