

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.794 OF 2019 AND  
ORIGINAL APPLICATION NO.66 OF 2020**

**DISTRICT:- LATUR**

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**O.A.NO.794/2019**

- 1) Shrihari Ram Davargave,  
Age : 32 years, Occ. Service,  
As Police Constable (now dismissed),  
R/o. Sardarwadi, Tal. Nilanga,  
Dist. Latur.
- 2) Sham Prabhakar Bade,  
Age : 32 years, Occ. Police Constable,  
(Now Dismissed), R/o. Borgaon,  
Tal. Jalkot, Dist. Latur.
- 3) Ramesh Pandharinath Birle,  
Age : 33 years, Occ. Police Constable  
(Now Dismissed), R/o. Harangul,  
Tal. & Dist. Latur.

**...APPLICANTS**

**V E R S U S**

- 1) The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
- 2) The Director General of Police,  
Bhagatsing Shahid Marg, Mumbai.
- 3) The Special Inspector General of Police,  
Nanded Region, Nanded,  
Tq. & Dist. Nanded.
- 4) The Superintendent of Police,  
Latur, Tal & Dist. Latur.
- 5) The Sub Divisional Police Officer,  
Udgir, Tal. Udgir, Dist. Latur.

**...RESPONDENTS**

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APPEARANCE : Shri D.T.Devane, Advocate for the Applicants.  
: Shri M.P.Gude, Presenting Officer for the respondents.

**O.A.NO.66/2020**

Mahesh s/o. Vyankatrao Khelge,  
Age : 39 years, Occ. Nil,  
R/o. At Post : Wadhvana (Bk),  
Tal. Udgir, Dist. Latur.

**...APPLICANT**

**V E R S U S**

The Superintendent of Police,  
Latur.

**...RESPONDENT**

APPEARANCE : Shri A.S.Deshmukh, Advocate for the Applicant.  
: Shri M.P.Gude, Presenting Officer for the respondent.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN  
AND  
SHRI BIJAY KUMAR, MEMBER (A)**

**Reserved on : 11-07-2022  
Pronounced on : 14-07-2022**

**C O M M O N O R D E R**  
**(PER: JUSTICE SHRI P. R. BORA)**

1. There are three applicants in O.A.No.794/2019 whereas O.A.No.66/2020 is filed by sole applicant. These four applicants have been dismissed by a common order passed by Superintendent of Police, Latur who is the sole respondent in O.A.No.66/2020 whereas respondent no.4 in O.A.No.794/2019 (hereinafter mentioned as Disciplinary

Authority). In view of the fact that in both the O.As. challenge is to the aforesaid order dated 01-04-2019, we have heard both these matters together and deem it appropriate to decide these matters by this common order.

2. At the relevant time all the applicants were posted at Police Station Udgir City. Applicant nos.1 and 2 in O.A.No.794/2019 were working on the post of Police Constable whereas applicant no.3 in O.A.No.794/2019 and applicant in O.A.No.66/2020 were working as Naik Police Constable.

3. On 01-04-2019, crime was registered against all the four applicants on the report lodged by one Shri Sachin Balaji Channawar for offences u/s.392 & 394 r/w. 34 of the IPC. On the same day i.e. on 01-04-2019 the impugned order came to be passed whereby the applicants have been dismissed from the police services. The applicants have alleged that before passing the impugned order neither any show cause notice was given to them by the Disciplinary Authority nor the opportunity of hearing was afforded. It is the further contention of the applicants that implicitly relying on the contents in the FIR registered against the applicants, the Disciplinary Authority has without making any further enquiry and without giving an opportunity of

hearing to the applicants jumped to the conclusion that the applicants are guilty of the accusations made against them in the FIR. According to the applicants the Disciplinary Authority has arbitrarily exercised the powers under Article 311(2)(b) of the Constitution of India. The applicants have, therefore, sought quashment of the impugned order.

4. Respondents have resisted the O.As. by filing affidavits in reply in both the matters. Contents of the affidavits in reply filed in both these matters are substantially same. It is the contention of the respondents that the applicants did commit offence of serious nature by taking undue advantage of their posts in the Police Force. According to the respondents since a strong *prima facie* evidence was available against the applicants showing involvement of each of them in commission of the alleged crime, immediate and strict action was required to be taken against the applicants so as to ensure that faith of the common man in the Police Force is not lost. It is the further contention of the respondents that since the applicants were serving in the Police Force, no witness was likely to come forward to depose against them. In the circumstances, according to the Disciplinary Authority, it was not reasonably practicable to conduct the regular

departmental enquiry against the applicants. It is the further contention of the respondents that as per the investigation done by the Investigating Officer, all the applicants were found to be involved in commission of the alleged crime, and in the circumstances, Disciplinary Authority invoked powers under Article 311(2)(b) of the Constitution of India and dismissed the applicants from the police services with an object that the public at large shall not lose faith in the police department.

