

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH, NAGPUR****ORIGINAL APPLICATION NO. 563/2020 (D.B.)**

Shri Tularam S/o Uddhav Chatap,
Aged about 28 years, Occ. Terminated,
R/o At Narsala, Post : Kedbadh,
Tah.: Saoner, Distt. Nagpur (M.S.).

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 2) The Superintendent of Police (Rural),
Nagpur.

Respondents

Shri G.G.Bade, the Id. counsel for the applicant.

Shri S.A.Sainis, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT

Judgment is reserved on 18th February, 2021.

Judgment is pronounced on 26th February, 2021.

Heard Shri G.G.Bade, the Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the respondents (With the consent of both the counsels the matter was heard in single bench of Vice Chairman, Nagpur Bench).

2. The Id. counsel for the applicant submits that :- *"The applicant came to be appointed on the post of Constable on 13.04.2012. Applicant was posted at Saoner in 2017 and was attached to Cyber Cell, Nagpur Rural. The complainant namely Ku. Bhagyashri lodged a false report under Section 341 & 354 of Indian Penal Code on*

17.07.2020 and accordingly F.I.R. came to be registered on 17.07.2020. The respondent no. 2 on account of registration of the F.I.R. dismissed the applicant from services vide impugned order dated 17.07.2020 without holding any inquiry, nor issuing any show cause notice”.

3. As per the reply of Respondent no. 2 through Id. P.O. :-

4. It is true that, at earlier point of time applicant was suspended on the ground that due to inactiveness of applicant and despite he being put to notice the beat illegal activities were going on relentlessly and therefore increment of 1 year was temporary stopped. It is denied that the said increment which was stopped, has been subsequently released in favour of the applicant. It is pertinent to mention here that after the perusal of service record of the Applicant, it is revealed that the Applicant was suspended from 8/03/2017 to 31/05/2017 and his increment was withheld for not taking action against illegal activities while the Applicant was posted at P.S Saoner, Nagpur [Rural]. Looking into the past conduct of the Applicant, it manifest that the Applicant has abused his power which is against the law, discipline and conduct of the police officer and also detrimental to the public interest.

6. It is submitted that, the Applicant is trying to cover up the issue to protect himself from the clutches of law. Criminal Complaint which is subjudice before the law of land is the result of unlawful and illegal act on part of the Applicant. It is not the misfortune struck to the Applicant but he is meeting his own nemesis for the wrong done with the helpless lady. Complaint dated 17/07/2020 lodged by one lady namely Ku. Bhagyashri Kashinath Natkar for offence under Section 341, 354 of the Indian Penal Code is pending in the domain of court.. It is vehemently denied that the said case has been falsely lodged against the Applicant..It is pertinent to mention here that the Applicant is misleading this Hon'ble Court by citing wrong sections as the Applicant has been inculpated under sections 341 and 354 of IPC which amounts to perjury. The copy of F.I.R clearly shows that the Applicant has been incriminated under sections 341 and 354 of the Indian Penal Code and not u/s 341 and 351 of Indian Penal Code as stated by the Applicant in present application. The copy of the F.I.R. dated 17/07/2020 is annexed as Annexure-A-1 which is already annexed by the Applicant.

8. *It is submitted that if a regular departmental inquiry is ordered against him for "commission and omissions" committed in the registration of offence vide Cr. No. 317/2020 u/s 341 and 354 of the Indian Penal Code it is unlikely that anybody will come forward to depose against the Applicant as the applicant has antecedent that instil fear in the mind of witnesses. No witness will appear as the Applicant is a part of police department and earlier the victim and witnesses has been betrayed and stabbed by the applicant.. Thus holding an inquiry would be both impracticable and inexpedient in the present case. It is further submitted that the Superintendent of Police[Rural] is the appointing authority and competent authority to pass an order of removal or dismissal. The Competent authority is empowered to exercise powers under Article 311[2][b] of the Constitution to dismiss, or remove or to reduce him in a rank and to decide and dispense with enquiry after recording the reasons in writing. While working as above the applicant has committed very serious & heinous offence by trying to outrage the modesty of woman who has come to seek help. The facts of the case & the reason as stated in F.I.R which resulted into the dismissal of the present Applicant from the service is that on 14/07/2020 one Ku. Bhagyashree Kashinathji Natkar has approached the Cyber Crime office, Nagpur Rural for filing complaint against the obscene messages, posts, on her Facebook Account. Due to which said Bhagyashree lodged complaint with the P.S in respect of obscene messages, posts, on her Facebook Account. Applicant instead of discharge his statutory duty as a police officer had misused his position and tried to outrage the modesty of the woman. F.I.R. speaks volume about the present applicant. For the aforesaid offence the FIR was registered by said Bhagyashree against the applicant on 17.07.2020 under the provisions of Indian Penal Code in Crime No. 0317/2020 under section 341 & 354 of Indian Penal Code registered with Kapil Nagar Police Station. On the very day Police Inspector Police Headquarter Nagpur Rural has written letter to the answering Respondent mentioning the whole incident & about the lodging of FIR against the present applicant and thus the applicant was dismissed by the answering Responent No. 2. Applicant's behaviour reminisces of saying " Faith unfaithful kept me falsely true" . Applicant has grossly failed to discharge his statutory duty and abused his position as govt servant which constitute serious crime and society will loose their faith over the esteemed police department Police department is seemed to be custodian of the society who is always there to help them but the act of Applicant had betrayed the faith of society over the department.*

