

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 758 of 2019 (DB)

Shri Sandeep Kesharao Akolkar,
Buckle No.1556, aged about 33 years,
R/o Shrinagar Colony, Opp. Hanuman Temple,
V.M.V. Road, Amravati, Tq. Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Home Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner of Police,
Amravti City Amravati, Dist. Amravati.
- 3) The Director General of Police,
Maharashtra State, Shahid Bhagat Singh Marg,
Mumbai-1.

Respondents.

Shri D.S. Sawarkar, Advocate for the applicant.
Shri H.K. Pande, learned P.O. for respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman.
And
Hon'ble M.A. Lovekar, Member (J).

Date of Reserving for Judgment : 28th March, 2022.

Date of Pronouncement of Judgment : 7th April, 2022.

JUDGMENT

Per : Member (J).

(Delivered on this 7th day of April, 2022)

Heard Shri D.S. Sawarkar, learned counsel for the
applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. Case of the applicant is as follows –

The applicant was appointed as Police Constable on 20/11/2008. He rendered services satisfactorily and received certificates of commendation (Annex-A-1). He acquired a degree in February, 2012. He completed Commando training and served as a Charlie Commando for one and a half years. For nine months he served in Riot Control Unit. On 13/3/2013 respondent no.2 passed the impugned order (Annex-A-2) dismissing him without holding enquiry, under Article 311 (2) (b) of the Constitution of India. The applicant was being treated by a psychiatrist Dr. Atul Patil. His diagnosis was that the applicant was suffering from Bipolar Disorder (mania). Accordingly he issued a report (Annex-A-3) on 25/1/2013. He made certain suggestions showing that the applicant could continue to work. The department again sought opinion of Dr. Atul Patil. He gave it (Annex-A-4). It was consistent with what he had opined earlier. The applicant was then served with a show cause notice dated 26/2/2013 (Annex-A-5) stating therein various instances of conduct stated to be unruly and unbecoming of a Government servant, including absence without leave. Infact, father of the applicant had submitted leave application (Annex-A-6) with medical certificate. Application (Annex-A-7) was submitted for extension of leave. The applicant submitted reply dated 4/3/2013 (Annex-A-8) to

the show cause notice and prayed that he be permitted to resume duty. It was not accepted. Instead, the impugned order was passed arbitrarily. There were no circumstances to invoke Article 311 (2) (b). The impugned order was contrary to Sections 25 and 26 of Maharashtra Police Act and Rule 4 of the Bombay Police (Punishments and Appeals) Rules, 1956. It was also opposed to Circulars dated 17/1/2008 and 19/9/2008 (Annexs-A-9 and A-10) issued by respondent no.3 and Home Department of Government of Maharashtra, respectively. No opportunity of hearing was given to the applicant. Sections 448 and 449 of Bombay Police Manual were disregarded while passing the impugned order. Opinion of another psychiatrist (Annex-A-11) Dr. Rajkumar attached to Police Hospital, Amravati as Government Medical Officer was also disregarded. Vide (Annex-A-12) the applicant was informed that he could prefer appeal before respondent no.1 against the impugned order. He submitted and re-submitted the appeal (Annex-A-13 and A-14) before respondent no.1. Medical Certificates (Annex-A-15 and A-16) issued in the meantime show that the applicant was fit to resume duty. Vide communication dated 19/1/2018 (Annex-A-17) the applicant was asked to remain present before the Appellate Authority for hearing of appeal. The Appellate Authority confirmed the order of dismissal of

the applicant. The applicant was accordingly informed vide letter dated 24/1/2019 (Annex-R-1 at page 74). Hence this application.

