

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 949 OF 2016

DISTRICT : SANGLI

Shri Premkumar Sukhdeo Bansode)
R/o: Sukh Sawali Building,)
Shahu Nagar, Osmanabad,)
Occ – Nil [Ex. Police Sub Inspector],)
Attached to Vishrambaug Police Station)
Sangli City.)...**Applicant**

Versus

1. The Special Inspector General)
of Police, Kolhapur Range,)
Kolhapur, having office at)
Tarabai Park, Kolhapur.)
2. The Director General & Inspector)
General of Police [M.S],)
Mumbai, having office at)
Old Council Hall, S.B Marg,)
Mumbai 400 039.)
3. The Superintendent of Police,)
Sangli.)
4. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri Arvind V. Bandiwadekar, learned advocate for the Applicant.

Ms. Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Shri P.N Dixit (Vice-Chairman) (A)

RESERVED ON : **02.03.2021**

PRONOUNCED ON : 19.03.2021

PER : Justice Mridula Bhatkar, Chairperson

J U D G M E N T

1. The Applicant challenges the order dated 18.08.2016 passed by the Respondent No.1, summarily dismissing him from the post of Police Sub Inspector in exercising the powers under Sections 25 and 26 of the Bombay Police Act, 1951 read with the Article 311(2)(b) of the Constitution of India, 1949. The Applicant, by order dated 01.10.2012 was directly appointed as Probationary Police Sub Inspector in the Police Department. On 24.09.2013 he was posted to Gadchiroli for undergoing field training. On 26.05.2016 he was transferred from Gadchiroli to Kolhapur range and further posted to Sangli District. While he was working as Police Sub Inspector at Vishrambaug Police Station at Sangli City, he went to his native place at Osmanabad. On 06.08.2016, a case was registered against him vide CR No.101/2016 at Anandnagar Police Station, Osmanabad for the offence of rape under Section 376, 376[i][A], 354 and 506 of Indian Penal Code read with Section 4, 5[4] and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO). Pursuant to the registration of the offence, the applicant was placed under suspension by order dated 6.8.2016, passed by Superintendent of Police, Sangli, i.e. Respondent no. 3, by invoking powers under Section 25 (b) of the

Maharashtra Police Act and Rule 3, sub rule (A-2) & 1A(i) & (b) of Mumbai Police (Discipline & Appeal) Rules, 1956. Thereafter, by the impugned order dated 18.8.2016, passed by Special Inspector General of Police, Kolhapur Range, the Special Inspector General of Police, Kolhapur Range, dismissed the applicant from service under Article 311(2)(b) of the Constitution of India. The said impugned order of dismissal dated 18.8.2016 is questioned. The main grounds of challenge are :-

- (a) The Officer, who issued the order of dismissal is not of the rank of Appointing Authority.
- (b) The reasons for dispensing with the enquiry before dismissal are not stated.

2. Learned Counsel for the Applicant has submitted that the order of dismissal is illegal as it is not passed by the appointing authority and without conducting the enquiry contemplated under Article 311(2)(b) of the Constitution of India. Hence, the order passed by Special Inspector General of Police under proviso (2) of Article 311 is void, bad in law and needs to be quashed and set aside. He submitted that the authority competent to pass the order of dismissal was not the Special Inspector General of Police, Kolhapur, Respondent no. 1, but it was the Director General and Inspector General of Police, Respondent no.2. Learned counsel pointed out that the appointment order of the applicant dated 24.09.2013 was passed by the Director General of Police and not

by the Special Inspector General of Police. He submitted that he was appointed earlier by the order of Dy. Inspector General of Police. However, after completing his probation period, he was appointed on 24.09.2013 by the Director General of Police and posted at Gadchiroli.

3. Learned Counsel has submitted that the Director General of Police is the competent authority for issuing the order of dismissal and the authority issuing the order of dismissal under Article 311(1) of the Constitution of India 1949 should have been of the rank of Director General of Police or above him and so Special Inspector General of Police is not competent to pass the order. He relied on the following judgments of Hon'ble High Court :-

(1) Balu Dasu Rathod Versus The State Of Maharashtra, Criminal Application No.1439/2018, dated 04.09.2019.

(2) Nand Shankar Versus State of Rajasthan and Ors. reported in AIR 1957 Rajasthan 148.

4. The Special Inspector General of Police is subordinate to the appointing authority, and therefore, he has no powers to remove him from the service. Learned counsel further submitted that the order of suspension dated 6.8.2016 was issued by the Superintendent of Police, Sangli, i.e. Respondent no. 3, invoking powers under Sec 25 (b) of the Maharashtra Police Act and Rule 3, sub rule (A-2) & 1A(i) & (b) of Mumbai Police (Discipline & Appeal) Rules, 1956. Thus as per these rules, the applicant was given

punishment of suspension. Therefore, if the applicant was suspended by way of punishment, then he cannot be dismissed from service, which will amount to a double jeopardy, which is illegal under Article 20(2) of the Constitution of India. Learned Counsel argued, alternatively if a person is suspended then itself it suggests that enquiry would entail. However, in the present case, without conducting any enquiry after suspension, the applicant was dismissed from service by invoking powers under second proviso to Article 311 of the Constitution of India. Learned counsel argued that the second proviso to Article 311, though gives powers to the appointing authority to dismiss the Government servant without holding enquiry, it is mandatory on the part of such authority while issuing such orders, to mention in writing his or her satisfaction that it is not reasonably practicable to conduct the enquiry. After reading the entire impugned order of dismissal, no such satisfaction of the authority disclosing the reasons why it is not practicable to conduct the enquiry is reflected in it. Thus, the order does not comply with the mandatory requirement under Article 311(2)(b) of the Constitution of India. He relied on the following judgment of Hon'ble Supreme Court :-

Krishna Kumar Vs. The Divisional Assistant Electrical Engineer, Central Railway & Others, reported in AIR 1979 SC 1912.

5. Learned Counsel relied on the case of one Shri Dnyaneshwar L. Awate, who happened to be a Police Sub Inspector at serial no.

