

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.717 OF 2019**

**DISTRICT:- DHULE**

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Rajendra Anandrao Shirsat,  
Age : 56 years, Occ. Nil,  
R/o. 33, Yashodhan Society,  
Walwadi, Deopur, Dhule,  
Dist. Dhule.

**...APPLICANT**

**V E R S U S**

1. The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
2. The Director General of Police,  
Maharashtra State Police Head Quarters,  
Shahid Bhagatsing Marg,  
Kulaba, Mumbai-400 001.
3. The Inspector General of Police,  
Nashik Range, Nashik,  
Dist. Nashik.
4. The Superintendent of Police,  
Dhule, Dist. Dhule.

**...RESPONDENTS**

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APPEARANCE : Shri Amit Savale, Advocate for the  
Applicant.  
: Shri M.P.Gude, Presenting Officer  
for the respondents.

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

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**Reserved on : 11-07-2022  
Pronounced on : 14-07-2022**  
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**O R D E R**  
**(PER: JUSTICE SHRI P. R. BORA)**

1. The applicant has approached this Tribunal seeking quashment of the order dated 28-11-2017 whereby respondent no.4 has dismissed him from the police services by invoking the provision under Article 311(2)(b) of the Constitution of India. The applicant joined the police services in the year 1984. At the relevant time, the applicant was posted at Chalisgaon Road Police Station, Dhule and was discharging the duty of Muddemal Clerk.

2. The order passed by respondent no.4 is assailed by Shri Amit Savale, learned Counsel appearing for the applicant mainly on the ground that the same has been passed in utter disregard of the principles of natural justice and in utter violation of the constitutional protection provided under Article 311(2) of the Constitution of India to a person holding civil post. The learned Counsel has placed his reliance on the following judgments:

- (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.

3. Referring to the law laid down in the aforesaid judgments, the learned Counsel has argued that respondent no.4 has not recorded any just and cogent reason for ordering dismissal of the applicant without holding a regular enquiry against the applicant. The learned Counsel further submitted that merely on the basis of the so-called acknowledgment receipt allegedly issued by the applicant for receiving the muddemal from the Food and Drugs Administration, respondent no.4 without giving

any opportunity to the applicant of being heard, unilaterally held the applicant guilty and dismissed him from the police services.

4. Learned Counsel further submitted that the alleged muddemal was never handed over to the applicant and this fact has been communicated by the applicant in his reply dated 17-11-2017 given to the letter dated 07-11-2017 by PSI K.G.Tadvi of Chalisgaon Road Police Station. Learned Counsel further submitted that on the same allegations show cause notice was issued to PSI Tadvi and the departmental enquiry was conducted against PSI Tadvi whereas without conducting any departmental enquiry against the applicant and without giving him any opportunity of hearing, respondent no.4 has dismissed the applicant from the Police Services. Learned Counsel submitted that dismissal of the applicant is liable to be set aside on the aforesaid ground also since discriminatory treatment has been given to the applicant. Learned Counsel submitted that in respect of same muddemal PSI Tadvi had made an application with the court of Magistrate seeking permission to destroy the said muddemal. Learned Counsel submitted that such an application was made by PSI Tadvi on 01-06-2017 and in the said application, it was

stated by PSI Tadvi that the said muddemal was in custody of the Deputy Commissioner, Food and Drugs Administration, Dhule.

5. Learned Counsel submitted that it is well settled that the constitutional right conferred upon the delinquent cannot be dispensed with lightly, arbitrarily or out of ulterior motive or merely in order to avoid holding of enquiry. Learned Counsel submitted that, to conduct an enquiry against the person holding civil post before ordering his dismissal is a rule, whereas to pass any such order without conducting enquiry is an exception and unless the disciplinary authority establishes that it was not reasonably practicable to hold enquiry against the delinquent before ordering his dismissal and unless the disciplinary authority records its satisfaction in regard to the reasons for which according to him, it was not reasonably practicable to hold any disciplinary enquiry against the delinquent, no order of dismissal can be passed. Learned Counsel submitted that justification has to be given by the disciplinary authority as about the cause or causes because of which it was not reasonably practicable to hold enquiry. Learned Counsel further submitted that respondent no.4 has not provided any just

and cogent reason to justify the conclusion recorded by him that it was not reasonably practicable to hold departmental enquiry against the applicant before ordering his dismissal. On all aforesaid grounds, the learned Counsel for the applicant prayed for setting aside the impugned order.