5. Heard Shri D.T.Devane, Shri A.S.Deshmukh, learned Counsel for the applicants in respective cases and Shri M.P.Gude, learned Presenting Officer appearing for the respondents in both cases. Learned Counsel for the applicants relied upon the following judgments in support of their arguments:

- (i) Judgment of Hon'ble Apex Court in case of Jaswant Singh V/s. State of Punjab reported in [1991 AIR SC 385].
- (ii) Judgment of Hon'ble Apex Court in case of Risal Singh V/s. State of Haryana & Ors. [2014 (13) SCC 244].
- (iii) Judgment of Hon'ble Apex Court in case of Tarsem Singh V/s. State of Punjab [2006 (13) SCC 581].

- (iv) Judgment of Hon'ble Delhi High Court in case of Govt. of NCT of Delhi & Ors. V/s. Sudesh Pal Rana passed in W.P. (C) No.788/2010 & CM No.20322/2010.
- (v) Judgment of learned D.B. of the M.A.T., Mumbai in case of Shri Pralhad P. Patil V/s. Superintendent of Police, Raigad & Anr. passed in O.A.No.122/2016.
- (vi) Judgment of learned D.B. of the M.A.T., Nagpur in case of Ganesh Shriram Jogdand V/s. State of Maharashtra & Anr. passed in O.A.No.781/2019.

6. Referring to the law laid down in the aforesaid judgments, the learned Counsel have argued that powers under Article 311(2)(b) are to be sparingly used. It has been further argued that there must exist a situation which would render holding of an enquiry not reasonably practicable. Learned Counsel have submitted that in the impugned order Disciplinary Authority has not discussed any such reason which would justify the dismissal of the applicants without conducting enquiry against them. According to the learned Counsel, Disciplinary Authority has arbitrarily exercised the power vested in him. Learned Counsel have, therefore, prayed for setting aside the impugned order.

7. Learned P.O. appearing for the respondents supported the impugned order. The learned P.O. reiterating the contentions raised in the affidavits in reply submitted that ample *prima facie* evidence was existing against the applicants. He further argued that having regard to the nature of offence committed by the applicants, the image of the Police Force has been tarnished and the faith of the common man in the Police is shaken. Learned P.O. further submitted that applicants being police persons, no witness would have dared to depose against the applicants and as such, it was not reasonably practicable to hold enquiry against the applicants. Learned P.O., therefore, prayed for dismissal of the O.As.

8. We have carefully considered the submissions advanced by the learned Counsel appearing for the applicants and the learned P.O. appearing for the respondents. We have perused the documents filed on record.

9. It is not in dispute that on 01-04-2019 crime came to be registered against the applicants in Udgir City Police Station for offences punishable u/s.392, 384 r/w. 34 of the IPC. In the FIR, it was alleged by informant Sachin Channawar that, on 29-03-2019 when he was returning to

his home after closing his shop (Balaji Jewellers), he was accosted by one police person, namely, Shri Shrihari Davargave (applicant no.1 in O.A.No.794/2019) and was called upon by him to disclose what the informant was carrying in the bag with him. It is further alleged that the said police person then took informant in the marble shop of one Shri Koyle in Shahu Chowk and started grilling the informant. Informant was threatened by the said police person that the amount in the bag of the informant will be seized if he does not pay 70% of the said amount to him. It was further alleged that another police person by name Shri Birle (applicant no.3 in O.A.No.794/2019) reached at the said spot and he also grilled the informant. Said Shri Birle gave proposal to pay to the police persons the 50% of the amount in the bag. An amount of Rs.6,00,000/- (Rs. Six lac only) was there in the said bag. It is further alleged that thereafter Mahesh Khelge (applicant in O.A.No.66/2020) reached there and he also threatened the informant to pay 50% of the total amount in his bag or else the police will implicate him in crime. The contents of the FIR further reveal that Mahesh Khelge and Sham Bade (applicant no.2 in O.A.No.794/2019) took him on the backside of the Police Station and Mahesh Khelge forced