1482 and the batchmate of Mr Bansode, the present applicant. He has filed O.A 28/2018 along with O.A 938/2018. The said O.A was decided by this Tribunal on 16.11.2019 by setting aside the order of dismissal on the ground that order is not issued by the competent authority, i.e. Director General of Police, but it was passed by the Special Inspector General of Police. The said order was challenged by State of Maharashtra in Writ Petition Stamp No. 4777/2020 and it was confirmed by the Bombay High Court by order dated 27.10.2020. He submitted that the said Writ Petition filed by the State was dismissed. However, liberty was given to the Respondents i.e. State to file Review Application before the Tribunal. Respondents filed Review Application no.14/2020, which is pending before the same Division Bench. The learned Counsel has submitted that this Division Bench should defer its decision in present O.A. till Review Petition No.14 of 2020 is decided by the other Division Bench of this Tribunal. On the point of Precedent he relied on the following judgments :-

- (1) Writ Petition No.3403 of 2014, dated 16.12.2014, Namdeo Tukaram Shelke Versus Additional Director General of Police and Inspector General of Prisons.**
- (2) R. Parthasarathy Assistant Collector of Central Excise, Kalyan Division Versus Dipsi Chemicals Pvt. Ltd., reported in 1987 Mh.L.J.**
- (3) Ram Jivan Versus Smt. Phoola (Dead) By Lrs. & Ors, reported in 1976 1 SCC 852.**

- (4) Panjuman Hassomal Advani Versus Harpal Singh Abnashi Singh, reported in 1975 Mh.L.J. 29.**
- (5) Ambika Prasad Versus State of U.P. reported in AIR 1980 SC 1762.**
- (6) Sri Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Versus State Of Andhra Pradesh and others, reported in 1972 AIR 51.**
- (7) Writ Petition No.1411 of 2011, dated 07.09.2011, The State of Maharashtra & Ors Versus Shri Rahulkumar Babasaheb Yewale.**

6. Learned counsel for the applicant, on merits has argued that in the charge sheet yet total 13 to 16 witnesses are cited by the Investigating Agency. The authority has not recorded statement of even a single witness to show that he was satisfied on merit that it was not reasonably practicable to conduct an enquiry. Nothing is brought on record to show that either the witnesses were tampered with or investigation was hindered. Learned Counsel has argued that the note dated 16.8.2016 is an afterthought prepared by the authority because the facts which are mentioned therein are absent in the order of suspension dated 18.8.2016. The reasons mentioned therein are not reflected at all in the said order. Therefore, the order of dismissal without conducting formal enquiry is illegal and should be quashed and set aside.

7. Learned counsel for the applicant has submitted that in the present case, 16 witnesses were examined in the criminal case before the Sessions Judge and none of the witnesses have expressed fear. Thus, all the witnesses were available and therefore, the order of the authority of not conducting the enquiry is not justifiable. Learned counsel for the applicant submitted that gravity of the misconduct cannot be the only ground for dismissal. The misconduct may be grave. However, to have departmental enquiry is a constitutional right of the alleged delinquent officer. Thus the Respondents have failed to show that it was not reasonably practicable to conduct enquiry hence the order of dismissal is illegal and should be quashed and set aside. The law laid down in following judgments is relied by the learned Counsel :-

- (1) **Sudesh Kumar Vs. State of Haryana & Ors reported in (2005) 11 SCC 525.**
- (2) **In Tarsem Singh Vs. State of Punjab & Ors reported in (2006) 13 SCC 581.**
- (3) **Chief Security Officer & Ors Vs. Singh Rabidas, reported in (1991) 1 SCC 729.**
- (4) **O.A 556 & 551/2013, Shri Ravindra Medage Vs. State of Maharashtra & Others.**
- (5) **Writ Petition No. 8274/2008 dated 20.4.2009, Director General of Police Vs. Ashok Dawale.**
- (6) **Writ Petition No. 3195/1998, State of Maharashtra Vs. S.P Kalamkar, decided on 31.1.2008.**

8. Learned Counsel further submitted that Circular dated 20.08.2011 is contrary to Section 25(2)(b) of Mumbai Police Act. He, while referring to the provisions in Bombay Police Manual 1959 on the point of recruitment of Police Sub Inspector, argued that Bombay Police Manual is ancient and not reliable.

9. The learned C.P.O. while defending the order of dismissal has submitted that the Special Inspector General of Police, Shri Vishwas Narayan Nangare Patil was above the rank of Deputy Inspector General of Police and appointment order dated 01.10.2012 was issued by the Deputy Inspector General of Police and not Inspector General of Police. She further submitted that the submissions of learned Advocate for the Applicant that the Director General of Police has issued the appointment order in the year 2013 are misleading in view of the relevant provisions of Bombay Police Act and Bombay Police Manual. She submitted that first the appointment order was issued by Deputy Inspector General of Police and second the order of posting is issued by the Director General of Police. She has pointed out that in the case of Shri Dnyaneshwar L. Awate, Applicant in O.A.No.28/2018 along with O.A.No.938/2018, dated 16.11.2019 the provisions of Section 6(2)(b) of Maharashtra Police Act 1951, so also Rule 33(b) and Rule 56 of the Bombay Police Manual were not shown, so also Bombay Police (Punishments and Appeals) Rules, 1956 were not produced before the Division Bench and therefore, the Respondent-State has

now moved the application of review before the said Bench. Hence the matter is not finally decided. She relied on the affidavit-in-reply dated 20.12.2016 filed by Shri Arvind Daulat Choudhari, Police Inspector, Police Control Room, Kolhapur on behalf of Respondent No.1, wherein the allegations made and contentions raised by the applicant in his application are totally denied. It is specifically stated that the dismissal order 18.08.2016 is speaking order which complies with the legal requirement contemplated under Article 311(2)(b) of the Constitution of India. The learned C.P.O. also relied on the additional affidavit-in-reply dated 08.03.2017 of Respondent No.1, Shri Vishwas Narayan Nangare Patil, wherein it is stated that as per the proviso Section 25(1) of the Maharashtra Police Act 1951 and as per explanation under Rule 3 of Bombay Police (Punishments and Appeals) Rules, 1956 suspension is not a punishment when suspension has been made pending enquiry into criminal offence registered against him and therefore question of double jeopardy does not arise. She relied on the following judgments :-

**Ved Mitter Gill Vs. Union Territory Administration,
Chandigarh & Ors reported in (2015) 8 SCC 86.**

10. The learned C.P.O. argued that the reasons are mentioned in paragraph 24 of the said affidavit-in-reply how the enquiry was not reasonably practicable and so the decision of dispensing with the enquiry under Article 311(2)(b) of the Constitution of India was

taken. The affidavit-in-reply dated 04.04.2018 of Respondent No.2 through Smt. Namrata Ganesh Patil working as Assistant Inspector General of Police (Establishment), office of Director General of Police is also relied. The learned C.P.O. has further submitted that the criminal case against the applicant in Special Case (POCSO) No.33/2016, The State of Maharashtra Versus Premkumar Sukhadeo Bansode has concluded in conviction by order dated 13.10.2017 by the Special Judge, Osmanabad and he is held guilty under Sections 376, 376 (2)(i), 376(2)(k), 354, 354-A-(II), 506 of the Indian Penal Code and under Section 4, 6, 8, 10 of the Prevention of Children from Sexual Offences Act, 2012 and thus the decision of the dispensing with the Departmental Enquiry is also justified. She further pointed out that in the affidavit dated 20.12.2016 of Shri Arvind D. Choudhari, Police Inspector the state has relied on the service book of the applicant wherein his date of appointment is mentioned as 01.10.2012 (appointment / नियुक्ति) and the said order is issued by the Deputy Inspector General of Police.

