

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 696/2013 (D.B.)

Ishwar S/o Pandurang Mashram,
 Aged Major, Occ. Nil,
 R/o Tulan Mendha, Post Vayagaon,
 Tq. Bramhapur, Dist. Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
 Department of Home Ministry,
 through its Secretary, Mantralaya, Mumbai-32.
- 2) State Reserve Police Force,
 through its Director, Mumbai.
- 3) State Reserve Police Force,
 Block No.13, Nagpur.

Respondents.

S/Shri S.P. Palshikar, G.K. Bhusari, Advs. for the applicant.
Shri P.N. Warjurkar, P.O. for respondents.

WITH
ORIGINAL APPLICATION No. 313/2019 (D.B.)

Kailash S/o Mangusingh Rathod,
 Aged 50 years,
 R/o Karanja (Rural),
 District : Washim.

Applicant.

Versus

- 1) State of Maharashtra,
 through its Additional Chief Secretary,
 Home Department ,Mantralaya, Mumbai.
- 2) Superintendent of Police,
 Washim, District Washim.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri A.M. Ghogre, P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 356/2019 (D.B.)

Rajratan Khadse,
 Aged 31 years, Occ. Service
 (at present dismissed from service)
 R/o Pipri Police Quarter,
 Quarter No. G-3, Saraswati Building, Wardha.

Applicant.**Versus**

1) State of Maharashtra,
 through its Additional Chief Secretary,
 Home Department ,Mantralaya, Mumbai.

2) Superintendent of Police,
 Wardha.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri A.M. Ghogre, P.O. for respondents.

WITH**ORIGINAL APPLICATION No. 126/2019 (D.B.)**

Vijay S/o Gunwant Kene,
 Aged about 40 years, Occ. Service,
 R/o Durga Colony, Shriram Nagar, Tumsar,
 Dist. Bhandara.

Applicant.**Versus**

1) State of Maharashtra,
 Department of Home Ministry,
 through its Secretary, Mantralaya, Mumbai-32.

2) Superintendent of Police,
 Bhandara.

3) The Deputy Superintendent of Police,
 Tumsar, Dist. Bhandara.

Respondents.

Shri M.R. Khan, Advocate for the applicant.
Shri P.N .Warjurkar, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 20th November, 2019.

Date of Pronouncement of Judgment : 22nd November, 2019.

COMMON JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 22nd day of November, 2019)

Heard Shri S.P. Palshikar, learned counsel for the applicants (in O.As.696/13, 313/19 & 356/19), Shri M.R. Khan, Id. counsel for the applicant (in O.A.126/19) and Shri A.M.Ghogre, Id. P.O. and Shri P.N. Warjurkar, Id. P.O. in respective O.As.

2. The disputed issues involved in all these O.As. are the identical, therefore; all applications are heard and being decided by this common order.

3. In O.A. 696/2013 the applicant was appointed as Constable in SRPF in the year 1997. On 6/1/2006 as per the contention of the applicant someone used his loaded Rifle and fired it, consequently one Gangadhar Y. Thakre died. It was contention of the Department that the applicant was the person who fired the Rifle and killed Gangadhar Y. Thakre. The offence was registered under Section 302 of IPC against the applicant, the charge sheet was filed.

The applicant was arrested and suspended. The Commanding Officer served show cause notice on the applicant dated 15th September, 2006 calling his explanation why the applicant should not be dismissed from the service as provided under Article 311 (2) (b) of the Constitution of India. The applicant submitted reply on 21/9/2006 and thereafter vide order dated 11/10/2006 the Commanding Officer dismissed the applicant from service observing that the conduct of the applicant was defaming the department and it may create indiscipline in the SRP Force and in order to save image of the department in the public, the applicant was dismissed from the service.

4. It is case of the applicant that he was prosecuted in Sessions Trial No.53/2006 and he was convicted vide Judgment dated 13/8/2009 by the Sessions Court. The applicant preferred Appeal No.441/2009 before the Hon'ble High Court and the Hon'ble High Court allowed the appeal on 11/6/2013 and acquitted the applicant.