6. Respondents have resisted the contentions raised in the O.A. by filing affidavit in reply. One Ravindra Dayaram Sonawane working as Deputy Superintendent of Police (HQ), Dhule has submitted the affidavit in reply on behalf of all the respondents. Respondents have denied the allegations made in the O.A. In paragraph 6 of the affidavit in reply, it is specifically contended that the Enquiry Officer had conducted enquiry in accordance with the rules and regulations prescribed for departmental enquiry and had submitted his final report along with recommendation to the Disciplinary Authority for further necessary legal action against the applicant. It is further contended that applicant had committed gross negligence towards his legal duty and as such his services were terminated vide the impugned order.

7. Learned P.O. supported the impugned order. Learned P.O. submitted that an Enquiry Officer had conducted

enquiry in accordance with rules and regulations prescribed for the departmental enquiry and had submitted his final report along with recommendation to the Disciplinary Authority for further necessary legal action against the applicant. Learned P.O. further submitted that respondent no.4 in his capacity of Disciplinary Authority exercised the powers in accordance with the law and issued the impugned order. According to the learned P.O., the order passed is legal and proper. Learned P.O. has placed his reliance on the judgment of the Hon'ble Apex Court in case of **Ved Mitter Gill Vs. Union Territory Administration, Chandigarh and others [(2015(3) SLR 739 (SC)]** and prayed for rejection of the O.A.

8. We have carefully considered the submissions advanced by the learned Counsel appearing for the applicant and the learned P.O. appearing for the respondents. We have perused the documents filed on record and the judgments relied upon by the parties in support of their respective contentions. The applicant has been dismissed from the police services by invoking provisions under Article 311(2)(b) of the Constitution of India. Article 311 of the Constitution provides that "*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.”* Sub clause (2) of Article 311 says that “*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*”. However, the second proviso to Article 311(2) is in the nature of exception, which read thus:

*“311(2)(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;”*

9. The impugned order reads thus (paper book page 60):

“आदेश

ज्याअर्थी तुम्ही, असई. राजेंद्र आनंदराव शिरसाठ, तत्का. नेम. चाळीसगांव रोड पो स्टे सद्या संलग्न पो.मु. धुळे तुम्ही चाळीसगांव रोड पा.स्टे. येथे नुमणूकीस असताना, गुरनं.१८/२०१७ भादवि कलम ३२८, २७२, १८८, ३४ प्रमाणे दि.२२.०४.२०१७ रोजी गुन्हा दाखल झाला आहे. दि.२०.०४.२०१७ रोजी सीआरपीसी क्र.१०२ प्रमाणे लक्झरी बस क्र.एम.पी.०९/एफ.अ-५६६७ व लक्झरी बस क्र. एम.पी.३० पी-९०७५ अशांमध्ये (१) १२ बॉक्स आर.एम.डी. रू. ४,८९,६०० किंमतीचे, (२) २ मोठे कार्टून त्यामध्ये इंडीया गोल्ड लहान मोठे पाउच असलेले किंमत रू.८५,०००/-, रू.४,८९,६०० किंमतीचे, (३) व्ही-१ तंबाखु रू.१,५०,६४०/- किंमतीचे, (४) १० मोठे कार्टून त्यात केसर युक्त विमलचे ४८ कार्टून रू.३,११,३६०/- किंमतीचा माल डिटेन करण्यांत आला.



चाळीसगांव रोड पो.स्टे. जा.क्र.४४२-४४३/२०१७, दि. २०/०४/२०१७ अन्वये मा. उपायुक्त, अन्न व औषध प्रशासन, धुळे यांना लेखी पत्र देवून दोन्ही लक्झरी बस मध्ये मिळून आलेल्या गुटख्याची तपासणी करणेबाबत विनंती केली होती. तसेच चाळीसगांव रोड पो.स्टे.जा.क्र.४४७/२०१७, दि.२१/०४/२०१७ अन्वये मा. उप आयुक्त, अन्न व औषध प्रशासन, धुळे यांना लेखी पत्र देवून जा.क्र. ४४२-४४३/२०१७, दि.२०/०४/२०१७, अन्वये तपासणी करणेकामी त्यांच्या ताब्यात देण्यांत आलेला संपुर्ण मुद्देमाल परत मिळणेबाबत विनंती केली आहे.