11. We have considered Rule 3 of Bombay Police (Punishments and Appeals) Rules, 1956, so also proviso to Section 25(1) of Maharashtra Police Act 1951 and we are in agreement with the learned C.P.O. that the suspension was pending enquiry and it was not punishment and thus there is no issue of double jeopardy under Article 22(2) of the Constitution of India.

12. The learned C.P.O. argued that the suspension is to be treated under Rule 3(1-A) and it is not suspension under Rule 3 (a-2), even though the provision is wrongly mentioned.

The Bombay Police (Punishments and Appeals) Rule, 1956,

5. The officers specified in column 1 of the Schedule 1 to these Rules shall have power to inflict punishments of the kind specified in column 3 thereof on the officers specified in column 2 thereof, subject to the restrictions laid down in column 4 thereof.”]

13. We will first address the point of Law of Precedent raised by the learned Advocate Shri Bandiwadekar. The judgment in O.A. No.28/2018 & O.A.No.938/2018 of Shri Dnyaneshwar Laxman Awate on similar issue of competency of the authority was allowed by the Division Bench of this Tribunal by order dated 16.11.2019 in favour of the Delinquent Officer. The Division Bench has set aside and quashed the said order of dismissal. The learned Advocate Shri Bandiwadekar has submitted that the present matter is to be deferred as the Division Bench of this Tribunal in O.A.No.28/2018 & O.A.No.938/2018 has decided the identical issue on competency and dismissal and review is pending. We do not agree with his submissions. The Applicant Shri Awate in O.A.No.28/2018 & O.A.No.938/2018 is the batch-mate of the Applicant in the present O.A. The Division Bench while deciding the said dismissal order passed under Article 311(2), proviso (2)

has considered Section 25 of Maharashtra Police Act, however has missed the very relevant provisions on appointing authority in the Maharashtra Police Act and Bombay Police Manual. The ratio laid down in the case of ***Krishna Kumar (supra)***, can be culled out that one Bench of the Hon'ble Supreme Court, may be right or wrong, still it is binding on the other Division Benches. The learned Counsel has argued that the State of Maharashtra has challenged the order of this Tribunal in Awate's matter by filing Writ Petition Stamp No.4777/2000 along with Interim application No.1/2020 and the Hon'ble First Court of the Bombay High Court by order dated 27.10.2020 has dismissed the said petition and upheld the order of the Tribunal hence doctrine of merger is attracted. Liberty was granted to the Respondents to file Review Application only to the extent of a particular document i.e. order which was not available and was not placed before the Tribunal. We make it clear that the Hon'ble Division Bench of the Bombay High Court has not dismissed the matter considering its merits especially factual and legal aspects on the point of appointing authority and its powers in view of the Bombay Police Act 1951, Bombay Police (Punishments and Appeals) Rules 1956 and Bombay Police Manual 1959. Therefore, the application of doctrine of merger in the present case is a total misconception of law. Thus neither the Doctrine of Merger nor the Law of Precedent will come in the way in deciding the present matter.

14. Let us address the cases relied by the Applicant. The Division Bench of Bombay High Court in the ***Namdeo Tukaram Shelke's case (supra)***, has restored the O.A. for reconsideration. In paragraph 9 in the said Writ Petition it is mentioned that there is common judgment and order in the connected O.A. before the Tribunal and the Tribunal has dismissed the O.A. without referring to the said common order. The Tribunal has, therefore, committed the error of law in not considering and applying the said common order to the facts of the case of the Petitioner. Hence the order passed by the Tribunal is illegal, perverse and therefore liable to be quashed and set aside. The matter was sent back as remanded for reconsideration. In the present case we have taken into account the order passed by the earlier Division Bench of the Tribunal.

15. In the case of ***R. Parthasarathy (supra)*** the Bombay High Court has referred the judgment of ***Ram Jivan's case (supra)***. Further in case of ***R. Parthasarathy (supra)*** the Bombay High Court has referred to the judgment of ***Panjuman Hassomal Advani (supra)*** wherein it was held that the interpretation of the judgment of Hon'ble Supreme Court made by one Division Bench of High Court cannot be ignored or brushed aside by another Division Bench on the ground that the interpretation is not correct. In the judgment of ***R. Parthasarathy (supra)***, the Bombay High

Court has also referred the case of **Ambika Prasad (supra)** wherein it is held that,

“Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. In this view, other submissions sparkling with creative ingenuity and presented with higher-pressure advocacy, cannot persuade us to re-open what was laid down for the guidance of the nation as a solemn proposition by the epic fundamental rights case.”]

16. The judgment of Andhra High Court in case of **Sri Venkateswara Rice (supra)**, it is held that one coordinate Bench of the same High Court cannot view contrary to the decision given earlier by the another Bench of that Court and the said Court is bound by the earlier decision.

17. The Bombay High Court in **Shri Rahulkumar Babasaheb Yewale’s case (supra)**, in the said petition the Government Pleader had requested certain observations to be expunged in that Division Bench and asked the State Government to issue afresh notification delegating the powers of the Director General of Police to the Additional Director General of Police (Administration) as that would be the appropriate remedial measure. This authority is not relevant to the present case.

18. We have also perused the order dated 16.11.2019 of Mr. Awate’s dismissal. In the D.E. he was held guilty. His dismissal

order was issued by the Special I.G., Konkan Division. The order of dismissal of the present Applicant, Mr. Bansode is also issued by the Special I.G., Kolhapur wherein no D.E. under Article 311(1) was conducted. The challenge given in respect of the competency of Special Inspector General of Police in the case of Shri Dnyaneshwar L. Awate, Applicant in O.A.No.28/2018 & O.A.No.938/2018 is upheld by the other Division Bench of the Maharashtra Administrative Tribunal, Bombay Bench. No service book of Mr. Awate, his first appointment order and relevant provision of law are discussed.

