

ORDER**[Per : Hon'ble Shri V.D. Dongre, Member (J)]**

By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned order of dismissal. The order of punishment of dismissal dated 20.12.2017 (Annexure "A-7") is issued by respondent No. 4 by invoking the powers under Sections 25 & 26 of the Maharashtra Police Act, 1951 and Article 311 (2) (b) of the Constitution of India and order in first departmental appeal dated 29.5.2018 (Annexure "A-8") is issued by respondent No. 3 and further order dated 12.4.2019 (Annexure "A-10") is issued by respondent No. 2 in second appeal/revision, thereby confirming the final order of punishment by way of dismissal for the said proceedings.

2. The facts in brief giving rise to this Original Application are as follows:-

(a) The applicant was initially appointed on the post of Police Constable in the office of Superintendent of Police Wardha by order dated 6.12.2008 (Annexure "A-1"). The applicant got inter-district transfer and thereby as per order dated 15.6.2012 he was transferred from the office of Superintendent of Police, Wardha to the office of Superintendent of Police, Hingoli. Thereby the applicant was allowed to join at Hingoli as per joining order dated

26.6.2012 (Part of Annexure "A-2" colly.) issued by respondent No. 2 i.e. Superintendent of Police, Hingoli. In the year 2016 the applicant was transferred from Motor Transport Department to City Traffic Police Branch, Hingoli as per order dated 19.5.2016 (Annexure "A-3").

(b) On 31.10.2017 when the applicant was working on the post of Constable with respondent No. 4 at Hingoli City/Traffic Branch one false Crime No. 166/2017 for the offences punishable under Sections 420 & 392 r/w 34 of IPC came to be registered in Basamba Police Station, Hingoli and subsequently on 7.11.2017 Crime No. 170/2017 also came to be lodged for the offences punishable under Sections 420 & 392 r/w 34 of IPC (part of Annexure "A-4" Colly.), thereby it was alleged that the applicant and another one person came at the spot and told him that, there was liquor in the bag and threatened to file criminal case against him. The applicant was initially arrested on 31.10.2012. In fact, in both the FIRs there was no specific name of the applicant. The applicant was arrested in both crimes. In both the crimes applicant was released on bail as per order dated 12.12.2017 (Part of Annexure "A-5" colly.) Meanwhile respondent No. 4 suspended the applicant as per order dated 3.11.2017 (Annexure "A-6"), in view of registration of crime No. 166/2017 at Basamba Police Station District Hingoli. While the applicant was under suspension, the impugned order of dismissal dated 20.12.2017 (Annexure "A-7") came to be issued by respondent No. 4 alleging that the applicant and another person used the Government vehicle in collusion with criminals. The said impugned

order of punishment dated 20.12.2017 (Annexure "A-7") is not in accordance with law as it is issued without following the principles of natural justice. No any show cause notice was given to the applicant before passing the said order of dismissal. The applicant is falsely involved in the criminal case where the applicant hopes to succeed.

(c) The applicant preferred departmental appeal against the impugned order of dismissal dated 20.12.2017 (Annexure "A-7). That was dismissed by respondent No. 3 by order dated 29.5.2018 (Annexure "A-8") without considering the grounds raised in the said appeal, against which the applicant preferred second appeal/revision on 27.6.2018 before respondent No. 2. The said second appeal/revision filed by the applicant is dismissed by respondent No. 2 by order 12.4.2019 (Annexure "A-10") without considering the grounds in the second appeal/revision.

(d) It is contended that as per the guidelines issued by the Hon'ble Apex Court and Hon'ble High Courts, the authority cannot directly dismiss the services of the employees without giving an opportunity of hearing to them. Respondent No. 4 in the dismissal order has not recorded satisfactory reasons while issuing the order of dismissal. The same is the case with the orders passed in first departmental appeal and second departmental appeal/revision. Hence, this application.

3. The Original Application is resisted by filing affidavit in reply on behalf of respondent Nos. 3 & 4 jointly and respondent