मा. उपायुक्त, अन्न व औषध प्रशासन, धुळे यांचेकडील पत्र क्रं. प्रतिबंधीत/डिटेन/१३०९/२०१७/३, दि.२४/०४/२०१७ अन्वये रूपये ४,०१,३१०/- व पत्र क्रं.प्रतिबंधीत/डिटेन/१३१३/२०१७/३, दि. २४/०४/२०१७ अन्वये रूपये १,४५,५५२/- असा एकुण रूपये ५,४६,८६२/- रूपये किंमतीचा गुटखा मुद्देमाल असई/ राजेंद्र आनंदराव शिरसाठ यांच्या ताब्यात दिनांक-२४/०४/२०१७ रोजी देण्यांत आलेला असून, त्याप्रमाणे त्यांनी स्थळ प्रतीवर मुद्देमाल ताब्यात किळाल्याबाबत स्वाक्षरी केलेली आहे.

असई/ राजेंद्र आनंदराव शिरसाठ यांनी मा. आयुक्त, अन्न व औषध प्रशासन, धुळे यांच्या कार्यालयाकडून वरील प्रमाणे प्राप्त झालेला मुद्देमाल हा चाळीसगांव रोड पो.स्टे. च्या मुद्देमाल रजिस्टर व रूम मध्ये जमा केल्याचे मिळून आलेला नाही. यावरून आपण आपले स्वतःचे आर्थिक फायद्यासाठी सदरचा मुद्देमाल पो.स्टे. ला जमा न करता परस्पर गहाळ केल्याचे स्पष्ट होत आहे.

अशा प्रकारे आपण असई/ राजेंद्र आनंदराव शिरसाठ, तत्का. नेम. चाळीसगांव रोड पो.स्टे. येथे मुद्देमाल कारकुन म्हणुन नेमणूकीस असतांना आपले वरील गुन्हेगारी कृत्यामुळे आणि नैतिक अधःपतनाच्या आक्षेपार्ह वर्तनामुळे पोलीस विभागाची बदनामी झाली व जिल्हयातील सर्वसामान्य नागरिकांच्या मनामध्ये पालीस विभागाच्या अनुषंगाने निर्माण झालेली फसवणु, भ्रमनिरस तसेच नैराश्याची भावना व त्यामुळे निर्माण झालेला तत्र संताप या बाबींची लोकहिताच्या दृष्टीकोनातुन चौकशी करणे वाजवीपणे व्यवहार्य नाही याबाबत माझी खात्री झाली आहे.

त्याअर्थी मी एम. रामकुमार, पोलीस अधीक्षक, धुळे मला भारतीय राज्य घटनेने कलम ३११(२)(ब) अन्वये प्रदान केलेल्या अधिकाराचा सक्षम अधिकारी म्हणून वापर करून असई. राजेंद्र आनंदराव शिरसाठ, नेमणूक चाळीसगांव रोड पो.स्टे. हल्ली तैनात पोलीस मुख्याल, धुळे यांना पोलीस सेवेतुन बडतर्फ करीत आहे.

सदरचे आदेश आज दिनांक-२८/११/२०१७ पासून अंमलात येतील.

स्वाक्षरी/-  
(एम. रामकुमार)  
पोलीस अधीक्षक, धुळे.”

10. On perusal of the impugned order, it transpires that respondent no.4 has conclusively held that it is the applicant who has surreptitiously disposed of the muddemal worth Rs.5,46,862/- seized in C.R.No.18/2017 registered at Chalisgaon Road Police Station, Dhule. The contents of the impugned order also reveal that respondent no.4 reached to the aforesaid conclusion on the basis of the fact that office copy of the letter dated 24-04-2017 whereby the Deputy Commissioner, Food and Drugs Administration, Dhule is stated to have given in possession of the applicant the aforesaid seized muddemal, was bearing signature of the applicant acknowledging the receipt of the said muddemal. The impugned order further reveals that respondent no.4 did notice that entry of the aforesaid muddemal was not found to be taken by the applicant in the muddemal register and the muddemal was also not found in the muddemal room. On the basis of the facts as aforesaid, respondent no.4 seems to have recorded the conclusion that the aforesaid muddemal was surreptitiously disposed of by the applicant. At the relevant time, the applicant was working as a Muddemal Clerk in the Chalisgaon Road Police Station, Dhule. The impugned order further says that because of the aforesaid criminal

act of the applicant which is described by respondent no.4 as the conduct of moral turpitude, the image of the Police Department has been tarnished and there is extreme anger in the minds of the citizens in the district against the police department and taking into account the same, in the public interest, it would not be reasonably practicable to hold a regular departmental enquiry against the applicant. After recording the aforesaid opinion, respondent no.4 has passed the order thereby dismissing the applicant from the police services by invoking the provision under Article 311(2)(b) of the Constitution of India.