9. *It is a matter of record that no show cause notice came to be issued to the Applicant, while dismissing the services of the Applicant. It is a flight of imagination of Applicant and therefore denied that it can safely be said that no opportunity was granted to the Applicant to put forth his case before the Competent Authority, and thus in the absence of any opportunity the impugned order dated 17/07/2020 needs to be quashed and set aside by this Hon'ble Tribunal. It is pertinent to note here that the Applicant was caught red handed and Prashant along with Police Constables Nitin Yerkar [Batch No. 201] & Balaji Madurkar [Batch No. 343] has rescued the Complainant from the clutches of the present applicant. It is submitted that it is the prime duty of the Police Personnel to undo the wrong and the illegal activities within his jurisdiction, maintain discipline, integrity and honesty and truthful conduct while performing public duty. However the applicant has committed very serious & heinous offence by trying to outrage the modesty of a women. As a consequence thereof the answering respondent who is the appointing authority of the applicant and being competent to award punishment to the applicant invoked the powers envisaged in Article 311(2)(b) of the Constitution of India dismissed the applicant from the service. Because of the shameful act of Applicant the image of entire police machinery stands tarnished in the eyes of the society and shaken the confidence of public qua police.*

12. *It is submitted that Article 311(2)(b) of the Constitution of India contemplates that the competent authority can dismiss or remove the person from the service if he is satisfied that, conducting the regular departmental enquiry is not possible, for the reasons to be recorded. The charges against the applicant is of serious nature and the answering respondent satisfied that if charge sheet is issued against applicant the witnesses will not turn up to give evidence against him and will not stickup with their testimonies at the time of trial as already under cloud fear of Applicant.. Hence Considering the legal provisions and the guidelines laid down by the Hon 'ble Supreme Court of India the answering respondent came to the conclusion and dismissed the applicant from the service, Thus this is the fit case wherein the powers given under Article 311(2)(b) of the constitution can be invoked.*

4. As per the Constitution of India, the Section 311(2)(b) says:-

"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."

5. By perusal of impugned order dated 17.07.2020 (Annexure-A-1, P.B., Pg. No. 9) it is not seen that respondents have followed the conditions laid down in the Constitution of India for using Article 311(2)(b). Nowhere, in the order it has been explained that what where the reasons due to which it was not reasonably practicable to hold inquiry as per M.C.S. (Discipline and Appeal) Rules, 1979. As per the provisions in Article 311(2)(b) of the Constitution of India, the concerned empowered Disciplinary Authority requires to record the reasons in writing that why it was not reasonably practicable to hold such enquiry in the order itself. It is neither mentioned in the impugned order nor any documents have been filed along with the reply filed by the respondents. In this situation, the impugned order becomes violative of provisions of Constitution of India.

6. Whatever reasons have been mentioned in the impugned order those are not substantiated by any documentary evidence or circumstantial evidences. It is very much vague in nature.

7. In view of discussions in foregoing paras, the O.A. requires to be allowed; so following orders:-

ORDER

1. O.A. is partly allowed.
2. The impugned order dated 17.07.2020 (Annexure-A-1, P.B., Pg. No. 9) is hereby quashed and set aside and applicant be reinstated to its original post **within two months** from the date of this order.
3. Respondents are at liberty to initiate departmental enquiry as per existing rules and regulations and take necessary action.

4. No order as to costs.

**(Shri Shree Bhagwan)
Vice Chairman**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.
Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 26/02/2021.
and pronounced on

Uploaded on : 01/03/2021.