

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.699/2016.

Gyaniram Sitaram Jibhkate,
Aged about 56 yrs.,
Occ-Service,
R/o Shivaji Ward, Gadkumbhli Road,
Gondia.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 032.
- 2) The Dy. Inspector General of Police,
Nagpur Circle, Nagpur.
- 3) The Superintendent of Police,
Gondia.

Respondents

Shri N.R. Saboo,, the Ld. Counsel for the applicant.
Shri S.A. Deo, the learned C.P.O. for the respondents.

Coram:- Hon'ble Shri Rajiv Agarwal,
Vice-Chairman (A) and
Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

Per:-Vice-Chairman (J)

JUDGMENT

(Delivered on this 11th day of August 2017.)

Heard Shri N.R. Saboo, the learned counsel for the applicant and Shri S.A. Deo, the learned C.P.O. for the respondents.

2. Vide impugned order dated 26.8.2016, the applicant, the Assistant Sub-Inspector (A.S.I.) has been dismissed from service as per the provisions of Section 25 & 26 of the Maharashtra Police Act, 1951 r/w Article 311 (2) (b) of the Constitution of India. The applicant has claimed that the order being illegal, be quashed and set aside and the applicant be reinstated in service on the post of A.S.I. with all consequential financial benefits

3. The applicant entered the service of Police Department as a Constable and was promoted to the post of Naik in the year 1995. Thereafter, he was promoted as Hawaldar by an order dated 3.7.2000 and thereafter as A.S.I. as per seniority on 29.5.2012.

4. One Smt. Sushma Gope who was accused U/s 302 of I.P.C., preferred one complaint against the applicant and on the basis of the said complaint, the applicant was kept under suspension on 16.8.2016. Vide impugned order dated 26.8.2016 passed by the Superintendent of Police, Gondia (R.3), the applicant was dismissed from service and hence this O.A.

5. According to the applicant, the impugned order stands vitiated on the ground that the reasons for satisfaction to take recourse under Article 311 (2) (b) of the Constitution is not mentioned in the order. The learned authority also referred to the incident of 1984 and adopted erroneous approach in dismissing the applicant. The authority failed to consider that after the incident of 1984, the applicant was reinstated in service in 1987 and thereafter he was promoted to the posts of Naik, Hawaldar and then A.S.I. The reasons stated for dismissal without holding a departmental enquiry, are totally unsustainable and therefore, dismissal is illegal. The respondent authority also did not even issue a show cause notice to the applicant before issuing dismissal order and, therefore, no opportunity was given to defend the case.

6. In the reply affidavit filed on behalf of respondent Nos. 2 and 3, preliminary objection has been taken that the applicant has not exhausted remedy of appeal as per Section 27 of the Maharashtra Police Act, 1951. The applicant should have filed an appeal before the Deputy Inspector General of Police, Nagpur Range, Nagpur against the order of dismissal. In the alternative, the respondents justified the reasons for dismissal and submitted that the said dismissal is in the public interest. Earlier conduct of the applicant

has rightly been considered. Earlier crime under Sections 354 and 509 of I.P.C. was also registered against the applicant and in fact the applicant was punished in the earlier departmental enquiry. But mercy was shown to him. It is stated that the allegations against the applicant are so grave that it was not proper or in public interest to initiate departmental enquiry against the applicant and to take action. His immediate removal was necessary.

7. We have perused the order of dismissal. Allegations against the applicant are very serious. The said order is as under:-