the informant to compromise the matter and robbed an amount of Rs.1,50,000/- (Rs. One lac fifty thousand only) from him and after receiving the said amount released the informant. The contents of the FIR further reveal that, the informant disclosed about alleged incident to the press reporters and then submitted an application in the office of Sub Divisional Magistrate (SDM) Shri Lokhande and also informed the Special Inspector General of Police, Nanded region by using website of the said office. The contents of the FIR further reveal that the Police persons who had accepted the money from the informant then returned the amount of Rs.1,50,000/- (Rs. One lac fifty thousand only) to him and under coercion and threats got an application signed by the informant to the effect that informant is withdrawing the complaint against the applicants.

10. On the basis of the aforesaid FIR a crime came to be registered against the applicants at Udgir City Police Station for offences punishable u/s. 392, 384 r/w.34 of the IPC. FIR was registered at about 04:00 pm. On the same day, the Disciplinary Authority issued the impugned order and thereby dismissed the applicants from the Police services with immediate effect. We deem it appropriate to

reproduce hereinbelow the impugned order as it is in vernacular, which reads thus:

“जा.क्र.डिई/पिआर/बडतर्फ/२०१९/४२५७

लातूर दि.०१/०४/२०१९.

विषय :- भारतीय संविधान १९५० मधील अनुच्छेद क्रं.३११(२)(b) अंतर्गत सेवेतून बडतर्फीचे आदेश.

**::आदेश::**

ज्याअर्थी तुम्ही १) पोशि/१६६१ श्रीहरी राम डावरगावे, ने.पो. स्टे.उदगीर शहर २) नापोशि/१३१३ महेश व्यंकटराव खेळगे, ने.पो.स्टे. उदगीर शहर, ३) पोशि/१६८० शाम प्रभाकर बडे, ने.पो.स्टे.उदगीर शहर व ४) नापोशि/७७६ रमेश पंढरीनाथ बिलें, ने.पो.स्टे.उदगीर ग्रामीण येथे नेमणूकीस आहात.

तुम्ही पोलीस दलात नेमणूकीस असून कायद्याचे रक्षण करणे हे कायदेशीर कर्तव्य असतानासुद्धा तुम्ही लोकसभा निवडणूक सन-२०१९ चे निवडणूक आदर्श आचार संहितेची भिती दाखवून खंडणी व जबरी चोरी सारखे पोलीस दलाच्या कामकाजास घात पोहचवणारे, गुन्हेगारी स्वरूपाचे, विघातक व बेजबाबदारपणाचे कृत्य केल्याचे निदर्शनास आले आहे.

आणि ज्याअर्थी तुम्ही केलेल्या गुन्हेगारी कृत्याबाबत तुमच्या विरूद्ध पो.स्टे.उदगीर शहर येथे गुन्हा नोंद झाला आहे.

आणि ज्याअर्थी, सदर गुन्हेगारी पीडीत व साक्षीदार हे तुमच्या गुन्हेगारी वृत्तीमुळे भयभीत झाल्याचे दिसून आले आहे. सबब तुमच्या विरूद्ध नियमित विभागीय चौकशी करण्याचे ठरविल्यास तुमच्या गुन्हेगारी वर्तनामुळे विभागीय चौकशीत तुमच्याविरूद्ध साक्ष देण्यासाठी साक्षीदार पुढे येणार नाहीत. त्यामुळे तुमच्याविरूद्ध विभागीय चौकशी करणे हे वाजवी किंवा व्यवहार्य ठरणार नाही, अशी माझी पुर्ण खात्री झाली आहे.

त्याअर्थी मी, डॉ.राजेंद्र माने, पोलीस अधीक्षक लातूर, पोलीस शिपाई या पदाचा नियुक्ती प्राधिकारी म्हणून मला भारतीय संविधान १९५० मधील अनुच्छेद क्रं.३११(२)(b) द्वारे प्रदान असलेल्या अधिकाराचा वापर करून तुम्ही १) पोशि/१६६१ श्रीहरी राम डावरगावे,

ने.पो.स्टे.उदगीर शहर २) नापोशि/१३१३ महेश व्यंकटराव खेळगे, ने.पो.स्टे.उदगीर शहर, ३) पोशि/१६८० शाम प्रभाकर बडे, पो.स्टे.ने.उदगीर शहर व ४) नापोशि/७७६ रमेश पंढरीनाथ बिल्ले, ने.पो.स्टे.उदगीर ग्रामीण यांना सदरील आदेश प्राप्त झाल्यापासून सेवेतुन बडतर्फ करित आहे.

स्वाक्षरी /—  
(डॉ राजेंद्र माने)  
पोलीस अधीक्षक, लातूर”

11. From the contents of the aforesaid order, it is evident that the Disciplinary Authority had conclusively held that the applicants are guilty of the offence which was still in the legal process with a presumption of innocence. As mentioned hereinbefore FIR came to be lodged on 01-04-2019 at about 04:00 pm and on the basis of the said FIR, crime came to be registered against the applicants for offences punishable u/s.392, 384 r/w.34 of the IPC. The order of dismissal is passed on the same day i.e. on 01-04-2019. It must have been passed during the office hours. It, thus, appears that before investigation commences in the said crime, Disciplinary Authority held the applicants guilty of the allegations made against them in the said FIR.

12. It is a matter of common knowledge that the police do not submit charge sheet against any accused unless the entire investigation is completed and unless sufficient

material is collected evidencing the culpability of the said accused in committing the crime alleged against him. Many times it happens that if no sufficient material is collected, the police do not file charge sheet in the said matter. For completing the investigation and for filing the charge sheet in the court, time is provided of 60 days, 90 days and 180 days, as the case may be, under the provisions of Criminal Procedure Code. In the instant matter, Disciplinary Authority however, reached to the conclusion that the applicants are guilty of the offence on the same day on which the offence is registered against the applicants. The Disciplinary Authority thus, has held the applicants guilty of the offence which was still in legal process with a presumption of innocence. When investigation was not even commenced, on what basis respondent reached to the conclusion and held the applicants guilty of the offence, is not explained by the respondents. The Disciplinary Authority has held the applicants guilty relying on the sole document i.e. FIR filed by one Shri Sachin Channawar. The course adopted by the respondent is unconscionable and impermissible.

13. In paragraph 20 of the affidavit in reply filed in O.A.No.66/2020, it is contended that after receipt of the

complaint, the investigation was handed over to SDPO, Udgir Division, namely, Shri Bhimashankar Hirmukhe. It is further stated that the SDPO personally visited Udgir and inquired into the matter wherein it was revealed that the applicants did commit alleged offence though they belong to a disciplined force. It is further stated that the said SDPO appraised the Disciplinary Authority about it and the Disciplinary Authority after having gone through the matter in detail arrived at a conclusion that no witness is likely to come forward to state against the applicants, and therefore, it was impracticable to initiate departmental enquiry against the applicants. It is further averred that as per the investigation done by the Investigating Officer, the applicants are found involved in the said crime. It is further contended that having regard to the nature of offence, since, immediate action was required to be taken to save the dignity and image of police force, the enquiry was dispensed with.

14. It is significant to note that in the impugned order nothing is mentioned about the investigation allegedly done by SDPO, Udgir, namely Shri Bhimashankar Hirmukhe. Secondly, it is not disclosed by the Disciplinary Authority as to when the investigation was handed over to SDPO,

Udgir and when he visited Udgir. It is also not disclosed as to what sort of enquiry was made by SDPO, Udgir and whether the SDPO, Udgir had recorded statements of witnesses and if yes, who were the said witnesses.

15. As we have mentioned hereinabove, before commencement of the investigation in the crime registered against the applicants, the order of dismissal was passed by the Disciplinary Authority. In the circumstances, the stand taken by the Disciplinary Authority in paragraph 20 of the affidavit in reply filed in O.A.No.66/2020, is absolutely unsustainable. FIR is admittedly filed on 01-04-2019. As we have noted hereinabove, FIR was registered at 04:00 pm, more particularly, at 16:13 hours on 01-04-2019. The impugned order of dismissal has also been passed on 01-04-2019. In absence of any material placed on record, the order of dismissal must be held to have been issued during the office hours on 01-04-2019. In no case investigation was likely to be completed within a span of less than two hours. Thus, we have no hesitation in holding that without there being any material against the applicants except the FIR filed against the applicants, Disciplinary Authority by making undue haste has passed the impugned order. The fact apart that in absence of any

convincing material placed on record by the respondents, we are constrained to hold that the conclusion recorded by the Disciplinary Authority holding the applicants guilty of the alleged charges only on the basis of the FIR filed against the applicants, cannot be sustained, the moot question is whether the Disciplinary Authority has recorded the reasons to justify that it was not reasonably practicable to hold the enquiry against the applicants before ordering their dismissal ? and the next question would be, if such reasons are recorded, whether they are sustainable ?

16. In the order of dismissal Disciplinary Authority has mentioned that, had he decided to hold regular enquiry into the misconduct of the applicants, because of the criminal conduct of the applicants, no one would have come forward to depose against the applicants. The reason as has been assigned in the impugned order is apparently unacceptable and appears to be false. Having regard to the nature of allegations leveled against the applicants for ordering their dismissal, the most material witness would have been the person who had lodged the report at Udgir City Police Station, namely, Shri Sachin Balaji Channawar. Another evidence could be of Press Reporter Shri Soni and SDPO, Udgir Shri Lokhande. It does not appear to us that any of

the witnesses as aforesaid would have avoided to depose in the departmental enquiry against the applicants. When the informant Shri Sachin Channawar after having faced torture and terror at the hands of the applicants did not feel any fear in lodging report against the applicants in the Police Station and also made a complaint online with the Special Inspector General of Police, Nanded Region, it does not appear to us that there was any impediment for the informant to depose before the Enquiry Officer about the alleged incident. For SDPO, Udgir, there was no question of any fear and his evidence could have been recorded in the enquiry proceedings. It was, thus, very much possible to hold a regular enquiry against the applicants before ordering their dismissal.

17. The Hon'ble Apex Court has consistently ruled that in order to invoke clause (b) of Article 311 (2) of the Constitution, following two conditions must be satisfied to sustain any action taken thereunder. These are: -

- (i) There must exist a situation which renders holding of any enquiry, "not reasonably practicable; and
- (ii) The disciplinary authority must record in writing its reasons in support of its satisfaction.



The question of practicability would depend on the existing fact, situation and other surrounding circumstances. The question of reasonable practicability, therefore, has to be judged in light of the circumstances prevailing in that particular case on the date of passing of the order.

18. In the instant matter, as we have elaborately discussed hereinabove, no such circumstance or situation is brought on record rendering holding of an enquiry not reasonably practicable. Secondly, the Disciplinary Authority has not recorded any convincing reason in support of his satisfaction while reaching to the conclusion that it was not reasonably practicable to hold the enquiry against the applicants before ordering their dismissal.

19. The law is well settled that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or merely in order to avoid holding of an enquiry. According to us, the reasons as have been canvassed by the learned Presenting Officer are neither objective nor reasonable in the facts of the present case. It appears to us that the Disciplinary Authority has adopted a wrong and illegal method in ordering dismissal of the applicants from the police services. The order so passed by the Disciplinary Authority is in utter disregard of the

principles of natural justice. As has been held by the Hon'ble Apex Court in the case of **Jaswant Singh Vs. State of Punjab [1991 AIR (SC) 385**, the decision to dispense with the departmental enquiry cannot be rested solely on the *ipse dixit* of the concerned authority. The Hon'ble Apex Court has further held that when the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those, who support the order to show that satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. The respondents have utterly failed in convincing us that any such circumstance was prevailing so as to dispense with the enquiry envisaged by Article 311(2) of the Constitution. The Disciplinary Authority has, thus, arbitrarily exercised the power vested in him. Though the learned Presenting Officer has placed reliance on the judgment of the Hon'ble Apex Court in the case of **Ved Mitter Gill Vs. Union Territory Administration, Chandigarh and others [(2015(3) SLR 739 (SC)]**, the facts in the said matter were altogether different than the facts involved in the present matters.

20. In view of the fact that no material has been placed by the respondents to establish that it was necessary to

dispense with a normal enquiry against the applicants in terms of proviso (b) appended to clause (2) of Article 311 of the Constitution, we are of the opinion that the impugned order cannot be sustained and deserves to be set aside. It is accordingly set aside. The respondents are directed to reinstate the applicants in service within one month from the date of this order. However, in view of the discussion made by us in the body of judgment it would be open to the respondents to initiate the departmental enquiry against the applicants if they so desire. Payment of back-wages shall abide by the result of the said enquiry. Such enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of passing of this order and shall be completed within six months from its commencement. The applicants shall ensure that the enquiry proceedings are not delayed or protracted at their instance.

The Original Applications are allowed in the aforesaid terms. There shall be no order as to costs.

**(BIJAY KUMAR)**  
**MEMBER (A)**

Place : Aurangabad  
Date : 14<sup>th</sup> July, 2022

**(JUSTICE P.R. BORA)**  
**VICE CHAIRMAN**