11. As has been held by the Hon'ble Apex Court in the case of Jaswant Singh (cited supra) following two conditions must be satisfied to sustain an action taken under Article 311(2)(b) of the Constitution of India:-

- (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.

12. The reasons which have been assigned in the impugned order are:-

- (i) Because of the criminal act of the applicant and his objectionable, immoral conduct has resulted in tarnishing the image of the police department; and
- (ii) The image of the police department has been undermined in the public view and there is sense of discontent and disappointment in public mind and it has resulted in creating extreme public anger. Considering the facts as aforesaid, it may not be reasonably practicable in the interest of public to hold the enquiry against the applicant.

13. How it is not necessary to conduct an enquiry against the applicant is sought to be canvassed in the impugned order, whereas the law obligates the Disciplinary Authority to assign and explain reasons which render holding of an enquiry not reasonably practicable. In our opinion, respondent no.4 has failed in assigning any such reason.

14. In the impugned order though a one line statement is incorporated to the effect that it was not reasonably practicable to hold the enquiry, the order read as a whole, it transpires that an attempt has been made by respondent no.4 to justify how there was no need to conduct any enquiry against the applicant before ordering his dismissal. We deem it appropriate to again reproduce the relevant portion in the said order dated 28-11-2017, which reads thus (paper book page 60):

“अशा प्रकारे आपण असई/ राजेंद्र आनंदराव शिरसाठ, तत्का. नेम. चाळीसगांव रोड पो.स्टे. येथे मुद्दामाल कारकुन म्हणुन नेमणूकीस असतांना आपले वरील गुन्हेगारी कृत्यामुळे आणि नैतिक अधःपतनाच्या आक्षेपाहून वर्तनामुळे पोलीस विभागाची बदनामी झाली व जिल्हयातील सर्वसामान्य नागरिकांच्या मनामध्ये पालीस विभागाच्या अनुषंगाने निर्माण झालेली फसवणु, भ्रमनिरस तसेच नैराश्याची भावना व त्यामुळे निर्माण झालेला तब्र संताप या बाबींची लोकहिताच्या दृष्टीकोनातुन चौकशी करणे वाजवीपणे व्यवहार्य नाही याबाबत माझी खात्री झाली आहे.”

Thus, an attempt has been made to submit how it was not advisable to hold enquiry against the applicant before ordering his dismissal. It has to be stated that whether to conduct or not to conduct an enquiry before ordering the dismissal of a person holding civil post is not within the discretion of the Disciplinary Authority. As mandated by Article 311(2) of the Constitution of India, no person holding civil post can 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. Thus, conducting an enquiry is mandatory. If the said course is to be avoided or to be deviated then the Disciplinary Authority is under an obligation to record reasons.

15. In the case of Risal Sing V/s. State of Haryana and others, the applicant therein was dismissed from the services of the Haryana Police on the similar grounds as the

applicant has been dismissed. The wordings used in the order of dismissal in the said case were almost similar to the wordings of the order impugned in the present O.A. We deem it appropriate to reproduce the order in the said matter, which has been reproduced by the Hon'ble Apex Court in its judgment. It reads thus:

*“2. The above said act on the part of above official shows his criminal activities. He being a member of a disciplined force is responsible for protecting the life and property of the citizen of this country, but instead of discharging his duty honestly and sincerely he himself has indulged in criminal activities. As such he has not only tarnished the image of the Haryana Police but also has rudely shaken faith of the citizens of Haryana in the entire Police force, who is supposed to be their protectors. He has acted in a most reprehensible manner. Which is unexpected from a member of disciplined force and undoubtedly extremely prejudicial to the person safety and security of citizen.*

*3. The involvement of said police official in such a shameful criminal activity has eroded the faith of common people and his continuance in the force is likely to cause further irreparable loss to the functioning and credibility of Haryana Police. The defaulter has acted in a manner highly unbecoming of police official. After such act of serious misconduct. If he is allowed to continue in the Police force, it would be detrimental to public interest.*

*4. Keeping in view the overall circumstances of above operation, I K.K. Rao, IPS, Superintendent of Police, Mewat at Nuh, in exercise of the powers conferred under Article 311(2)(b) of Constitution of India I hereby order the dismissal of SI Rishal*

