

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.713/2013.

Smt. Priti Govindrao Bhivgade,
Aged about 34 years,
Occ : Unemployed,
R/o, Laghuvetan Colony, Plot No.16,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 2) The Additional Commissioner of Police (Admn.),
Nagpur City, West High Court Road,
Civil Lines, Nagpur.
- 3) The Desk Officer,
Home department (M.S.),
Mumbai.

Respondents

Shri P.K. Mishra, Advocate for the applicant.

Shri M.I. Khan, P.O. for the respondents.

Coram:- B. Majumdar, Vice-Chairman and'

R.B. Malik, Member (J)

Dated: - 27th April 2016.

Oral order

Per: Member (J).

The applicant, a Woman Constable having been dismissed without holding departmental enquiry under the provisions of Article 311 (2) (b) of the Constitution of India challenges the said order by way of this O.A. U/s 19 of the Administrative Tribunals Act, 1985.

2. The facts are a few and uncomplicated. The applicant was working as a Woman Police Constable (WPC). She is married and has also got children. Allegations came to be made against her and a colleague of hers of extra marital relations prone to lower the dignity of police force. On that ground, by order dated 21.5.2012 the Additional Commissioner of Police (Administration.), Nagpur made an order of dismissal under the above quoted provision of the Constitution. He held *inter alia* that taking into consideration the overall view of the conduct of the applicant, the said authority was satisfied that in public interest it would not be proper to hold Departmental Enquiry (D.E.). In other words, the D.E. was dispensed with and dismissal followed.

3. The above order came to be challenged in appeal, but the State of Maharashtra in Home Department by an order dated 31.7.2013 dismissed the said appeal driving the applicant to this Tribunal with this O.A.

4. We have perused the record and proceedings and heard Mr. P.K. Mishra, the learned counsel for the applicant and Mr. M.I. Khan, the learned P.O. for the respondents.

5. It is a common ground that a prosecution was and is pending against the applicant and her co-accused. The complainant

in that matter apparently is the wife of applicant's co-accused. The penal provisions invoked *inter alia* are Section 498-A and 496 r/w Section 34 of the Indian Penal Code. As mentioned just now this prosecution is pending and, therefore, by no stretch of imagination can it be said that the applicant was a convict.

6. In the meanwhile, departmental proceedings went underway and as already mentioned above culminated into the two orders which are herein impugned. Insofar as the order of the Additional Commissioner of Police (Administration), Nagpur is concerned, except for making self-serving observations that on the basis of material regarding the conduct of the applicant, he was satisfied that it would not be in the public interest to hold departmental enquiry and it will not be practical also. The exact Marathi version of that order reads as follows:

“ज्याअर्थी, या प्रकरणाची वस्तुस्थिती व मपोशि / २६१६ प्रिती गोंविदराव भिवगडे यांची वागणुक काळजीपूर्वक विचारात घेवुन तसेच प्राप्त अहवालावरून माझी अशी खात्री झाली आहे की, या प्रकरणात चौकशी करणे सार्वजनिक हिताच्या दृष्टीने व्यवहार्य होणार नाही”

7. Pertinently, there is no amplification of facts to justify the conclusion against holding of a departmental enquiry. The point is as to whether on such a bald *ipse dixit* of the said authority, the process of judicial review of administrative action could blindly accept

the same. The answer is axiomatic and in this behalf useful reference could be made to two judgments rendered by two Division Benches of the Hon'ble Bombay High Court cited by Shri Mishra, the learned Advocate for the applicant. The first judgment is in the matter of **State of Maharashtra V/s S.P. Kalamkar, 2008 (4) Mh.L.J. 553 (S.P. Kalamkar's case) and Shantilal Jadhav V/s Commissioner of Police, 2010 (3), Mh.L.J. 362 (Shantilal's case)**. In both the authorities cited above, the issues that arose were substantially the same as they are in this O.A. and Article 311 (2) (b) of the Constitution fell for judicial consideration. In para 11 of **S.P. Kalamkar's case**, relying upon two judgments of the Hon'ble Supreme Court it was observed that if the satisfaction reflected by the order of the concerned authority was *sans* independent material to formulate subjective satisfaction, then the said action would not pass muster with the judicial test. Further, apart from Article 311 (2) (b) of the Constitution, Section 26 of the Bombay Police Act also fell for consideration in **S.P. Kalamkar's case**. It was held that while generally so speaking, decision of the authority concerned on the aspect of reasonably practicable to hold an enquiry, the said decision will be final, but it is still very much justiciable. Because it will have to be ensured that it did not offend the constitutional and legal protection to the concerned public servant. It was held in effect that in para 2 of **S.P. Kalamkar's**

case that even if holding of an enquiry was dispensed with by recourse to the relevant provision of Article 311 of the Constitution, opportunity to show cause against the punishment would have to be given as per mandate of Section 26 of the Bombay Police Act. Even if the enquiry was dispensed with, such an opportunity to a police personnel would have to be given.