No. 2 has filed affidavit in reply separately, thereby adverse contentions raised in the Original Application are denied. It is specifically submitted that Crime Nos. 166/2017 and 170/2017 were registered at Basamba Police Station District Hingoli on 31.10.2017 and 7.11.2017 respectively for the offences punishable under Sections 420 & 392 r/w 34 of IPC and that the applicant was arrested in the said crimes and thereafter was released on bail. It is further submitted that before dismissal order of the applicant issued by respondent No. 4, the preliminary enquiry was conducted by the Police Inspector, Hingoli City Shri Ashish Maria on the order of respondent No. 4. In the said preliminary enquiry the enquiry officer after enquiry came to the conclusion that the applicant and other Driver-Police Constable, Shri Navnath Jadhav participated and conspired with other persons in both the crimes. So also, the applicant and Navnath Jadhav used the Government vehicle for illegal purpose by misusing their powers. The applicant pressurized the witnesses in the preliminary enquiry due to which witnesses made a complaint and demanded for Police protection. The enquiry officer found the applicant guilty so on the basis of the report of the enquiry officer and relying upon Circulars issued by the Maharashtra State, Home Department bearing No. PIC-1907/60/174/Pol-06B, dated 19.9.2008 and

Circular issued by Additional Director General of Police (Administration), M.S. Mumbai bearing No. DGP/11 /22 / 6/ DE/218/2008, dated 17.1.2008, respondent No. 4 issued dismissal order of the applicant.

4. It is further submitted as regards hearing of first departmental appeal, respondent No. 3 issued fax message dated 21.4.2018 (Exhibit "R-I") and after considering all the records respondent No. 3 was satisfied with the order of dismissal and dismissed the departmental appeal. Second departmental appeal/revision preferred by the applicant, in respect of the punishment order also came to be dismissed by respondent No. 2. The order of punishment, order of dismissal and orders in first departmental appeal and second departmental appeal/revision are legal and proper in view of the investigation papers of the Crime Nos. 166 & 170 both of 2017 registered at Basamba Police Station District Hingoli. There is no merit in the Original Application and is liable to be dismissed.

5. Affidavit in reply is also filed on behalf of respondent No.1 on the footings of the affidavit filed on behalf of respondent Nos. 2 to 4 as discussed above.

6. We have heard the arguments advanced by learned counsel for the applicant on one hand and the learned Presenting Officer representing the respondents on the other hand.

7. Perusal of the impugned order of punishment of dismissal dated 20.12.2017 (Annexure "A-7") issued by respondent No. 4 would show that it is issued in view of registration of Crime Nos. 166 & 170 both of 2017 registered respectively on 31.10.2017 and 7.11.2017 at Basamba Police Station for the offences punishable under Sections 420 & 392 r/w 34 of IPC. The applicant was arrested in both the crimes. While in Police custody the amount of Rs. 17,000/- said to have been recovered from the applicant being amount involved in the alleged crime of cheating and robbery with other associates. The said order is passed by invoking the provisions of Sections 25 & 26 of the Maharashtra Police Act, 1951 and Article 311(2)(b) of the Constitution of India. The above-said provisions are reproduced for ready reference herein below: -

25. Punishment of the members of the subordinate ranks of the Police Force departmentally for neglect of duty, etc.

(1) The State Government or any officer authorized under sub-section (2), in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who in the opinion of the State Government or such authorized

officer, is cruel, perverse, remiss or negligent in, or unfit for, the discharge of his duties, any one or more of the following penalties, namely : -

(a) recovery from pay of the whole or part of any pecuniary loss caused to Government on account of the negligence or breach of orders on the part of such Inspector or any member of the subordinate rank of the Police Force;

(b) suspension;

(c) reduction in rank, grade or pay, or removal from any office of distinction or withdrawal of any special emoluments;

(d) compulsory retirement;

(e) removal from service which does not disqualify for future employment in any department other than the Police Department;

(f) dismissal which disqualifies for future employment in Government service:

Provided that, suspension of a police officer pending an inquiry into his conduct or investigation of a complaint against him of any criminal offence shall not be deemed to be a punishment under clause (b).

(1A) The State Government or any officer authorised under sub-section (2) in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which, in the opinion of the State Government or of such authorised officer, is not of such nature as to call for imposition of any of the punishments referred to in sub-section (1), any one or more of the following punishments, namely:-

(a) warning;

(b) a reprimand (to be entered in his service book);

(c) extra drill;

(d) fine not exceeding one month's pay;

(e) stoppage of increments :

Provided that, the punishment specified, -

(i) in clause (c), shall not be imposed upon any personnel above the rank of Constable;

(ii) in clause (d), shall not be imposed upon an Inspector.]

Punitive powers of [Director-General and Inspector-General], Commissioner, Deputy Inspector-General [(including Director of Police Wireless)] and [Superintendent] [and Principal of Training Institution]

[(2) (a) The Director General and Inspector General including Additional Director General, Special Inspector General, Commissioner including Joint Commissioner, Additional Commissioner and Deputy Inspector-General shall have authority to punish an Inspector or any member of the subordinate rank under sub-section (1) or (1A). A Superintendent shall have the like authority in respect of any police officer subordinate to him below the grade of Inspector and shall have powers to suspend an Inspector who is subordinate to him pending enquiry into a complaint against such Inspector and until an order of the Director-General and Inspector-General or Additional Director-General and Inspector-General and including the Director of Police Wireless and Deputy Inspector-General of Police can be obtained.]