तुम्हास सहायक फौजदार/१४ याजिराम जिभकाटे, गादया जिहा पोलिस आथापनेवर पोटे. गोरेगाव येथे नेमणुक असताना तुमची दनांक १.८.२०१६ रोजी नाईटगत चेकंग व पेपेलंग युट असताना राणी १०.०० वा.चे सुमारास तुम्हास गोरेगाव पोटे. गु.र.जी. . ५०/१६ कलम ३०२, २०१, ३४ भावी या गुण्यामधील पोलिस कटडी रमांडमये असलेया महला आरोपी सुषमा जलेश गोपे हचे जवळ जाऊन “तुम्हाकडे असलेल मुलगी कोणाची आहे ?” असे वचारले असता महला आरोपीने “ह मुलगी सघन बोरकरची आहे” असे हटले तेहा तुम्हास महला आरोपीस “मी जर आज तुम्हासोबत झोपलो तर गी पोरगी माझीच हणशील का ?” तेहा आरोपी महलेने तुम्हास समजावयाचा यान केला व “तुम्हास असे घाण-घाण का बोलता ? तुम्हास पोलिस आहात हणून धाक दाखवता का ?” असे हटले. यानंतर थोया वेळाने महला आरोपी सुषमा जलेश गोपे ह पोटे. इमारतीमये वायरलेस म जवळ तचा बाळाला घेऊन उभी असताना तुम्हास तुम्हास णी लॉक-अपचे जवळ उभे राहून तुम्हास वदघी यांत खाल सरकवल, याटची चैन खोलून आरोपी महलेकडे पाहून तुम्हास तुमचे लंग काढून हलले. यानंतर थोया वेळाने महला आरोपी घाबान वायरलेस ममये झोपल असता तुम्हास वायरलेस मचा दरवाजा मोयाने बाहेन ठोठावला. गोरेगाव पोलिस षेशन मये पोलिस रखवालतील

महला आरोपी सोबत तुम्हा अत्यंत अपलक्ष असण्या व नैतिक अधःपतनाचे गैरवतन केले आहे.

तुम्हा पोलिस रखवालीतील महला आरोपी सोबत केलेल्या अत्यंत लजापद, व्रक्त व अनैतिक गैरकृत्याबाबत प्रदीत महला आरोपी सुषमा जलेश गोपे हने भंडारा कारागृहातून दिलेल्या तारानुसार तुमचेव्रध गोरेगाव पोटे. गु.र.जी. . ५४ /१६ भावी कलम ३५४, ५०९ यांमाणे गुहा दाखल करण्यात आला आहे. सदर गुण्यात तुम्हास अटक करण्यात आला असून थम णी णाय दंडाधिकार कोटा ३ रे गाद्वया यांनी तुमची णयायालयीन कोठडी मंजूर केल आहे. सदर गुण्याचे तपासांती तुमचेव्रध सबर पुरावा जणपण ज्ञाणाने णयायालयात तुमचेव्रध दोषारोपण सादर करण्यात आले आहे.

तुम्हा उपरोत अत्यंत घृणापद, लांछनापद व नैतिक अधःपतनाया गुहेगार गैरवतनाबाबत जंदा करणाया व वाईट मतदश करणाया बाण्या व्रध मायमामये णसध करण्यात आणामुळे पोलिस दलाची णतमा मलज ज्ञाल आहे. तुम्हा पोलिस दलासारया कायदा राबवणाया यंणेतील सहायक फौजदार णयती असूनह पोलिस रखवालीतील महला आरोपीया असहातेचा गैरफायदा घेत, पोलिस असण्याचा कारणावण धमक व धाकपतशा दाखवून तुम्हा तचे सोबत केलेल्या अत्यंत लजापद, अनैतिक व गुहेगार वणपाया घटनेचा व्रध महला संघटना, वयंसेवी संथा यांनी ती णषेध व धकार कण तुमचेव्रध कठोर कारवाईसाठी जवेदने दिल आहेत. तुमचे वर णकारचे गैरवतन पोलिस कमच्याया अशोभनीय असून णयामुळे पोलिस दलाया णतमेस तडा पोहचला आहे तसेच णतबध पोलिस खाण्याची बदनामी ज्ञाल आहे.

तुम्हा अशा णकारया नैतिक अधःपतनाया व गुहेगार वृणीया गंभीर गैरकृत्यामुळे सवसामाय जनतेमये असुरततेची व भीतीची भावना जमाणा ज्ञाल आहे. णया पोलिस दलाकडून महला व मुलया संरणची जबाबदार आहे णया पोलिस दलातील तुम्हा सारया पोलिस कमच्यायाचे पोलिस रखवालीतील महला आरोपी आरोपी सोबत णी अणयाचाराचा घृणापद गुहा केला असणाने जनतेला पोसंवांर व्रवास ठेवणे कठण ज्ञाले आहे. तुम्हा अशा णकारया अत्यंत रू, मुजोर व अणयाचार गैरवतनामुळे तुमचेबदल जनमानसामये तटकारा व

दहशत जमाणा झाला असून पोलिस दलास ती टाकल्या सामोरे जावे लागत आहे.