8. It is very clear that such an opportunity was not given to the present applicant.

9. In **Shantilal's case**, it was held that exercise of powers under Article 311 (2) (b) of the Constitution must be after careful application of mind and mere say so of the authority would not suffice. In this O.A., it is not even mentioned that the conduct of the applicant was grave or perverse. However, had it been so still **Shantilal's case** holds that even the mechanical user of those words would not be sufficient. It is held in para 9 of the **Shantilal's case** that the constitutional safeguards cannot be dispensed with lightly or arbitrarily or just to avoid the departmental enquiry.

10. It is very clear that the application of principles laid down in **S.P. Kalamkar's and Shantilal's cases** (*supra*) to the present facts would surely lead to a conclusion for the applicant.

11. Now there is another quite disturbing aspect of the matter which shows that while making the appellate order, there was complete non application of mind. But in fact, it could be something more and something graver and worse. Para 2 of the appellate order in Marathi mentions that the applicant was given personal hearing on 11.6.2013. Issues raised by her in the appeal were considered and the documents perused and it was not necessary to interfere with the order of punishment. Further, in para 3 of the appellate order it was mentioned that during departmental enquiry also every aspect of the matter was considered and it was found by the Enquiry Officer that the allegations against the applicant were proved, that the punishment awarded was fully warranted by proved facts and all the charges were undoubtedly proved against the applicant.

12. An impression is, therefore, sought to be created as if the departmental enquiry was held and even at the time of "hearing of appeal" the applicant was heard. This is contradicted by the order of the Additional Commissioner of Police (Administration), Nagpur by the very invocation of Article 311 (2) (b) of the Constitution. But still further, the learned P.O. placed on record for our perusal as per the directions earlier given a communication form the Home Department dated 26.4.2016, which recites that the appeal was heard by the

Hon'ble Minister of State for Home on 11.6.2013 and this fact would appear only from the documents that were there. It was categorically mentioned that the kind of departmental enquiry referred to in the above order on 31.7.2013 was not held at all. We disapprove of the cavalier manner in which the appellate order was phrased and also the proceedings culminated in this O.A. were held. It is after some real efforts that we have restrained ourselves from taking some action against the concerned authorities. We shall however direct that a copy of this order be forwarded to the Principal Secretary, Home Department, Govt. of Maharashtra for information and action considered it proper and necessary.

13. The upshot, therefore, is that the impugned orders are unsustainable. They will have to be quashed and set aside. However, matters still will have to be remanded to the authority that made the first order, viz. Additional Commissioner of Police (Administration), Nagpur. Normally in this forum, if an order of remand is to be made, in such circumstances, matter is sent to the appellate authority. We were also so minded initially to do so. However, in this particular matter, the said course of action might lead to further protraction of the proceedings and cause hardship to the applicant, which the respondents might want, but the Judicial Forum certainly

would not oblige. It needs to be noted that both in S.P. Kalamkar's as well as Shantilal's case, immediate relief was not granted to the applicant, though the impugned actions were quashed and set aside. In fact, in Shantilal's case, directions were given that the applicant would be on suspension from the date of delivery of the orders by the Hon'ble High Court. Therefore, we are not immediately going to direct the reinstatement of the applicant. But at the same time, we are going to lay down an outer time limit within which the concerned authority must make an appropriate order and we make it clear that it will be open to the said authority to even order departmental enquiry if he was so minded. We have expressed no opinion thereabout. But he must act in accordance with the law, as hereinabove discussed based on the judgment in S.P. Kalamkar's and Shantilal's case, which in turn were based on the law laid down by the Hon'ble Supreme Court.

14. The orders impugned are quashed and set aside. For the reasons set out, hereinabove, matter is remitted to the Additional Commissioner of Police (Administration), Nagpur City with a direction to reconsider the whole matter in the light of observations hereinabove and conclude the same within two months from today and communicate the outcome to the applicant within one week thereafter. The time begins to run from the date of this order. In case the

applicant remains aggrieved by the order of the said authority, then she shall be at liberty to prefer an appeal there-against and in case the appeal was preferred, the appellate authority shall decide the same within two months from the lodging of the memo of appeal in his office and communicate the same to the applicant within one week thereafter.

This O.A. is allowed in above terms with no order as to costs.

sd/-

(R.B. Malik)
Member (J)

27.04.16

sd/-

(B.Majumdar)
Vice-Chairman

pdg