(b) The Principal of a [Police Training College] shall also have the like authority in respect of any member of the subordinate ranks of the Police Force below the grade of Inspector [undergoing training at [such [College] or] serving under him], and in respect of head constables and constables belonging to the Police Force of [the District in which such [College] is situated] or of any other district attached to [such [college] for duty under him]. [He may also suspend an inspector who is [undergoing training at] [such College or] subordinate to him pending inquiry inters complaint against such] Inspector and until an order of the Director-General and Inspector-General or Deputy [Director-General and Inspector General] can be obtained].

[(ba) The Principal of a Police Training Scholl shall have the like authority in respect of any member of the subordinate ranks of the Police Force below the grade of an Inspector, undergoing training at such school or serving under him, or attached to such school for duty under him.]

[(bb)] *****]

(c) The exercise of any power conferred by this sub-section shall be subject always to such rules and orders as may be made by the State Government in that behalf.

(3) Nothing in [sub-sections (1), (1A) and (2)-

(a) shall affect any Police Officer's liability to a criminal prosecution for any offence with which he may be charged; or

(b) shall entitle any authority subordinate to that by which the Police Officer was appointed, to dismiss or remove him.

[26. Procedure to be observed in awarding punishment. -

Except in cases referred to in the second proviso to clause (2) of article 311 of the Constitution of India, no order of punishment under sub-section (1) of section 25 shall be passed unless the prescribed procedure is followed.]

ARTICLE 311(2)(b) of Constitution of India

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

(1).. .. .

(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 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)

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank ins satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;”

8. Learned counsel for the applicant submitted that the order of dismissal of the applicant is of summary nature without

giving opportunity of hearing to the applicant and without holding any Departmental Enquiry and even without issuing any show cause notice. According to him, in view of settled legal position such order of dismissal is not sustainable in the eyes of law.

9. To substantiate the aforesaid submissions, learned counsel for the applicant placed reliance on the decision of the Principal Seat of this Tribunal at Mumbai in O.A. Nos. 133 & 134 both of 2013 decided by order dated 9.5.2013 in the matter of Shri Sanjay Devidas Pachange Vs. the Superintendent of Police, Thane and Shri Hiranman Dhira Thakare Vs. the Superintendent of Police Thane. In both these cases both the applicants on 23.1.2013 were allegedly having a drink at Central Point Hotel, Nalasopara around 2200 hrs. The allegation was that the complainant one Smt. Jaya Rajkumar Sharma along with her friend Shri Jitendra Dube, were taking dinner in the said hotel. There was scuffle between the applicants and Shri Jitendra Dube. Ultimately on 24.1.2013 a common FIR came to be lodged against both the applicants in Nalasopara Police Station vide C.R. No. 57/2012 under the provisions of Sections 352, 294, 323, 504, 506, 509 and 34 of IPC read with the provisions of Section 85(2) of the Bombay

Prohibition Act, by Smt. J.R. Sharma. Both the applicants were arrested and later on were released on bail. Thereafter, by order dated 28.1.2013 within a period of 4 days of the incident the applicants were dismissed from service by the respondents therein relying upon the report submitted by SDPO, Vasai along with CD. The said dismissal order was passed by invoking the Article 311(2)(2) r/w Section 25 of the Bombay Police Act, 1951.

10. In the said judgment in paragraph Nos. 9, 16 to 18 it is observed as under: -

“9. From the above, Shri Bandiwadekar clearly pointed out that under proviso in clause (a) it is clearly mentioned that a person can be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

16. In the above, services of both the applicants could not have been dispensed with by a summary dismissal order as sought to be done by the respondent and the above dismissal order, which is ex-facie contrary to the provisions of Article 311(2) of the Constitution of India. Both the applicants ought to have been given a proper charge-sheet in a disciplinary proceeding and ought to have been afforded an opportunity to defend themselves. Merely because a criminal case is filed against a Police Head Constable or a Police Naik cannot be a ground for summary dismissal. Both the above

orders are patently violative of the provisions of Article 311(2) of the Constitution of India.

17. Under these circumstances, both the OAs are made absolute in terms of prayer clause 9(a) respectively. However, it is made clear that the respondent is at liberty to adopt appropriate disciplinary proceeding against the applicants strictly in accordance with law.