तुम्हा यापूर्वी भंडारा जिल्ह्यामध्ये आपापनेवर नेमणूक असतांना सन १९८४ मध्ये कु. शीला मेहर ह्या लष्कराचे आपापने दाखवून लष्कराची शारदक संबंध ठरवून घेतले होते त्या संदर्भात तुमचे वध विभागीय चौकशी अंती सेवेतून काढून टाकणे (Removal from service) हे शा. देण्यात आले होते. तुम्हा सदर शा. वध केलेले अपील मा. पोलिस उपमहासंचक, नागपूर पोलिस नागपूर तसेच मा. पोलिस महासंचालक, म.रा. मुंबई यांनी फेटाळले होते. तुम्हा शासनाकडे सादर केलेल्या विनंती अजाब शरसनाने दिलेल्या निदर्शनांमार्फत तुम्हास सन १९८७ मध्ये शासन सेवेत पुनः ठरवून देण्यात आले असले तरी तुम्हा कुमार मुलगा लष्कराचे आपापने दाखवून लष्कराचे सोबत शारदक संबंध ठरवून घेतल्याबाबत तुम्हा सेवा अविशेषामध्ये निलंबित ठरवून देण्यात आल्या आहेत.

तुम्हा उपरोक्त नैतिक अधःपतन, संशयास्पद सचोटी व चा. व घृणास्पद गुहेगार गैरकृत्याची कोणत्याही प्रकारची विवेक चौकशी / विभागीय चौकशी करणे लोकहितास्पद उचित ठरणार नाही सदर गुण्यातील मंडीत महिला आरोपी हे तारदार असून तुम्हा वतः किंवा तुम्हा साठारामारफत लष्करावर दबाव व दडपण आणून सुडाच्या भावनेने लष्करा मनात भीतीच्या धर्माच्या विनंती जमाणा करण्याची दाट शरयता आहे. तुम्हा पुर्विलहास पाहता तुम्हा बळीत महिला आरोपीस धमक व धाकपतशा दाखवण्याची व तुमचे वधसा देण्यापासून लष्करा परावृ. करण्याची दाट शरयता आहे. सदर विकरणाची एकंदर व तुम्हा विविध काळजीपूर्वक विचारात घेता सावधानक हिताच्या वि. तुमचे वध विभागीय चौकशीची वि. या वाजविषणे पार पाडणे विवहाय नसण्याबाबत माझी खा. झाला आहे.

तुम्हा भंडारा व ग. वि. पोलिस दलाचे आपापनेवर कायशत असतांना केलेल्या अयंत अलल, असय, नैतिक अधःपतनाच्या व घृणास्पद गुहेगार वि. पाच्या गंभीर कासुराच्या पाशवभूषणवर तुम्हा पोलिस दलातील सेवा यापुढे चालू ठेवणे अयंत बाधक वि. पाचे आहे. तुम्हा उपरोक्त गंभीर कसुर तुम्हा नैतिक अधःपतनाची, संशयास्पद सचोटी व चात्याची तसेच घृणास्पद गुहेगार वि. वि. सा. देत असून ती पूणः वि. वासाह. वाटत आहे. तुम्हासारा या गुहेगार वि. मनात बाळगणाऱ्या

पोलिस कमच्याप्यास शांतबोध अशा पोलिस दलात कायशत ठेवणे सामाजिक व नैतिकदृष्ट्या घातक आहे. तुम्हाकेंले या अत्यंत गंभीर, संवेदनशील व ापी अप्याचाराया गुण्यातील तुमच्या सहभागाया अनुषंगाने तुमचेवोध कठोर कायद्याहणे करणे मला आवयक वाटते. या अनुषंगाने तुमच्या उपरोक्त नैतिक अधःपतनाया व गुहेगारणे वपाया गैरवतमाबाबत मी खालिलमाणे आदेश ङगामत करत आहे.