The impugned order (Annex-A-2) reads as under –

“ भारतीय संविधानाच्या अनुच्छेद ३११ च्या परंतुकाच्या पोट कलम (ब) खालील आदेश

ज्या अर्थी तुम्ही संदिप केशवराव आकोलकर पोलीस आयुक्त, अमरावती शहरच्या आस्थापनेवर पोलीस शिपाई बक्कल नंबर १५५६ ह्या पदावर दिनांक २०.११.२००८ पासून नेमणुकीस आहात. तुम्ही पोलीस मुख्यालय, अमरावती शहर येथे कार्यरत आहात. तुम्ही पोलीस दलाचे आवश्यक असलेले पायाभूत प्रशिक्षण पोलीस प्रशिक्षण केंद्र, मरोळ, मुंबई येथे पूर्ण केलेले आहे. तुम्ही दिनांक १२.१२.२०१२ रोजी पोलीस उपायुक्त, परिमंडळ यांचेकडे स्टीक रनर म्हणून कर्तव्यावर नेमलेले असतांना कोणाचीही परवानगी न घेता अथवा वरिष्ठांना कुठलीही माहिती न देता कर्तव्यावर अनाधिकृतपणे गैरहजर होवून जिल्हाधिकारी, अमरावती यांच्या कार्यालयात जाऊन पोलीस संघटना स्थापन करण्यासंबंधी जिल्हाधिकारी, अमरावती यांना निवेदन दिले व यासाठी त्यांच्याकडे इच्छा मरणाची परवानगी मागितली. त्यानंतर तुम्ही दिनांक १७.१२.२०१२ वेळ १६०० वा. पासून कर्तव्यावर कुठलीही माहिती न देता / परवानगी न घेता आजपर्यंत गैरहजर आहात. गैरहजर असतानांच दिनांक १२.०१.२०१३ रोजी तुम्ही जिल्हाधिकारी, अमरावती यांचे कार्यालयात पोलीस दलाचे शासकिय गणवेशात जावून तेथे सार्वजनिक ठिकाणी सर्वांना दिसेल अश्या ठिकाणी झाडाला दोर बांधून तो गळ्यात अडकावून इच्छा मरण लिहलेला फलक हाती घेवून उभा राहिला व पाकीस्तानी सैनिक आपल्या सैन्याला मारत आहेत, भारतीय सरकार काहीही करत नाही, आरोपी अफजल गुरु यांचेही धड वेगळे करा असे लोकांना चिथवणारे वक्तव्य करित होता.

त्यानंतर तुमचे वडील केशवराव आकोलकर यांनी तुम्ही मानसिक रुग््न असल्याचे व उपचार चालु असल्याचे कार्यालयाला पत्राद्वारे कळविले व मनोविकार तज्ञ डॉ.अतुल पाटील यांचे दिनांक १२.०१.२०१३ अशी तारीख असलेले वैद्यकिय प्रमाणपत्र सादर केले.

तुमच्या वडीलांचा, भावाचा व मित्राचा यासंबंधात जबाब घेतला असता तुम्ही नक्षलवाद, पाकीस्तानी सैनिकाचे कृत्य, अफजल गुरु यांना फाशी द्या असे वक्तव्य करित असल्याचे आढळून आले.

या प्रमाणे तुम्ही पोलीस संघटना स्थापन करण्यासाठी वरिष्ठांकडे निवेदन न देता किंवा विनंती न करता जिल्हाधिकारी, अमरावती यांना निवेदन दिले व यासाठी इच्छा मरण मागितले. त्याचप्रमाणे नक्षलवाद, पाकीस्तानी सैन्याचे कृत्य यासारख्या शासन विरोधातील वक्तव्य सार्वजनिक ठिकाणी करून लोकांच्या भावना भडकविण्याचा तसेच पोलीस सहका-यांमध्ये असंतोष निर्माण होऊन शासकीय कामकाजात अडचणी निर्माण होतील असे वर्तन केले आहे. त्याचप्रमाणे मानसिक रुज्ज असल्याचे दर्शविलेले आहे. तुमचे हे वर्तन पोलीस दलातील शिस्तीला, कर्तव्याला व वर्तणुकीला शोभणारे नाही.

तुमच्या वरील गैरवर्तनाबद्दल तुम्हाला भारतीय संविधानाचे अनुच्छेद ३११ (२) नुसार सेवेतून बडतर्फ काढण्यात येऊ नये यासंबंधी कार्यालयीन क्रमांक पोआअ/विचौलि/पोशि-१५५६/१४२५/२०१३, दिनांक २६.०२.२०१३ नुसार नोटीस देण्यात येऊन सात दिवसांत तुमचे म्हणणे मांडण्याची संधी देण्यात आली. तुम्हास सदरची नोटीस दिनांक २६.०२.२०१३ रोजी प्राप्त झाली.