*Singh No. 133/GGN with immediate effect. A copy of this order be delivered to him free of cost.”*

16. In respect of the aforesaid order the Hon’ble Apex Court has observed in paragraph 6 of its judgment that “On a bare perusal of the same, it is clear as day that it is bereft of reason. Non-ascribing of reason while passing an order dispensing with enquiry, which otherwise is a must, definitely invalidates such an action.” The Hon’ble Apex Court in the said judgment has reproduced some paragraphs in its earlier judgment in case of Union of India and Anr. V/s. Tulsiram Patel, which read thus:

**“130.** *The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are “not reasonably practicable” and not “impracticable”. According to the Oxford English Dictionary “practicable” means “Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible”. Webster’s Third New International Dictionary defines the word “practicable” inter alia as meaning “possible to practice or perform : capable of being put into practice, done or accomplished: feasible”.*

*Further, the words used are not “not practicable” but “not reasonably practicable”. Webster’s Third New International Dictionary defines the word “reasonably” as “in a reasonable manner: to a fairly sufficient extent”. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or*

*absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.”*

17. Hon’ble Apex Court has then referred to the judgment in the case of Reena Rani V/s. State of Haryana and has observed thus:

*“10. Tested on the touchstone of the aforesaid authorities, the irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the inquiry is totally unsustainable and is hereby annulled. As the foundation founders, the order of the High Court giving the stamp of approval to the ultimate order without addressing the lis from a proper perspective is also indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction.”*

18. In the instant matter also perusal of the impugned order explicitly reveals that, it is bereft of reason and as held by the Hon’ble Apex Court in the aforesaid judgment non-ascribing of reason while passing the order dispensing with an enquiry, which otherwise is a must definitely invalidates such an action.

19. As has been brought on record by the applicant, arising out of the same crime registered at Chalisgaon Road Police Station and on the same set of facts upon which the order of dismissal has been passed against the applicant,



departmental enquiry was conducted against PSI Tadvi. If the enquiry could be conducted against PSI Tadvi, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the applicant. Enquiry was conducted against PSI Tadvi and punishment of suspending his two annual increments without cumulative effect was awarded to him. The document on record further reveal that the enquiry was conducted and the punishment was imposed on Police Inspector Hemant Subhash Patil also who was at the relevant time in charge of the Chalisgaon Road Police Station and after he was held guilty, punishment of suspending his three annual increments without cumulative effect was passed against him. In the aforesaid circumstances, there appears substance in the objection raised by the applicant that discriminatory practice was adopted by respondent no.4 against the applicant.

20. It is significant to note that in the affidavit in reply filed on behalf of respondent nos.1 to 4, it has been specifically contended that the departmental enquiry was conducted against the applicant by the Enquiry Officer and the final report of the said enquiry was submitted to the Disciplinary Authority for further necessary legal action.

Respondents have, however, not filed on record the said enquiry report. Moreover, the order of dismissal does not disclose that any such enquiry was conducted against the applicant. On the contrary, it is stated in the impugned order that having regard to the public anger etc. it was not reasonably practicable to hold enquiry before ordering the dismissal of the applicant.

21. Learned P.O. in his arguments though reiterated the contents raised in the affidavit in reply, could not point out why the alleged enquiry report has not been filed on record and how then the impugned order contains an averment that it was not reasonably practicable to hold the departmental enquiry against the applicant. We are surprised by the defence so raised by the respondents in paragraph 6 of their affidavit in reply. It need not be stated that when the impugned order has been passed by respondent no.4 by exercising powers under Article 311(2)(b) of the Constitution of India, it means that respondent no.4 dismissed the applicant without holding any enquiry against him.

22. After having considered the facts and circumstances involved in the present matter, we have reached to the

conclusion that the respondents have failed in establishing that it was necessary to dispense with an enquiry against the applicant in terms of proviso (b) appended to Clause (2) of Article 311 of the Constitution of India. 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 respondent no.4 has adopted a wrong and illegal method in ordering dismissal of the applicant from the police services. The order so passed by respondent no.4 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 respondents have 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. Respondent no.4 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 matters.

23. We reiterate that no material has been placed by the respondents 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 respondents are 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 respondents to initiate the departmental enquiry against the applicant if they so desire. 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.

**(BIJAY KUMAR)**  
**MEMBER (A)**

**(JUSTICE P. R. BORA)**  
**VICE CHAIRMAN**

Place : Aurangabad  
Date : 14<sup>th</sup> July, 2022