19. We are undoubtedly bound by the Law of Precedent and the ratio laid down by the Hon'ble Supreme Court and the High Court giving authoritative verdict on the point of Precedent. However, the Law of Precedent cannot be applied superficially especially when the other Division Bench has no opportunity to discuss the relevant rules and the provisions as they were not produced or argued at all before the earlier Bench. The discussion on the appointment order, relevant rules and the provisions of law is therefore completely silent. Though the facts are identical another Division Bench is not expected to turn Nelson's eye towards those relevant rules and the law, only because the earlier Division Bench did not refer and discuss the same and is totally silent about it. The legal issue can be raised and argued at any stage, if it is not

adjudicated by the earlier Court. On the point of competency of the appointing as well as dismissing authority it is useful to point out the relevant provisions in further discussion, which will fortify our this view.

20. On this background, we find it necessary to deal with his appointing order of the applicant along with the provisions of Maharashtra Police Act, 1951 and the Bombay Police Manual, 1959. The power to suspend pending Criminal enquiry is under Section 25(1)(b) of Maharashtra Police Act, 1951. It is reproduced as follows :-

“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 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 in the opinion of the State Government or such authorised 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)."

It is necessary to quote Section 25(2) as it is mentioned in Section 25(1) of the Maharashtra Police Act.

"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)."

The learned Advocate for the Applicant has laboured to convince us the basic foundation stone i.e. order of appointment is not 01.10.2012, but issued by Deputy Inspector General of Police the order dated 24.09.2013 the order of posting is issued by the Inspector General of Police to dislodge the order of dismissal. The arguments of learned Advocate Mr. Bandiwadekar that passing of suspension order earlier and thereafter dismissal order amounts to double jeopardy, since, the suspension is itself punishment and hence the law does not permit the respondent to issue order of dismissal, is baseless. In the present case criminal case was pending against the Applicant and as argued by learned C.P.O. suspension is not a punishment even though a wrong provision is mentioned. The submission of learned Advocate that the Bombay Police Manual has no force of law and it is not binding is completely devoid of merit and not acceptable. The Bombay Police

Manual is the set of rules and regulations governing the working of the Police Force in Maharashtra. These are the detailed procedural instructions which are required to be followed in the Police Department. It also includes the rules and standing orders issued by the top authority of the Police. The various rules and regulations framed by the office of the Inspector General of Police under his Rule for the good and efficient administration of the Police force are incorporated in the Bombay Police Manual. The rules in the Bombay Police Manual are also considered as authoritative procedure for the Police Department. The rules in the Bombay Police Manual are consistent with the Maharashtra Police Act and therefore it is valid and cannot be questioned unless it is held void by the judicial order. The Bombay Police Manual is a handbook on procedure in day to day business like the Civil and Criminal Manuals. The Civil Manual and Criminal Manual respectively is followed and acted upon and it is well accepted under the law that it has authoritative force and binding on the working of the Civil and Criminal Courts. The same is the case of the Bombay Police Manual.

21. The Rule 56 of Bombay Police Manual, states the recruitment procedure for Sub Inspectors. Under Rule 56(2) the selection of candidates for direct recruitment of Sub Inspectors is made by the Selection Committee. Chapter 2 of Bombay Police

Manual is on recruitment and as per Rule 33 (b) in the areas out of Bombay, the Deputy Inspector General of Police is the Appointing Authority of Sub Inspectors. Hence, no Police Sub Inspector can be removed from the services by the order issued by the authority not below the rank of the Appointing Authority i.e. the Deputy Inspector General of Police.

22. As per the Bombay Police Manual, Rule 33(b), the Deputy Inspector General is the authority to recruit or appoint a Police Sub Inspector. Therefore as per the Article 311(1) of the Constitution of India, 1949, the Appointing Authority itself or any authority above the Appointing Authority are empowered to issue the order of dismissal of the Police Sub Inspector.

23. In the present case, the order of dismissal is issued by the Special Inspector General, Kolhapur. The question to be answered is,

“Whether the post of Special Inspector General is equivalent or above the rank of Deputy Inspector General of Police ?

24. The learned C.P.O. has produced the circular dated 20.08.2011.

25. The learned Advocate Shri Bandiwadekar has objected the production of the Circular because it is not specifically mentioned

anywhere in the affidavit-in-reply. However, he was given time to make submissions and argue.

26. It is worth to look into and consider the affidavit-in-reply of Special Inspector General of Police. In the affidavit-in-reply of Special I.G. Shri Vishwas Narayan Nangare Patil, dated 08.03.2017, in paragraph 19 the Respondents has stated that the Deputy Inspector General and Director of the Maharashtra Police Academy is the competent authority to appoint the Applicant. In paragraph 19.3 of the said affidavit it is contended that the challenge to competency of the authority is patently false because nowhere while giving the 'posting', the word 'appointment' is used by the D.G. It is also mentioned further that it is not necessary that the dismissing authority has to be the same as the Appointing Authority. It suffices if the Appointing Authority and dismissal authority are of equal rank and not subordinate. It was further mentioned in paragraph 19.2 that the post of Director of the Maharashtra Police Academy has been upgraded to the rank of the Special Inspector General of Police. Director is assisted by the Deputy Director and the said rank is equivalent to the rank of Deputy Inspector General of Police. The post of Deputy Director is equivalent to the post of Deputy Inspector General of Police is mentioned in the affidavit.

27. During the course of argument i.e. on 18.02.2021 we have allowed learned Advocate Mr. Bandiwadekar to make submissions on this letter which was produced by learned C.P.O. on the next date. Moreover, we did consider that the said circular was issued on 20.08.2011 much earlier to dismissal order.

28. The said letter discloses the appointment of the Police Sub Inspectors taking training at Maharashtra Police Academy, Nashik. It is referred that as per Bombay Police Manual, 56(4) the Deputy Inspector General of Police is the Appointing Authority of Police Sub Inspectors.

29. In **Krishna Kumar (supra)** the applicant who was working as Train Lighting Inspector was removed from service by the authority who was subordinate in rank to the appointing authority, i.e Chief Electrical Engineer. The Supreme Court held that,

“The subsequent authorization made in favour of the authority passing the order of removal in regard to making appointment to the post held by the appellant cannot confer upon him the power to remove him. An officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another.”