5. The applicant thereafter made representation to the department for his reinstatement in service, but it was rejected vide order dated 8/8/2013. In the present application, it is submitted that the applicant is dismissed from the service without conducting the departmental inquiry as provided in the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, therefore, his dismissal is contrary to law. It is submission on behalf of the applicant that after his

acquittal in the criminal case the department could have initiated the departmental inquiry, but it was not done and as the order of dismissal passed on 11/10/2006 was without conducting inquiry, therefore, after acquittal of the applicant in the crime, it was necessary for the respondents to give opportunity to the applicant to serve in the department. It is submitted that the Competent Authority without examining the merits of the case and the legal position, dismissed the applicant from the service. The main contention of the applicant is that there was no reason mentioned in the order dated 11/10/2006 why it was necessary to dispense with the disciplinary inquiry, therefore; the dismissal of the applicant is illegal and it is liable to be set aside.

6. In the O.A.No. 313/2019 the applicant joined the service on 1/6/1993 as Police Constable that on 17/3/2019 the applicant was attached to Police Station, Karanja (Rural), District Washim. The Crime No.76/2009 under Sections 420, 471 of IPC were registered at Police Station, Pophali, District Yavatmal. The Superintendent of Police, Washim received this information and in that crime the applicant was arrested on 19/3/2009. It is grievance of the applicant that the respondent no.2 vide order dated 19/3/2019 straight way dismissed the applicant from service without holding departmental inquiry observing that it would waste the valuable time of the public

office and it was not in the interest of the public to conduct the disciplinary inquiry. It is submission of the applicant that there was no reason for dispensing with the disciplinary inquiry as contemplated under Rule 8 of the MCS (D&A) Rules, therefore, dismissal is illegal.

7. In O.A. 356/2009 the applicant was appointed as Police Constable on 7/9/2014 and he was attached to Police Station, Alipur. On 28/4/2019 the applicant and other Police Constables visited village Kalshi for investigation of accidental death. On 29/4/2019 when the applicant and other Police staff was returning, they learnt that a person residing at village Katri named Shankar Mahadeo Dayare stored illicit liquor in his house, consequently, the police party went to that house. It was noticed that 10-15 persons were gaming and amount was lying there. As the applicant was not in police uniform, he was attacked by all those persons and severely bitten. The applicant was admitted in the hospital where his statement was recorded and on the basis of that statement, the FIR was registered at the Police Station under Sections 143,147,149,323,324,353 of IPC against Shankar Mahadeo Dayare and others on 29/4/2019 at 4.28 a.m. It is submitted that Shankar Dayare and all other persons for their defence instigated Sunanda Shankar Dayare to lodge false FIR and accordingly on 29/4/2019 at about 23.24 hours Sunanda Dayare lodged FIR. It is submitted that the S.P., Wardha passed the order on

2/5/2019 and dismissed the applicant without conducting the inquiry contemplated in MCS (D&A) Rules 1979. It is submitted that the S.P., Wardha observed in the order that no witness would come forward to depose against the applicant and inquiry would be futile, therefore, the S.P., Wardha exercised the power under Article 311 (2) (b) of the Constitution of India and dismissed the applicant from the service. It is contention of the applicant that his dismissal is in violation of law and there was no case for dispensing with the inquiry as contemplated in article 311 of the Constitution of India.

8. In O.A. 126/2019 the applicant was appointed as Police Constable in the year 1996 on the establishment of SRPF, Nagpur. The applicant was transferred to Dhule and thereafter he was posted on the establishment of S.P., Bhandara. The applicant was transferred from Police Station, Andhalgaon to Police Station, Lakhandur. It is grievance of the applicant that the respondent no.2 passed the order dated 11/2/2019 observing that the applicant was transporting illicit leaker in his own vehicle due to which the image of the police was maligned in the public. The respondent no.2 observed that considering the nature of the conduct there was possibility of witnesses not deposing against the applicant and therefore the inquiry was futile, consequently, the respondent no.2 exercised the powers under Article 311 (2) (b) of the Constitution of India and dismissed the

applicant from service. In this case also it is submitted that there were no grounds for dispensing with the disciplinary inquiry as contemplated by the services rules, therefore, the action of the respondent no.2 is illegal.

9. In all the matters we have heard the submissions on behalf of the applicants. It is contention of the Id. P.O. that power is conferred on the Appointing Authority to dispense with the inquiry and dismissed the Government servant from the service, whenever in opinion of the Appointing Authority, it is not reasonably suitable to conduct the inquiry in the interest of public. It is submitted that considering the guidelines under Article 311(2)(b) the respective Appointing Authorities have exercised their powers and therefore there is no flaw in the orders of dismissal.

10. So far as the O.A. 696/2013 is concerned, it is submitted by the Id. P.O. that the applicant was dismissed in the year 2006, he did not challenge the order till his acquittal by the Hon'ble High Court and therefore that order has attained the finality and now it is not open to challenge that order.

11. The material legal issue involved in all applications is whether there were circumstances for holding that it was not reasonably practicable to conduct disciplinary inquiry. We have perused the dismissal orders passed by the Appointing Authorities in

all the matters. In O.A. 696/2013 the dismissal order is Annex-A-4. In this order the reason is given for not holding disciplinary inquiry was that the act of the applicant was defaming the Institution, it was suspicious and it would spoil the internal discipline of the department. For this reasons, the Commandant of SRPF decided to dispense with inquiry.

12. In O.A. 313/2019 the dismissal order is Annex-A-2 and in this order it is mentioned that the applicant proceeded on sick leave from 21/2/2019 and while on the sick leave, he committed the offence on 17/3/2019. It is also mentioned that the applicant had relations with the criminals and it was his duty to protect the property of the public, but due to his heinous behaviour, he defamed the department. The Appointing Authority further observed that if inquiry would be conducted in the situation, it would defame the department and it would be time consuming and therefore it was not in the interest of the society.

13. In O.A. 356/2019 the dismissal order is Annex-A-3. The Appointing Authority has observed that the offence was registered against the applicant, no witness would support in the departmental inquiry, if held, therefore it was not in the interest of the public to conduct the inquiry.

14. In O.A. 126/2019 the dismissal order is at Annex-A-1. In this order it is mentioned that there was no possibility to secure presence of the witnesses in the departmental inquiry due to connection of the applicant with the criminals and therefore the inquiry was not necessary in the interest of the public.

15. It is submission of the Id. P.O. that these reasons recorded by the respective Appointing Authorities in the dismissal order are sufficient for holding that right decision was taken by the Authorities to dispense with the inquiries as it was not reasonably practicable to conduct the inquiries.

16. The learned counsel for the applicant invited our attention to Annex-A-3 filed in O.A.313/2019. It is Circular dated 17/1/2008 and Annex-A-4 Circular dated 19th September,2008. In both the Circulars direction was given by the Government to the Appointing Authorities to exercise the power under Article 311 (2) (b) of the Constitution of India, only in exceptional cases whenever it is essential to safe guard the interest of the public or when the delinquent is involved in act which are anti-national or he is connected with hardened criminals. The learned counsel for the applicant has invited our attention to the law laid down in case of the **Chief Security Officer & Ors., Vs. Singasan Rabidas (1991)1 SCC,729**. It is submitted that the reasons for dispensing with inquiry must be for the benefit of the society at

large. In that case the reason was recorded that if the witnesses were asked to appear in disciplinary inquiry, they were likely to suffer personal humiliation and insult and there was possibility of violence. The Hon'ble Apex Court held that such reasons were not sufficient.

17. The legal position is well established in case of **Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC,385**. The Hon'ble Apex Court has observed as under –

“3. The decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the concerned authority. 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 the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the instant case, it was alleged that the delinquent Police Officer instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors. It was also alleged that he threw threats to beat up the witnesses and the Inquiry Officer if any departmental inquiry was held against him. No particulars were given. It was not shown on what material the concerned authority came to the conclusion that the delinquent had thrown threats. The satisfaction of the concerned authority was found to be based on the ground that the delinquent was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. It was not shown that the concerned authority had verified the correctness of the information leading to the said allegation. Therefore, it could not be said that the subjective satisfaction of concerned authority as to dispensation of departmental enquiry against the delinquent was fortified by independent material. Thus the order of dismissal passed against the delinquent would not be sustainable”.

18. **In case of Sudesh Kumar Vs. State of Hariyana & Ors. (2005) II SCC,525.** In para-5 the legal position is laid down as under-

“ (5) It is now established principle of law that an inquiry under Article 311 (2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311 (2) (b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311 (2) (b), as extracted above, would clearly show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order are that the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand, it is not disputed that by order dated 23/12/1999, the visa of the complainant was extended upto 22/12/2000. Therefore, there was no difficulty in securing the presence of Mr. Kenichi Tanaka in the inquiry.”

19. The Article 311 (2) mandates that no person 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 hearing. Thus it seems that the disciplinary inquiry is a rule and dispensing with the inquiry is exception to this rule. In all the matters the applicants were not convicted in a criminal case, therefore, the case was not covered in Article 311 (2) (a). Similarly, though the appointing authorities were empowered to exercise jurisdiction under Art. 311(2)(b) to dismiss or remove the

applicants, but it was obligatory on them to record some cogent reasons why it was not reasonably practicable to hold such inquiry. It is pertinent to note that in O.A.696/2013 no reason was recorded why it was not reasonably practicable to hold the inquiry. It seems that the applicant in that case was dismissed, only for the reason that he breached discipline of the department, his act had defamed the department and it would create indiscipline in the department. In our opinion, these reasons put by the Appointing Authorities cannot be accepted as a cogent reason for holding that it was not reasonably practicable to hold the inquiry.

20. In O.A. 313/2019 the facts were that the applicant was dismissed from the service vide order dated 19/3/2019 and he was dismissed in relation to the incident occurred on 17/3/2019. It is pertinent to note that no attempt was made by the Appointing Authority to conduct any inquiry, straight way it was observed that the applicant was connected with the criminals and therefore he was not suitable for the department and if any inquiry would be held, it would be time consuming and it would not be in the interest of the society. Considering these reasons, it is not possible to accept that this case was covered under Article 311 (2) (b) of the Constitution of India for dispensing with the inquiry.

21. In O.A.356/2019 the reason given for not conducting the inquiry was that the witnesses would not turn up to depose against the applicant. It seems that the alleged incident occurred on 29/4/2019 and the applicant was dismissed from the service vide order dated 2/5/2019, how the Authority come to the conclusion that witnesses would not turn up or they would not support. In that case facts were that one of the witnesses had lodged FIR against the applicant and therefore it is not possible to accept that the witnesses were under threat. In view of these facts we are of the view that no cogent reasons were recorded by the Appointing Authority to show that it was not reasonably practicable to conduct the inquiry.

22. In O.A.126/2019 also on perusal of the dismissal order, it seems that offence was registered against the applicant on 4/6/2018 under Section 65 (a) & 83 of the Bombay Prohibition Act and Sections 279 & 427 of the IPC, the Appointing Authority observed that no witness would turn up to depose against the applicant and therefore it was futile to conduct the inquiry. It is pertinent to note that the crime no.510/2018 was already registered against the applicant and case was pending. The Police Officers who were witnesses in that case could have been examined. Under these circumstances, the reasons recorded, in our opinion are not sufficient to accept that it was practically unreasonable to conduct the inquiry. In our opinion all the

impugned orders of dismissal are passed disregarding true spirit under Article 311 (2) (b) of the Constitution of India and therefore these orders cannot be sustained.

23. So far as the O.A. 696/2013 is concerned, we would like to point out that the alleged incidence occurred on 6/1/2006 and the applicant was dismissed from the service vide order dated 11/10/2006. As the criminal trial was pending against the applicant, he did not challenge that order, he was convicted by the trial court vide Judgment dated 13/8/2009. The applicant preferred the appeal before the Hon'ble High Court and the Hon'ble High Court allowed the Appeal No.441/2009 on 11/6/2013. After the acquittal, the applicant made request to the respondents for allowing to join the duty, but he was informed that as he was dismissed from the service vide order dated 11/10/2006, it was not permissible to allow his request. In our opinion, as the initial order of dismissal passed by the Appointing Authority could not have been passed, because there was no circumstance for dispensing with the inquiry. Secondly, when the applicant was acquitted by the Hon'ble High Court, the Disciplinary Authority had jurisdiction to serve charge sheet on the applicant, but it was not done. In view of this matter, we are compelled to say that all the orders of dismissal passed by the respective Appointing Authorities are contrary to law, they cannot be sustained. The

circumstances discussed above show that all the impugned orders of dismissal were passed by the Appointing Authorities in absence of any cogent material for holding that it was not reasonably practicable to hold the disciplinary inquiry, consequently we are compelled to say that the impugned orders are liable to be quashed.

24. All the applicants claiming back wages along with their reinstatement in service. The learned P.O. submitted that particularly in O.A.No. 696/2013 it is not alleged that since the date of dismissal till today the applicant is out of job. Here we would like to point out that the legal position is settled that once it is held that dismissal is illegal then consequence is the Government servant is entitled to claim back wages, however, considering the fact that official duty is not discharged by the applicants after their dismissal, we think it suitable to award 50% back wages to the applicants. In the result, we pass the following order –

ORDER

All the O.As. are allowed. The impugned orders of dismissal are set aside. The respective Appointing Authorities are directed to reinstate the applicants in service within a period of 30 days from the date of this order. 50% back wages be paid to the applicants.

Liberty is given to the respondents to initiate the disciplinary inquiries against the applicants. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 22/11/2019.

*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 Hon'ble V.C. and Member (J).

Judgment signed on : 22/11/2019.

Uploaded on : 26/11/2019.