

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR.**

ORIGINAL APPLICATION NO. 21 of 2008

Altaf Ahmed S/o Late Abdul Gani Ahmed,
Age about 45 years,
Occupation Nil,
Resident of Police Quarter no 2,
Opposite Police Control Room,
Near Passport Office, Civil Lines,
Nagpur.

Applicant

Versus

1. State of Maharashtra through
its Secretary,
Department of Home,
Secretariat, Bombay 400 032.
2. Deputy Commissioner of Police (Headquarter),
Police Headquarter, Civil Lines,
Nagpur.

Shri Sashikant Borkar, Counsel for Applicants
Smt M A Barabde, PO for Respondents

CORAM: B. Majumdar : Vice Chairman
S S Hingne, Member (Judicial)

DATE: 10 March, 2016

PER VICE CHAIRMAN

The applicant, a Police Havildar, has filed this OA challenging his dismissal from service. In 2007, following registration of crimes against him under sections 294, 506 (b), 509, 457(7), 353 and 186, he was placed under suspension on 7.12.2007. He was dismissed from service vide

order dated 19.12.2007 by Deputy Commissioner of Police (Headquarter) (R/3). The applicant has challenged this order in the OA. Following a decision by the Government on the appeal submitted by the applicant, he came to be reinstated in service vide order of R/2 dated 1.12.2008 w.e.f. the date of receipt of the order. He was acquitted in the criminal case on 21.8.2011.

2. According to the applicant, R/2, while issuing the order of dismissal failed to record in writing the reason why he found that holding of an inquiry was not practicable and therefore in the absence of any satisfaction by the concerned authority and in the absence of any reasons to be recorded in writing, it cannot be said that holding of departmental inquiry is not reasonably practicable and that in the interest and security of the State, the powers under article 311 (2) (b) have been exercised for dismissing his services. No opportunity of hearing was given and a show cause notice was not served upon him, as was obligatory in terms of the provisions of section 26 of the Bombay Police Act, 1951.

3. Respondent no. 2, Dy. Commissioner of Police (Headquarters), in his affidavit dated 30.1.2008 submits as follow:

“7. It is true that the applicant had interfered in the administration. Vide Crime. No.457/2007 an offence came to be registered U/s 353 and 183 of the Indian Penal Code. Allegation made against applicant was proper that, he refused to accept the notice, which amounts to an offence punishable under Sec. 186 of the IPC. Both the complaints, one lodged by the complainant Mrs. Kanchanmala Premchand Chopda on December 3, 2007 vide Crime No.3253/2007 for the offences punishable under Section 294, 506(B) and 509 of the Indian Penal Code and subsequent complaint by the Police Station Officer vide Crime No.457/2007 for the offences punishable under Sections 353 and 186 of the IPC was as per the record. It is submitted that the applicant was involved in the said matter.

It is submitted that the Applicant was also prosecuted for offences punishable under Sections 170, 384 r/w Section 34 of Indian Penal Code vide Wadi Police Station Crime No. 110/2003 and the charge sheet was filed before the Judicial Magistrate First Class, Court No. 2, Nagpur. Such persons are blot on police department.

8. It is specifically denied that, no opportunity of hearing on (or) show cause notice was ever served upon him. It is submitted that the Applicant was served with the Notice dated 2.12.2007 under Section 149 of Criminal Procedure Code however he even refused to accept it.

9. It is submitted that taking into consideration the facts and circumstances of the case, the answering respondent issued the orders as per Article 311(2)(b) of Constitution of India. Therefore, opportunity U/s 26 of Bombay Police Act is not considerable, as Article 311(2)(b) of the Constitution of India is the discretionary powers and has over riding effect. The order issued by the answering respondent dated 19.12.2007 is therefore, just and proper.”