30. By way of reply, the learned Advocate Shri Bandiwadekar for the Applicant on the point of competency of the Special Inspector General who issued the order of dismissal relied on the judgment of Bombay High Court in case of **Balu Dasu Rathod (supra)**. He

has submitted that the said judgment was the case under Prevention of Corruption Act, 1988, wherein the Additional Commissioner of Police has accorded sanction under Section 19 of the Prevention of Corruption Act, 1988. He argued that the Hon'ble High Court held that the Additional Commissioner of Police was not competent to give sanction because Appointing Authority of the Police Sub Inspector was the Director General of Police (D.G.) and therefore the sanction to prosecute cannot be treated as valid and so cognizance taken by the Special Court was erroneous. He submitted that the Thane Special Court in **Balu Dasu Rathod's (supra)** has erroneously relied on the G.R. dated 12.02.2013 and has rejected the application for discharge. The learned Counsel further argued that the present applicant was appointed by the order dated 16.07.2013 which was signed by the Special Inspector General of Police (Establishment), Maharashtra State, on behalf of the Director General of Police (D.G.). Unless there is specific delegation of powers by the D.G., the subordinate officer to the D.G. cannot invoke the powers of the D.G.

31. The applicant in the case of **Balu Dasu Rathod (supra)** was appointed by the Special Inspector General of Police on behalf of the Director General of Police and therefore the Additional Commissioner of Police who gave sanction to prosecute under Section 19 in the Prevention of Corruption Act, 1988 obviously was rightly not a competent authority. The case of the applicant in the

present matter, is different as his appointment is by the Deputy Inspector General of Police vide order dated 01.10.2012. It is useful to refer to Section 6(2)(b) of Maharashtra Police Act 1951, where in clause (a), (b) and (c) reads as under :-

“(a) The State Government may appoint one or more Additional Director General and Inspector General, one or more Special Inspector General and one or more Deputy Inspector General.

(b) The State Government may direct that any of the powers, functions, duties and responsibilities and the authority of the Director-General and Inspector General may be exercised, performed or discharged, as the case may be, by a Special Inspector General or an Additional Inspector General or a Deputy Inspector General.

(c) The State Government may also by a general or special order direct that an Additional Director General and Inspector General or a Special Inspector General or a Deputy Inspector General shall assist and aid the Director General and Inspector General in the performance, exercise and discharge of his powers, functions, duties, responsibilities and authority in such manner and to such extent as may be specified in the order.”

Thus Section 6 pertains to Director General of Police, Inspector General of Police, Deputy Inspector General of Police. Under sub section 2 the State Government may appoint one or more Special Inspector General or Deputy Inspector General and by order the State Government may delegate the powers of Director General of Police to Special Inspector General or Deputy Inspector

General of Police, except the powers of major punishment under Section 25 of the Maharashtra Police Act, which includes punishment of dismissal or removal. Basically Deputy Inspector General of Police is an appointing authority of Police Sub Inspector, so the issue of delegation of powers by Director General of Police to Deputy Inspector General of Police / Special Inspector General of Police does not arise in the present case. Thus sub Section 2 of Section 6 is enabling the State to delegate the powers of Director General of Police to other officers. The learned Counsel for the Applicant has produced and referred the chart of the Police officers at various ranks in the Police Department which is available to him on the web-site of the Director General of Police. We looked into the said chart. It shows the placement of the various officers of Deputy Inspector General of Police and Special Inspector General who are coming under Director General of Police. They are placed in Mumbai and also in other Districts. It cannot be said that the chart shows the exact power based on hierarchy of the officers however it is of their placement.

32. The learned Advocate Mr. Bandiwadekar on our query has produced the G.R. dated 12.02.2013 which was referred to in the case of **Balu Dasu Rathod's (supra)**. The learned Counsel submitted that the said G.R. was taken out under Section 6(2)(b) and it is illegal.

33. The G.R. dated 12.02.2013 issued by the State of Maharashtra, General Administration Department pertains to granting sanction to prosecute the Government Servants under Prevention of Corruption Act, 1988. The authorities competent who can accord sanction under Section 19 of Prevention of Corruption Act are mentioned therein. In the said G.R. it is made clear that the Police Inspector and the Officers below the names of competent authority to give sanction are mentioned in the chart. It further states the Deputy Inspector General of Police or the Officer above is competent to accord sanction under Section 19 of the Prevention of Corruption Act to Police Sub Inspector.

34. Thus, the delegation of powers in G.R. dated 12.02.2013 is consistent with the Section 6(2)(b). Undoubtedly, the State Government has superintendence over the Police Force throughout. Thus, the Bombay Police Manual, Rule 56 by which the Appointing Authority of Police Sub Inspector is Deputy Inspector General of Police is very much consistent with Section 6(2)(b) of the Act. Moreover, the Government further by way of clarification has stated that in Chapter 2 of the Recruitment under Rule 33 of the Bombay Police Manual the Appointing Authority of Sub Inspector is mentioned as Deputy Inspector General of Police in areas outside Greater Mumbai. Mr. Vishwas Narayan Nangare Patil, Special Inspector General of Police is senior in rank to Deputy Inspector General of Police. The Government by Circular

dated 20.08.2011 which is consistent with Bombay Police Manual states that the Officers of the rank of Deputy Inspector General of Police or Special Inspector General also should be empowered to issue the order of removal, dismissal, compulsory retirement.

35. The learned Advocate Mr. Bandiwadekar by way of reply on the point of competency has relied on the judgment of Rajasthan High Court, Jaipur Bench in ***Nand Shankar's case (supra)***, wherein the Police Sub Inspector who was appointed by Inspector General of Police on probation and after completing training he was confirmed by the D.I.G. He was dismissed from the services by order of D.I.G. The dismissal was challenged by the applicant on the ground that D.I.G. is not the competent authority, but the I.G. is the competent authority and so dismissal should go. While dealing with the aspect of the competency the Division Bench of Rajasthan held that the appointment was given by the D.I.G. after completion of probation, hence D.I.G. is the appointing authority though earlier appointment order was issued made by the I.G., hence, competent authority to remove or dismiss is the D.I.G. and not I.G. and so the dismissal by the order given by the D.I.G. was upheld and the petition was dismissed. The Hon'ble Rajasthan High Court has considered the period of probation as only the temporary appointment till the officer has proved himself fit to fill in the permanent appointment. In the present case, the situation

is reverse as appointing authority is D.I.G. and later order of training was given by the I.G. The present case though, prima facie, appear identical to ***Nand Shankar's case (supra)*** however after close scrutiny of the provisions of law it is not applicable. The submissions of Mr. Bandiwadekar that after completion of training appointment order was given by the I.G.P., are the misleading submissions because as per the services of the Police Personnel below P.I. are regulated under Maharashtra Police Act and also Maharashtra Police Manual, wherein specifically mentioned that the D.I.G. is the competent authority to appoint the P.S.I. On careful reading of the said judgment we found that the Rajasthan High Court had no opportunity to discuss any such provisions in Police Act or Police Manual laying the law and the Rules regarding the appointment of Rajasthan Police Officers which can be similar to Maharashtra Police Act, 1951 and Bombay Police Manual 1959. Hence, we cannot rely on the said ratio.