सदर नोटीसचा खुलासा तुम्ही दिनांक ०४.०३.२०१३ रोजी सादर केला असून तुम्ही खुलासामध्ये नमुद केले आहे की, वर्ष २०११ पासून डॉ.अतुल पाटील, अमरावती यांच्याकडे मानसिक तणावा संबंधीचे आजाराचा उपचार घेत आहे व उपचार सुरु आहे. मुंबई येथील नऊ महिन्याचे प्रशिक्षण पूर्ण केले व चार्ली कमांडो म्हणून दिड वर्ष काम केले. तसेच दंगा नियंत्रण कक्षात नऊ महिने सेवा दिली. नागपूर येथे कमांडो प्रशिक्षण पार पडले. नुकतेच यशवंतराव चव्हाण मुक्त विद्यापिठाद्वारे पदवी सुध्दा प्राप्त केली आहे व पोलीस मुख्यालयाची चोखपणे सेवा देत असून प्रतिकूल शरे कळविण्यात आले नाही. दिनांक १२.१२.२०१२ रोजी स्टीकर नर कर्तव्य पार पाडत असतांना जिल्हाधिकारी कार्यालय येथे निवेदन देऊन पोलीस संघटना स्थापन करण्याची मागणी केली व इच्छा मरणाची परवानगी मागितली. ही बाब नमुद कालावधीनंतर उपचाराचे दरम्यान वडीलांकडून व नोटीस पत्राद्वारे कळली याबाबत अनभिज्ञ आहे. सदर निवेदन दिले किंवा कसे आठवत नाही. जवळ निवेदनाची प्रत नाही. झाडाला दोर बांधून गळ्यात अडकवून जिल्हाधिकारी कार्यालय अमरावती येथे चिथावणीखोर वक्तव्य केले ही बाब सुध्दा नोटीस मधून व वडीलांकडून कळली. त्याबाबत अनभिज्ञ असून केवळ मानसिक तणावातून वरील कृत्य घडले असावे असे दिसते. याबाबत अद्यापही आठवत नसून केवळ सांगोपांगी माहितीवरून वरील बाब कळली. तरी त्याबाबत दिलगिर आहे. पोलीस विभागाचा सच्चा सेवक आहे. सार्वजनिक ठिकाणी लोकांच्या भावना भडकविण्याचे कृत्य केले ही बाब अमान्य आहे. सदर वर्तन मानसिक दृष्ट्या पात्र व सदृढ अवस्थेतील नाही. ही बाब नैसर्गिक न्यायाचे दृष्टीने क्षम्य ठरते. तथाकथित वक्तव्य व गळफास घेण्याचे कृत्य हे पूर्वनियोजित नाही, हेतुपुरस्पर निश्चितच नाही. मानवतावादी दृष्टीकोणातून निर्दोषपूर्ण घोषित करावे. याबाबत

वेळोवेळीचे वैद्यकिय प्रमाणपत्र सादर केले आहे. त्यावरून निश्चितच खात्री होईल की पोलीस खात्याविषयी कोणताही दुराग्रह नाही. आजपर्यंत कोणताही फौजदारी गुन्हा नाही व चारीत्र चांगले आहे. वैद्यकिय रजा उपभोगून त्यांचे मार्गदर्शनानुसार सेवेत रुजू होवू इच्छीतो सबब बडतर्फीची कार्यवाही करू नये.