4. The learned Counsel for the applicant submitted that the respondents have failed to explain as to the circumstances under which it was not practicably possible to conduct an enquiry against the applicant before invoking Article 311(2)(b). Mere registration of a criminal case and issue of a notice under S/149 of CrPC do not suffice for this purpose. Besides, under provisions of S/26 of the Bombay Police Act, 1951, it was obligatory for R/2 to issue a show cause notice to the applicant before dismissing him under Article 311 (2)(b).

5. Referring to the order of reinstatement dated 1.12.2008 the ld Counsel submitted that it was issued obviously after the respondents had realized that they had committed a mistake in dismissing the

applicant under Article 311 (2)(b) without conducting a DE. Besides, the order states that the period between his dismissal and reinstatement will be decided after a decision on the DE to be conducted against him. No DE has yet been initiated against the applicant till today and no such DE now can be initiated against the applicant after a lapse of more than 7 years. Thus the original order of dismissal has become wholly unsustainable.

6. The Ld P.O. reiterated the submissions of R/2.

7. After hearing the submissions from both the sides and after perusing the record placed before us we find that the following facts are undisputable: No show cause notice was issued nor the applicant was given a personal hearing before the impugned order of dismissal under Article 311(2)(b) was issued. The order of reinstatement dated 1.12.2008 states that it will be effective from the date of its receipt by the applicant. The order further stipulates that a decision with regard to the nature of the period during which he was out of service will depend on the outcome of the DE to be conducted against the applicant. It is also a fact that as yet the respondents have not served any charge sheet to the applicant for initiating a DE against the applicant.

8. The applicant has stated that the respondents did not follow the provisions of section 26 of the Bombay Police Act, 1951 while issuing the order of dismissal. The section 26 of the Amendment Act states as follows:

26. Procedure to be observed in awarding punishment: When any officer passes an order for fining, suspending, reducing, removing or dismissing a Police officer, he shall record such order or cause the same to be recorded, together with the reasons therefore and a note of the inquiry made, in writing, under his signature.

Provided that 3 [no order for reducing, removing or dismissing a Police officer] shall be passed without giving him a reasonable opportunity of showing cause against the action proposed to be taken against him except in cases referred to in the proviso (a) to Cl. (2) of Art. 311 of the Constitution.

9. Thus R/2 was required to serve a show cause notice on the applicant before invoking Article 311(2)(b). In **State Of Maharashtra and Ors. vs S.P. Kalamkar** [2008 (110) Bom L R 512] hon'ble the High Court of Bombay had held that a plain reading of the provisions of S/26 shows that holding of departmental inquiry may be dispensed with in cases covered by Article 311(2). But even if such inquiry is dispensed with, an opportunity as contemplated by proviso to Section 26 of the Bombay Police Act will have to be given.

10. In view of the above we find that the order of dismissal is bad in law. The order however has been revoked by R/2 vide his order dated 1.12.2008 reinstating the applicant. The applicant's grievance is that the regularization of the period of absence between dismissal and reinstatement is left undecided, the same being subject to conduct of a DE which has never been done. R/2 had filed his reply on 30.1.2008, whereas the order of reinstatement was much later to that. However from record as well as submissions of the Ld PO before us it appears that even after a lapse of 8 years the respondents have no intention of conducting a DE. On the basis of the law laid down by the Apex Court as well as the High Court from time to time, we hold that the respondents, after such a major lapse of time, are estopped from initiating any DE against the applicant.

11. In conclusion we hold that the impugned order of dismissal dated 19.12.2007 is bad in law and is required to be quashed. The OA therefore stands allowed in terms of the following directions.

- a) The order of dismissal dated 19.12.2007 is quashed and set aside. The applicant will be treated as on duty for all purpose during the period he was out of service as a result of the above order.

- b) The respondents will not conduct any DE against the applicant involving the circumstances under which the order of dismissal was passed.
- c) Parties to bear their own cost.

(S S Hingne)
Member (J)

(B Majumdar)
Vice Chairman

Skt.