36. The learned Counsel for the Applicant relied on the Notification dated 22.05.1979 issued by Mr. R.D. Pradhan, Secretary to the Government. The said Notification was issued under Clause (b) of sub section 2 of Section 6 of the Bombay Police Act, 1951 and it was declared that the powers, functions, duties and responsibilities and the authority of Inspector General of Police may also be exercised, performed or discharged, as the case

may be, by the Special Inspector General of Police in the office of Inspector General of Police.

37. The learned Advocate Shri Bandiwadekar has wrongly relied on the notification dated 22.05.1979 issued by Mr. R.D. Pradhan, Secretary to the Government. The said Notification if read carefully is only regarding the powers of the Inspector General of Police which are conferred to him under Section 6 of Bombay Police Act, 1951. The Notification states that,

*“all the powers, functions, duties and responsibilities and the authority of the Inspector General of Police under the said Act and the rules and orders made thereunder (except the power under Section 25 to make rules and the powers under clause (a) of sub Rule section (2) of the section 25 of that Act to inflict a major punishment on **any Inspector** or other police officer who is appointed by the Inspector General of Police may also be exercised, performed or discharged, as the case may be, by the Special Inspector General of Police in the office of the Inspector General of Police.”*

Thus, nothing in the Notification is contrary to the constitutional provisions under Article 311 of the Constitution of India or any other Circular of the State. The core point of the Article 311 is the person who appoints, he or any officer above him are empowered to use the powers of removal, dismissal or reduction in rank of the Government servant. Thus, whether officer who is below rank of appointment authority has no power under Article 311 of the Constitution of India. The State

Government has powers to direct that any of the powers, functions, duties and responsibilities and the authority of the Director-General and Inspector General may be exercised, performed or discharged, as the case may be, by a Special Inspector General or an Additional Inspector General or a Deputy Inspector General. Thus Section 6(2)(b) is about the delegation of the powers. As per the Bombay Police (Punishments and Appeals) Rules 1956 Deputy Inspector General of Police i.e. DIG is given powers as per Schedule 1, Rule 5 which is reproduced below:-

<i>Sr</i>	<i>Designation of the Officer having authority to punish</i>	<i>Rank of the officer which can be punished</i>	<i>Kind of punishment which may be imposed</i>	<i>Restrictions (in any) subject to which the officer specified in column 1 is authorized to punish</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
1.	Inspector-General of Police	All officers to whom the Bombay Police (Punishments and Appeals) Rules, 1956, are applicable.	All punishments specified in rule 3, subject to the restrictions specified in column 4.	Restriction laid down in clause (a) of the proviso to sub-rule (2) of rule 3.
2	Deputy Inspector General of Police	(1) All officers to whom the Bombay Police (Punishments and Appeals) Rules, 1956, are applicable, except Inspector.	All punishments specified in rule 3, subject to the restrictions specified in column 4.	(a) Restriction laid down in clause (a) of the proviso to sub-rule (2) of rule 3.
		(2) Inspectors.	Caution and reprimand.	(b) Punishment of compulsory retirement, removal or dismissal shall not be inflicted by any authority lower in rank than by which the police officer was appointed.

3.	Superintendent of Police	Sub-Inspector, Assistant Inspectors, Constables and Sub-Head Constables	All punishments specified in rule 3, subject to the restrictions specified in column 4.	(a) Restriction laid down in clause (i) of sub-rule (1-A), and clause (a) of the proviso to sub-rule (2) of rule 3.
----	--------------------------	---	---	---

Section 56 (4) of the Bombay Police Manual reads as under :-

“The power to appoint Sub-Inspectors from amongst candidates selected by the Selection Committee and approved by Government has been delegated to the Deputy Inspectors General of Police under Article 309 of the Constitution of India.”

38. As per Section 6(b) read with Rule 56(4) of the Bombay Police Manual, the Appointing Authority of the Police Sub Inspector is the Deputy Inspector General. The first letter of appointment of the applicant dated 01.10.2012 is by Deputy Inspector General of Police. Shri Vishwas Narayan Nangare Patil is Special Inspector General of Police. Thus, the position and the powers of Director General of Police and Special Inspector General of Police are equal and therefore Mr. Vishwas Narayan Nangare Patil being superior to the Appointing Authority has power to remove, dismiss and reduce the rank of the Applicant.

39. The submissions of learned Advocate Shri Bandiwadkar that the Applicant was appointed on 24.09.2013 only when he has completed his training, are summarily rejected in view of clear order of his appointment dated 01.10.2012 and provisions under Maharashtra Police Act 1951 and Bombay Police Manual 1959.

The authority of Rajasthan High Court relied by learned Advocate is not applicable in view of different provisions of Bombay Police Act and the Bombay Police Manual. Moreover, all the provisions in Maharashtra Police Act 1951 and Bombay Police Manual 1959 are consistent with Article 309, Article 311 and Article 312 of the Constitution of India. The Police Officer in the State is appointed only once i.e. when he receives his first order of appointment. The second order whatever may be after his training or probation is only the order of completion of his training or probation giving the confirmation to the first order and such orders are mainly the orders of giving the posting. We have taken note and perusal of service book of the applicant wherein the date of appointment is mentioned as 01.10.2012. A lot more hair splitting is done to distinguish between Marathi words, 'नियुक्ती' and 'नेमणूक', / which can be translated as 'appointment' and 'posting'. We are conversant with the vernacular and so also the nuances in English language. Often in all the languages the same word is used with different connotation. Hence we are unable to appreciate this jugglery of words as argued by the learned Counsel for the Applicant.

40. We have not an iota of doubt in our mind that the appointment order dated 01.10.2012 is issued by the Deputy Inspector General of Police and not by the Director General of Police, hence the order of dismissal is legal, valid and consistent

with law laid down under Article 311(2)(b) of the Constitution of India 1949.

41. Article 310 of the Constitution of India 1949 is passed on the doctrine of pleasure as every Civil Servant in the State holds any office under the State during the pleasure of the Governor i.e. State. Article 311 (1) of the Constitution of India 1949 puts bar on dismissal, removal or reduction in rank of a person employed by an authority or subordinate to that by which he was appointed on the civil post in Union or State.