18. Of late, we find that in quite a few matters from Police Department, frequently different Superintendents of Police or Commissioners of Police are passing such summary dismissal orders solely on the ground that a criminal case has been filed against such Police Constables or Police Officers. A bare perusal of the order passed by the Superintendent of Police in the above case clearly indicates, total lack of awareness of the provisions of the Constitution of India as well as the provisions of the Bombay Police Act, 1951 and not 1950. In the light of the above, a copy of this order be forwarded to the Director General and Inspector General of Police, State of Maharashtra with a request to hold Legal Workshops for better law literacy with regard to relevant provisions of the Constitution of India as well as relevant provisions of Bombay Police Act, 1951, and Bombay Police (Punishment & Appeal) Rules, 1956. This would obviate the Police Constables and Police Officers to unnecessarily suffer such punishments and approach this Tribunal. Registrar is directed to forward

a copy of this order to the Director General and Inspector General of Police, State of Maharashtra.”

11. Learned counsel for the applicant further submitted that similar view is taken in many more such OAs by this Tribunal, which are as follows: -

- 1. O.A.NO. 781/2019**
- 2. O.A.NO. 696/2013 & Other O.As.**
- 3. O.A.NO. 794/2019 & O.A.O.A.NO. 66/2020**
- 4. O.A.NO. 120/2019**
- 5. O.A.NO. 195/2020**
- 6. O.A.NO. 329/2021**
- 7. O.A.NO. 303/2019 & Other OAs**

12. Learned counsel for the applicant further placed reliance on the circular dated 19.9.2008 issued by Home Department of Maharashtra State and Circular dated 17.1.2008 issued by respondent No. 2 thereby laying down guidelines that powers under Article 311(2)(b) are required to be used sparingly and exceptionally in serious cases of gangsters.

13. Learned Presenting Officer appearing for the respondents submitted that the contentions raised by the applicant are devoid of merit and the present O.A. is liable to be dismissed.

14. Considering the facts of the present case in the background of the decision of the Principal Seat of this Tribunal at Mumbai presided over by the Hon'ble Chairman & Hon'ble Vice Chairman dated 9.5.2013 in O.A. Nos. 133 & 134 both of 2013, it is seen that in the case in hand before passing

impugned order of dismissal of the applicant dated 20.12.2017 by respondent No. 4 even show cause notice was not issued to the applicant. This respondent No. 4 said to have relied upon the preliminary enquiry report in that regard, No show cause notice was issued to the applicant. Opportunity of hearing was not given even by issuing show cause notice. Moreover, opportunity of hearing was not given to the applicant by way of conducting departmental enquiry. In such circumstances invoking provisions of Article 311(2)(b) of Constitution of India r/w Sections 25 & 26 of Maharashtra Police Act, 1951 is totally misconceived. Hence, view taken in the said decision would aptly applicable in the present case. Nothing is placed on record by the respondents to deviate from the view taken by the Hon'ble Coordinate Bench of this Tribunal. In these circumstances we hold that the impugned order of dismissal of the applicant dated 20.12.2017 and subsequent orders dated 29.5.2018 (Annexure "A-8") 12.4.2019 (Annexure "A-10") passed in first departmental appeal and second appeal/revision respectively are liable to be quashed and set aside. However, the respondents will be at liberty to initiate appropriate disciplinary proceedings against the applicant strictly in accordance with law. Hence, we proceed to pass the following order: -

ORDER

(i) The Original Application is made absolute in terms of prayer clauses 9 (B), (C) (D) & (E), which read thus: -

“B) To quash and set aside the punishment order dated 20.12.2017 issued by the respondent No. 4, thereby dismissing the services of the applicant.

C) To quash and set aside the order dated 29.05.2018 passed by the respondent No. 3, thereby dismissing the departmental appeal filed by the applicant against dismissal order.

D) To quash and set aside the order dated 12.4.2019 passed by the respondent No. 2, thereby dismissing the second appeal/revision filed by the applicant against the order passed by the respondent Nos. 3 & 4.

E) To direct the respondents to reinstate the applicant in service with continuity of service with all consequential benefits to the applicant forthwith in the interest of justice.”

(ii) The respondents are directed to reinstate the applicant in service within a period of one month from the date of receipt of certified copy of this order.

(iii) However, it is made clear that it would be open for the respondents to initiate the departmental enquiry against the applicant if they so desire. The payment of back-wages abides by result of the said enquiry. Such enquiry must be initiated as early as possible and in any way must be completed as expeditiously as possible. No order as to costs.

MEMBER (A)

MEMBER (J)