तुमचा वर नमुद खुलासा समाधानकारक नाही, सदर जबाबामध्ये तुम्ही स्पष्टपणे नमुद केले आहे की तुम्ही नऊ महिन्यांचे मूलभूत प्रशिक्षण पूर्ण केले आहे, चाली कामांडो म्हणून दिड वर्ष काम केले आहे. तसेच दंगा नियंत्रण पथकात सुध्दा सेवा दिली आहे. तसेच, यंशवंतराव चव्हाण मुक्त विद्यापिठाद्वारे पदवी सुध्दा नुकतीच प्राप्त केली आहे हे आपणांस आठवते. परंतु, जिल्हाधिकारी यांना निवेदन दिले, इच्छामरण मागितले / झाडाला दोर बांधून गळ्यात अडकवून सार्वजनिक ठिकाणी वक्तव्य केले हे वर्तन आठवत नाही हे म्हणणे संयुक्तीक नाही. तुम्ही मानसिक रुग्ण असल्याचे स्वतः कबुल केलेले आहे. तसेच, मानसिक तणावात असल्याचे सुध्दा नमुद केलेले आहे. तसेच तुम्ही मानसिक रुग्ण असल्याचे व डॉक्टर अतुल पाटील यांचेकडे वैद्यकिय उपचार सुरु असल्याचे कागदपत्र सादर केले आहे. सदर कागदपत्रावरून तुम्ही मानसिक दृष्ट्या पोलीस दलातील कर्तव्ये पार पाडण्यांस अपात्र असल्याचे दिसून येते. पोलीस दलातील कर्मचा-यास सतत जनतेमध्ये वावरावे लागते. तसेच विविध प्रकारचे अग्नीशस्त्रे हाताळावी लागतात. त्यामुळे या अवस्थेत तुमच्याकडून कुठलीही अप्रिय घटना घडण्याची शक्यता नाकारता येत नाही. त्याप्रमाणे तुम्ही कर्तव्यावर गैरहजर होऊन पोलीस संघटना स्थापन करण्यासाठी हालचाली केलेल्या आहेत हे सिध्द होते. या संबंदात वृत्तपत्रांत सुध्दा बातमी प्रसिध्द झालेली आहे. तुमचे वर्तन हे पोलीस दलातील शिस्त / वर्तणुक व जबाबदारी यांचे विरुध्द असून शासनाचे ध्येयधोरणाविरोधात असल्याचे वर नमुद वर्तनावरून आढळून येते. त्याचप्रमाणे तुम्ही पोलीस दलातील कर्तव्ये पार पाडण्यांस मानसिक दृष्ट्या अपात्र असल्याचे मानसोपचारतज्ञ डॉ. अतुल पाटील यांचे कागदपत्रांवरून दिसून येते. त्यामुळे तुम्हास पोलीस शिपाई या पदावर ठेवणे व्यवहार्य ठरणार नाही.

त्याअर्थी मी अजित पाटील, पोलीस आयुक्त, अमरावती शहर मला भारतीय संविधानाच्या अनुच्छेद ३११ (२)(ब) अन्वये प्रदान करण्यात आलेल्या अधिकाराचा वापर करून पोलीस शिपाई १५५६, संदिप केशवराव आकोलकर नेमणुक पोलीस मुख्यालय यांना त्वरीत प्रभावाने या आदेशाद्वारे सेवेतून बडतर्फ करीत आहे.

3. It was argued by Shri Sawarkar, learned counsel for the applicant that the impugned order does not record reasons for

concluding that in this case it was not reasonably practicable to hold enquiry as contemplated under Article 311 (2) and hence the order passed by taking recourse to Article 311 (2) (b) cannot be sustained.

4. To further support his submissions that the impugned order was completely unwarranted, Advocate Shri Sawarkar relied on the opinion of Dr. Atul Patil (Annex-A-3) in which he stated that the applicant had gone through an episode of mania, after medication he had recovered fully but there was a relapse because the applicant did not follow medical instructions.

5. On behalf of the applicant reliance was also placed on the Circular dated 19/9/2008 (Annex-A-10) issued by Home Department, Government of Maharashtra in which following observations made by this Tribunal in O.A.No. 94/2007 are quoted –

“ Tribunal has come across number of applications filed by the Police personnel who are dismissed from service by the authority by exercising the powers under the said provisions, wherein we have noted that same or similar reasons, i.e., Witness may not come forward to depose against the delinquent as a routine manner, are being recorded. Many a times, we have noted that the authority passing the order did not bother to record the reason which is germane to the point, i.e., reasonability and practicability of holding an enquiry which is sine qua non for exercising that power. In many matters we have seen that the reasons are recorded in

routine manner without there being any material to reach such satisfaction."

6. Reply of respondent nos.2 and 3 is at pages 68 to 73. It is their contention that the order of dismissal passed by respondent no.2 and confirmed in appeal squarely falls within the four corners of Article 311 (2) (b) and hence the same need not be interfered with.

7. Main contention of the applicant is that the order of dismissal (Annex-A-2) does not either record reasons or demonstrate that it was reasonably not practicable to hold enquiry as contemplated under Article 311 (2) and hence it cannot be sustained. It was further submitted that the Appellate Authority, too, fell in error by not holding that the order of dismissal of the applicant was indefensible considering what is expressly stipulating in Article 311 (2) (b). This provision reads as under –

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

(b) 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;

8. We have perused the impugned order (Annex-A-2). For exercise of powers under Article 311 (2) (b) subjective satisfaction of the authority passing the order that it is reasonably not practicable to hold enquiry is absolutely essential. In addition, such satisfaction arrived at on the basis of consideration of facts must necessarily reflect in the order through reasons.

9. In Annex-A-2 various acts said to have been committed by the applicant are set out. But that could not have been sufficient to proceed under Article 311 (2) (b). The authority exercising such powers which are drastic in nature and carve out an exception to Article 311 (2), must record reasons as to why it would not be reasonably practicable to hold enquiry. Absence of these conditions precedent would render order under Article 311 (2) (b) unsustainable.

10. Assuming that the applicant had committed several acts which were serious in nature and quite clearly unbecoming of a government servant the proper course to adopt would have been to hold proper departmental enquiry as provided under Article 311 (2). This regular course could not have been departed from unless there were circumstances to show that it was reasonably not practicable to

hold such enquiry. The order at Annex-A-2 does not satisfy this criteria.

11. The applicant has relied on **A. Sudhakar Vs. Master General, Hyderabad, 2006 Law Suit (SC) 234**. In this case it is held—

“(25) In terms of Article 311 (2) of the Constitution of India, the procedural requirements which were required to be followed were as under: (i) opportunity to the concerned officer to deny his guilt and establish his innocence which means he must be told that what the charges against him are and the allegations on which such charges are based; (ii) he must be given a reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf; and (iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him.

(26) It is well-settled that those principles of natural justice are not embodied principles. The requirements contained in Article 311(2) of the Constitution of India in view of the decision of this Court in Khem Chand v. Union of India are held to be as a part of the principle of natural justice. The courts in the aforementioned situation are required to see as to whether non-observance of any of the said principles in a given case has resulted in denial of justice. If there had been substantial compliance of the procedure, the court may not interfere.”

12. The applicant has further relied on *Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and ors., 2015 Law Suit (SC) 1056.* In this case it is held that an enquiry initiated without framing of charges and concluded without giving an opportunity of hearing to the delinquent would be against the principles of natural justice and hence not sustainable in law. For all these reasons the impugned order deserves to be quashed and set aside.

13. It is settled legal position that order to pay full backwages does not automatically follow order of quashing and setting aside dismissal which results in reinstatement. Quantum of backwages, if at all backwages are to be granted should be based on proper appreciation of relevant material on record - the most important being whether or not the delinquent was gainfully employed during the period when the order of dismissal was subsisting. In the instant case, for want of concrete material, it would be just and proper to direct payment of 30% backwages. Thus the applicant would be entitled to relief in terms of prayer clauses (i) and (iii) and 30% backwages. Hence, the order –

ORDER

The O.A. is allowed in terms of Prayer clauses (i) and (iii). In addition, the applicant is held entitled to 30% backwages. The

appointing authority shall reinstate the applicant within 30 days from today. The respondents would be at liberty to initiate regular disciplinary proceedings against the applicant, if deemed necessary.

No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated :- 07/04/2022.

dnk.

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

Name of Steno : D.N. Kadam

Court Name : Court of V.C. and Hon'ble Member (J).

Judgment signed on : 07/04/2022

Uploaded on : 08/04/2022