42. Sub section 2 of Article 311 states no person can be dismissed, removed or reduced in rank, except after an enquiry wherein he was given memorandum of charges and the reasonable opportunity of audience. However, the proviso (a), (b) and (c) of sub section 2 of Article 311 lifts the bar of enquiry under the circumstances. Under proviso (d), the person is convicted on criminal charges, then the civil servant can be dismissed, removed or reduced in rank without enquiry. Under proviso (b), Sub Section 2 of Article 311 whether the authority is empowered to dismiss, remove or reduce in rank, to pass such order is satisfied that for some reasons which are to be recorded in writing it is not reasonably practicable to hold such enquiry and under proviso (c) if the President or the Governor is satisfied that in the interest of security of the State it is expedient to hold such enquiry. Thus in

the case of dismissal, removal or reduction in rank the two conditions are required to be followed :-

- (i) a person issuing the order of dismissal, reduction in rank or removal should not be lower in rank or subordinate to that by which he was appointed.
- (ii) Such action should not be taken without enquiry.

43. The provisos of Article 311(2) relaxes the restrictions of holding enquiry. As (a), (b) and (c) are provisos to Sub Section (2) of Article 311, (a) and (c) provisos are quite clear. However, law makers have used the particular physiology in proviso (b) of Article 311(2) by which discretionary power bestowed upon the authority is always arguable issue in the Courts when the action taken under proviso (b) of Article 311(2) by the authority is challenged. The said proviso though empowers the authority to dismiss, remove or reduce in rank of a person without enquiry it also lays down the inbuilt restrictions on the authority while using its discretion, which are as under :-

- (a) Satisfaction of the authority for some reason.
- (b) The reasons should be recorded in writing.
- (c) To conduct an enquiry is not reasonably practicable.

44. To give opportunity to the delinquent officer to put his case and to explain the situation is consistent with the natural justice and legal norms. However, there are certain circumstances in

which not only the gravity of the offence but also the type of the post or service rendered by the delinquent officer wherein it is not possible to conduct the enquiry matters. On this point we have the landmark judgment of the Larger Bench of the Hon'ble Supreme Court, **Union Of India And Another Versus Tulsiram Patel And Others, and group of matters, reported in 1985 AIR 1416** wherein Article 311 and proviso (2) is discussed at length.

Under our Constitution this is provided for by the Acts and Rules made under Article 309 as also by the safeguards provided in clauses (1) and (2) of Article 311. It is, however, as much in public interest and for public good that government servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service and that the protection afforded to them by the Acts and rules made under Article 309 and by Article 311 be not abused by them to the detriment of public interest and public good. When a situation as envisaged in one of the three clauses of the second proviso to clause (2) of Article 311 arises and the relevant clause is properly applied and the disciplinary inquiry dispensed with, the concerned government servant cannot be heard to complain that he is deprived of his livelihood. The livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood is provided by the public exchequer and the taking away of such livelihood is in the public interest and for public good, the former must yield to the latter. These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown which has been inherited by India and transposed into our

Constitution adapted to suit the Constitutional set up of our Republic but because public policy requires, public interest needs and public good demands that there should be such a doctrine. The pleasure doctrine embodied in Article 310 (1), the protection afforded to civil servants by clauses (1) and (2) of Article 311 and the withdrawal of the protection under clause (2) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good.

45. While considering the order issued by the then Special Inspector General of Police, Shri Vishwas Narayan Nangare Patil, the learned Advocate Mr. Bandiwadekar has compared the note dated 16.08.2016 and the actual order of dismissal dated 18.08.2016. The incident of rape took place on 05.08.2016. The offence was registered on 06.08.2016 under Section 376 of Indian Penal Code (IPC) and under Section 4 and 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The suspension was under Section 25(2)(c) of the Maharashtra Police Act, 1951 along with Rules 3[a-2] and [1-A][i][b] of the Bombay Police (Punishments and Appeals) Rules, 1956.

46. We have perused the noting dated 16.08.2016 and order dated 18.08.2016. The reasons mentioned in writing show the officer is satisfied that to conduct an enquiry is not reasonably practicable. A handwritten note of the reasons is prepared by the Special I.G. himself. He has mentioned the reasons that why it is

not reasonably practicable to conduct an enquiry. We appreciate the note of Special I.G. In the order dated 18.08.2016 there is a reference of the report of the enquiry conducted by the Superintendent of Police, Sangli, wherein the delinquent officer has not obeyed the order dated 29.07.2016 of his transfer to Sangli. He had not given any application for leave and for his absenteeism and without any application he left his jurisdiction at Sangli. The authority remarked that he was an irresponsible police officer. However, that is not the real reason of dispensing with the enquiry. The report dated 10.08.2016 given by Shri Raj Tilak Roushan, Assistant Superintendent of Police (SDPO), Tuljapur, Osmanabad is also referred to, wherein the registration of Criminal offence under Section 4 and 8 of POCSO Act is noted and because of this registration of the offence the Police Department has suffered disrepute. In the order the authority has given the details of the incident wherein it is mentioned that the victim is minor and how the Crime was shunned by various social organizations which led to harsh criticism and hatred about the police department. Further the delinquent officer has abused his post and power by giving threats by his service revolver and also it is said that in the public interest the said enquiry is not practicable. He has also mentioned that in view of the social and moral perspective it is not possible to conduct enquiry against him. In the written notes he has elaborated the reasons of dispensing with the enquiry. It is

further mentioned that the victim (girl) would have to give her evidence at the time of enquiry and would be subjected to cross examination and this would have affected the criminal trial itself. The evidence of the prosecutrix can be diluted and therefore the Court should be the first forum of the cross examination and the prosecutrix who is minor is vulnerable and would face trauma which she has already suffered and undergone and therefore he has expressed that such procedure is best left to the Court rather than the administrative enquiry. So also the applicant has disregarded the fundamental norms of the disciplined police department and has tarnished the image of the police department.

47. The submissions of learned Advocate Mr. Bandiwadekar that the concerned authority has not given reasons properly and has only taken into account the criticism, media reports and protest by the social organizations, and only on this ground by coming under the pressure, the authority has dispensed with the enquiry do not hold substance, on the background of this note.