अंतिम आदेश

मी, डॉ. दलप पाटल-भुजबळ, पोलिस अधीक, गादया, महारा ण पोलिस अधिनयम, १९५१ मधील णयम २५ व २६ तसेच भारतीय णय घटना कलम ३११ (२) (ख) वारे मला णदान करयात आलेया अधिकाराचा वापर कण तुम्हास तुमचे कसुराछे अनुषंगाने “सेवेतून बडतफण (Dismissed from service) ह शांत देत आहे.”

8. Perusal of the aforesaid order makes it crystal clear that the allegations against the applicant are grave in nature and the said order is self-explanatory. The learned CPO submits that the order has been passed in the public interest as per the provisions of Article 311 (2) of the Constitution of India r/w Rule 27 of the Maharashtra Police Act, 1951.

9. The learned counsel for the applicant submits that no opportunity was given to the applicant and even a show cause notice was also not issued to him before dismissal. It is further stated that, no reason is given as to why the competent authority came to the conclusion that initiation of departmental enquiry was not justified.

10. The learned C.P.O. invited our attention to Rule 27 of the Maharashtra Police Act, 1951. The said rule reads as under:-

27. Appeals from orders of punishment.

An appeal against any order passed against a Police Officer under section 25 of the rules or orders thereunder shall lie to the State Government itself or to such officer s the State Government may by general or special order specify:

Provided that, a punishment shall not be enhanced or more severe punishment shall not be awarded in appeal, unless notice to show cause against such enhancement or, as the case may be, more severe punishment, has been given, and any cause shown thereon has been considered.+

11. From the aforesaid provision under Rule 27 of the Maharashtra Police Act, 1951, it is clear that the Police Officer against whom any order is passed may file an appeal against such order. The applicant has not exhausted the said remedy and has directly approached this Tribunal for his grievance.

12. In response to the contention that no opportunity was given to the applicant before issuance of the dismissal order, the learned CPO has placed reliance on the judgment delivered by the Honble Apex Court in **Civil Appeal No.6814/1983 Union of India and another V/s Tulshiram Patel, Civil Appeal No.3484/1982 Union of India and others V/s Sadanand Jha and others, Civil Appeal No.3512/1982 Union of India and others V/s G.P. Koushal reported**

in (1985) 3 SCC 398. While considering the scope of Article 311 (2) of the Constitution, second proviso, the Honble Apex Court has held as under:-

Considerations of fair play and justice requiring a hearing to be given to a government servant with respect to any of the major penalties proposed to be imposed upon him do not arise when the second proviso to Article 311 (2) comes into play and the same would be the position in the case of a service rule reproducing the second proviso in whole or in part and whether the language used is identical with that used in the second proviso or not. The second proviso is based on public policy and is in public interest and for public good and the Constitution makers who inserted it in Article 311 (2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.

The disciplinary authority will have to take into account the factors referred to in *Challappan case* viz. the entire conduct of the delinquent employee, the gravity of misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. But this the authority will have to do ex parte. In this view of the matter the addition of the phrase "the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit" in Rule 14 of the Railway Servants Rules, Rule 19 of the Central Civil Services Rules or Rule 37 of the CIST Rules would not create any inconsistency with the second proviso to Article 311 (2) which does not contain this phrase. Having regard to the meaning of the word "considered" used in the context of the aforesaid phrase, the view taken in *Challappan case* that an objective consideration is possible only if the delinquent employee is heard and is given a chance to satisfy the authority regarding

final orders that may be passed by the said authority+ is not acceptable.+

13. The learned CPO also invited our attention to the judgment delivered by the Honble Apex Court in case of **Ved Mitter Gill V/s Union Territory Administration of Chandigarh and others reported in (2015) 8 SCC 86**. In the said case, the Honble Apex Court while considering the scope of Article 311 (2) of the Constitution second proviso (b) as regards dismissal without enquiry has held that validity of such proviso is to be determined on the basis of whether three ingredients of Article 311 (2) second proviso (b) are satisfied. It was further observed that the validity of dispensing with the departmental enquiry is not dependent upon the holding or not holding of criminal proceedings against the dismissed persons--- Once the parameters stipulated in clause (b) of the second proviso to Article 311 (2) of the Constitution are satisfied, the dismissal cannot be assailed.

14. In the said judgment, the Honble Apex Court has also observed as under:-

It is necessary to notice parameters laid down by the Supreme Court for invoking clause (b) of the second proviso to Article 311 (2) of the Constitution. The norms stipulated by the Supreme Court for the said purpose, require the satisfaction of three ingredients. Firstly, the conduct of 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 the reasons of the satisfaction in writing.+

15. In view of the aforesaid observation of the Hon'ble Apex Court, in the case of **Ved Mitter Gill V/s Union Territory Administration of Chandigarh and others reported in (2015) 8 SCC 86.** it is necessary to see whether the order in the present case shows such ingredients.

16. The impugned order has already been reproduced. In the first para of the said order, grave allegations against the applicant have been made from which it seems that the behaviour of the applicant was not that of a prudent public servant. He has acted in an indecent manner and in fact has crossed all the limits of decency. Order states that the behaviour of the applicant was not only indecent, but it was condemned by everybody. If the persons behaving in such an indecent manner, are allowed to work in police force, it may malign the image of the police force in the public. It seems that the applicant misbehaved with a lady prisoner and considering the post held by the applicant, such behaviour cannot be accepted.

17. In the impugned order, details of misbehaviour of the applicant has been narrated and it seems that this was not the only incident as regards misconduct of the applicant, but on the similar charges he was earlier removed from service, but was shown mercy and was reinstated. The alleged misbehaviour must have caused feeling of shame and insecurity, in the minds of girls and the ladies against the police department. The order also shows that there is every possibility that the applicant may bring pressure on the complainant as well as witnesses and may also give threats and tamper the witnesses in case regular enquiry was held could not be ruled out and, therefore, it was necessary in the interest of public not to initiate any departmental enquiry against the applicant. The competent authority seems to have rightly considered this aspect.

18. Perusal of the impugned order thus clearly shows that the competent authority has considered all the facts and circumstances and all the three ingredients which are required under Article 311 (2), seems to have been in existence. We are, therefore, satisfied that there is an ample evidence on record to show that the conduct of the applicant / delinquent may result in one of the three punishments viz. dismissal, removal or reduction in rank. The competent authority has recorded the reasons as to why it was not reasonably practicable to

hold an enquiry against the applicant and such reasons have been recorded in writing. Thus all the ingredients as contemplated under Article 311 (2) for invoking the said clause i.e. under Article 311 (2) (b) of the Constitution of India are incorporated in the impugned order. That satisfaction is the discretion of the competent authority and it would not be proper for this Tribunal to interfere or to trespass into the discretionary limits of the competent authority.

19. The learned CPO submitted that the applicant should have filed an appeal against the impugned order, since impugned order is passed under Article 311 (2) of the Constitution of India r/w Sections 25 & 26 of the Maharashtra Police Act, 1951. In the order itself, it was intimated to the applicant that he may file an appeal against the order of dismissal before the Dy. Inspector General of Police, Gadchiroli, Camp at Nagpur.

20. As already stated, Section 27 of the Maharashtra Police Act, 1951 states that an appeal against any order passed against a police officer U/s 25 of the Maharashtra Police Act, 1951 or the rules or order thereunder shall lie with the State Government or to such an officer as the State Govt. may, by general or special orders specify. Admittedly, the applicant has not preferred an appeal against

the order of dismissal and, therefore, he has lost the remedy of appeal for the reasons best known to him.

21. On a conspectus of discussion in foregoing paras, we are, therefore, satisfied that the impugned order of dismissal of the applicant is self explanatory and while exercising the discretionary powers under Article 311 (2) of the Constitution of India, the competent authority has considered seriousness of the matter, so also all the ingredients that are necessary to be considered for invoking such powers and, therefore, we do not feel it necessary to interfere in the powers exercised by the competent authority. We, therefore, do not find any fault in the order of dismissal of the applicant, which was necessary considering the conduct of the applicant and in the interest of public, so also in order to maintain high moral status in the police department in the eyes of the public. Hence, we proceed to pass the following order:-

ORDER

The O.A. is dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

(Rajiv Agarwal)
Vice-Chairman (A)