48. After going through the various erudite observations and law laid down by the Hon'ble Supreme Court and the High Court and also earlier judgments and the orders passed by this Tribunal under Article 311(2) proviso, which are precedent and binding on us, we have reached following conclusions :-

49. We have carefully examined all the available written notes prepared by the concerned officer and so also the order issued by the officer. The submission of learned Advocate Mr. Bandiwadekar that the noting dated 16.08.2016 is after thought and prepared subsequently is just a stray submission made by him and hence not acceptable without any basis. The learned Advocate Mr. Bandiwadekar has missed the vital point which is expressed by the officer while noting down the reasons and also it is voiced in the order. True, the offence is neither seditious nor terrorists act. However, it does not mean the offence is not equally grave and heinous. Basically in the offence against the woman, the authority or the judicial forum should need to have victim / woman centric approach. What the victim will go through during the enquiry if the enquiry conducted and what is the effect and impact of such enquiry on victim is the most important material point. It is not only how grave or severe the offence is, but the mental condition and the trauma of the victim if she is required to depose repeatedly i.e. at the time of recording FIR, at the time of enquiry and again before the Court, is considered by the Special Inspector General of Police. To give account of such physical unwanted incident again and again before the different authorities is an ordeal for the victim. The officer has rightly mentioned that the victim would have to undergo the cross examination at the time of enquiry and again she would be subjected to horrifying cross examination

before the criminal Court. It is also mentioned that while narrating the incident repeatedly may also create some discrepancy which could be exploited in future in the Court. This is not the case of only Section 376 of IPC, but the girl was minor so Section 4 and 8 of POCSO are invoked. The victim being the minor the authority should be more sensitive towards her plight during the enquiry and before the Court. As mentioned in the case of **Tulsiram Patel (supra)** by the Supreme Court though the delinquent officer has right to know the charges against him and he is to be given opportunity of hearing and clarify his charges, yet certain misconduct is such which becomes the issue of public interest/ public safety. Considering the nature of the offence and the person who has committed this offence himself is the protector of law and therefore the decision of dispensing with the enquiry is justified.

50. On the point 'not reasonably practicable' under Article 311(2)(b) enquiry is not reasonably practicable relied on the decision of the Supreme Court in the case of **Sudesh Kumar (supra)**. The appellant, Constable, was removed from service on the basis of complaint said to have been lodged by one Japanese national regarding bribe money paid by him. The appellant's service was terminated under Article 311(2) (b) of the Constitution of India wherein the enquiry was dispensed with. The Supreme Court held that :-

“Now it is established principle of law that an enquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311(2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry and in the impugned order no satisfactory reasons were mentioned.”

51. In **Tarsem Singh’s case (supra)**, the Supreme Court addressed the issue of departmental enquiry and dispensing with the enquiry under Article 311(2)(b) of the Constitution of India. The appellant, a Police Constable, had outraged the modesty of a woman by entering her house along with his accomplices and raped her. He was dismissed from service without holding departmental enquiry by taking recourse to proviso (b) to Article 311(2) of the Constitution of India. The Supreme Court held that :-

“A constitutional right conferred upon the delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry.

In this case the enquiry was dispensed with only on the ground that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means. However, no material has been placed on record to show that subjective satisfaction arrived at by the statutory authority, was based upon objective criteria and so also on the ground that there was no need for a regular departmental enquiry relying on the basis of a preliminary enquiry. The Supreme Court took a view that if a preliminary enquiry could be conducted, then why a formal departmental enquiry could not have been initiated against the appellant.”

In case of **Singh Rabidas (supra)**, the Respondent was a Security Officer and when he was on duty there was a theft and he allowed the outsider to carry the stolen material taking bribe. So the applicant was dismissed from service on the ground of misconduct. The Supreme Court held that:-

“There was total absence of material or good ground to dispense with the enquiry.”

The judgment of this Tribunal in case of **Shri Ravindra Medage (supra)** the witnesses did not express fear, and therefore, the Tribunal held that order of dismissal without holding enquiry is illegal.

The judgment of Bombay High Court in case of **Ashok Dawale (supra)**, who was the Assistant Police Inspector was dismissed from services under Article 311(2) of the Constitution of India without enquiry as he was indulge into smuggling of foreign liquor. The Bombay High Court has held that only on the ground of seriousness of the charge or because of the gravity of the charge, the enquiry could not have been dispensed with and relied on the judgment of Hon’ble Supreme Court in case of **Union of India Vs. Tulshiram Patel; AIR 1985 SC 1416** and in case of **S.P Kalamkar (supra)** along with other two matters where all the Police Officers, working as Senior Inspector of Police were dismissed under Article 311(2)(b) of the Constitution of India without conducting enquiry. In the said matter the orders of

removal were passed by the Commissioner of Police who was subordinate to the rank of Director General of Police / Inspector General of Police who was appointing authority. Therefore that was the matter of competency. The Maharashtra Administrative Tribunal on quashing and setting said the order of removal of the officer granting liberty to the State of proceed against the officer if they so deemed fit in accordance with law. However, those orders were passed 10 years back. After 10 years when these matters were heard finally by the Court, the Bombay High Court has absorbed that the State never applied to the Court to initiate the proceedings against those officers in accordance with the liberty given to them by the M.A.T. and therefore one of the grounds of giving relief to the Respondents-Officers and so the Writ Petition filed by the State was rejected.

The decision of the Supreme Court in ***Ved Mitter Gill (supra)*** wherein the appellant Superintendent of Jail and Petitioners, Assistant Superintendent of Jail were responsible for safe custody of all prisoners. Four under trial prisoner in the custody who were accused of assassination of Chief Minister's murder had escaped from the jail digging 94 feet underground tunnel. Though the said Civil Appeal was dismissed, the Supreme Court had discussed second proviso to Article 311(2) of the Constitution of India. The Supreme Court stated three important points:-

“Firstly the conduct of the delinquent employee should be such as would justify one of the three punishments, namely, dismissal, removal or reduction in rank. Secondly, the satisfaction of the competent authority that it is not reasonably practicable to hold an enquiry as contemplated under Article 311(2); and thirdly, the competent authority must record reasons of the above satisfaction in writing.”

52. We have considered the law laid down by the Hon'ble Supreme Court and the Hon'ble High Courts on the point of powers of the Appointing Authority or above the Appointing Authority, while dismissing any Government servant by dispensing with the enquiry. In the present case, the decision taken by the Special Inspector General of Police was the right decision that it was not reasonably practicable to conduct the enquiry in such matter. Thus we answer the two grounds raised in paragraph 1 of this Original Application as follows :-

Issue : In the present case, the Officer, who issued the order of dismissal is not of the rank of Appointing Authority or subordinate to him.

Answer : The Officer, issuing the order of dismissal is the Special Inspector General of Police and is above the rank of Deputy Inspector General of Police, who is the Appointing Authority, hence competent.

Issue : The reasons for dispensing with the enquiry before dismissal are not stated.

Answer : Reasons for dispensing with the enquiry before the dismissal as contemplated under Article 311(2)(b) of the Constitution of India are stated before the issuance of the order of dismissal.

53. Thus, we uphold the dismissal order dated 18.08.2016 issued by the Special Inspector General of Police as valid and legal and the Original Application is dismissed.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson