IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.122 OF 2016

DISTRICT : RAIGAD

Shri Pralhad P. Patil.)
Aged : 45 Yrs, Occu. Govt. Servant as)
Police Head Constable (Buckle No.1681),)
Khalapur Police Station, Dist : Raigad,)
(At Present lodged in Alibaug District)
Prison, Dist : Raigad), R/o. At Rajmala)
(Bamnoli), Post : Thasl, Tal. Alibaug,)
District : Raigad.)...**Applicant**

Versus

1. The Superintendent of Police.)
Raigad, Having Office at Alibaug,)
District : Raigad.)

2. The State of Maharashtra.)
Through the Principal Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri K.B. Bhise, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 27.09.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The order dated 17.11.2015 (Exh. 'A', Page 28 of the Paper Book (P.B)) made by the Superintendent of Police Raigad, Alibaug - the 1st Respondent herein, whereby the Applicant was dismissed from service (Police Head Constable) under the second proviso (b) to Article 311(2) of the Constitution of India is being questioned in this Original Application (OA). The issue is as to whether there was material to form satisfaction about it being not reasonably practicable to hold a Departmental Enquiry (D.E.) as envisaged by Article 311(2).

2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer (PO) for the Respondents. The Respondent No.1 is the Superintendent of Police, Raigad, Alibaug and the second Respondent is the State of Maharashtra in the Department of Home.

3. An explosion took place involving a two wheeler. That vehicle belonged to Police Constable Mr. N.N. Patil, who was in the process of starting the vehicle when it exploded. He died. Mr. P.C. Nage suffered serious injuries. A crime was registered under Sections 302, 307 etc. of the Indian Penal Code in Police Station, Alibaug. It was alleged that the applicant was the author of the said crime. He hid the explosives in that vehicle and maneuvered the whole thing in such a manner that the vehicle would get exploded without his role coming to the fore. The motive was either infatuation or love affair. The applicant is under judicial custody.

4. The 1st Respondent made the impugned order. Let us read it. It is in Marathi. The preface contains the gist noted in the preceding paragraph. The unnumbered Para 2 mentions the fact that the applicant was supposed to be the protector of law. But he misused and / or abused the knowledge gained by him in the police department. And the first Respondent was fully satisfied that the applicant was prima facie guilty of commission of the offence. The decision of the court will be final. Secondly, the applicant planted the explosives and be caused the death of his colleague. It showed that his mind had destructive tendency and was dangerous for police

force. Thirdly, the Applicant abused the arms and ammunition of the Department for destructive purposes and it was dangerous to retain him in Police Force. Fourthly, he committed murder of his colleague on account of love affair and if he was allowed to continue in Police Force, it might result in indiscipline and anarchy. Fifthly, if a DE was held, there was a possibility that the Applicant would interfere with its conduct. He would hold out threat to the witnesses and try to see that they turned hostile. Therefore, the enquiry could not be held in an atmosphere free from fear and partiality and in a transparent manner. Sixthly, the Applicant was criminal minded and his retention in Police Force would be detrimental to Police Force and to the nation. The order summed up by mentioning that the retention of the Applicant in the Police Force would adversely affect the image of the Police and he would misuse and abuse the knowledge acquired from the Police Force and mis-utilize it for destructive purposes. His nature was like that. And holding the DE against him would not be in public interest.

5. The above is a general English translation of a vital portion of the impugned order. Let us reproduce for ready reference that portion in Marathi ad-verbatim.

"वरील कृती ही महाराष्ट पोलीस दलाचे वाक्य 'सद्रक्षणाय खल:निकृहणार्य' याचे संपूर्णपणे विरोधात असून त्याच्या कायद्याचे रक्षणाचे काम न करता पोलीस दलात त्यास मिळालेल्या ज्ञानाचा व पदाचा वापर विध्वंसक कृतीकरिता पोहवा/१६८१ प्रल्हाद पांडुरंग पाटील याने केल्याचे दिसून येते आणि ज्याअर्थी माझी पूर्ण खात्री झाली आहे की,

१) पोहवा/१६८१ प्रल्हाद पांडुरंग पाटील हे कॉ.गु.र.नं.१५८/२०१५ मध्ये प्राथमिक दृष्टया दोषी दिसत असून सदर गुन्हयात ते न्यायालयीन कस्टडीत आहेत. न्यायिक तत्वानुसार त्यांच्यावर ठेवण्यात आलेल्या दोषी विषयी तपासाअंती न्यायालयाद्वारे अंतिम निर्णय होईल.

२) दोषी पोहवा/१६८१ प्रल्हाद पांडुरंग पाटील यांनी आपल्या सहका-याच्या वाहनात स्फोटक लावून आपल्या सहका-याची हत्या करुन त्यास जिवे मारले आहे. त्यांचे मन हे विघातक कृतीचे असुन पोलीस खात्यासाठी खुपच धोकादायक आहे.

३) त्यांनी पोलीस खात्यातील घेतलेले स्फोटके, शस्त्र, स्फोटक अॅम्युनेशन इत्यादीचे ज्ञान विघातक कृतीसाठी वापर केला असुन ते पोलीस खात्यासाठी पुढील काळासाठी त्यांच्या ठेवल्यास त्यांस स्फोटक, शस्त्र, गोळीबार इत्यादी ठिकाणी पोहचण्यास वाव मिळेल, आणि म्हणुन त्यांना खात्यात ठेवणे घातक आहे.

४) पोहवा/पाटील यांनी महिला पोलीस सहकारी यांच्या प्रेमप्रकरणासाठी सहका-याची हत्या केली आहे. त्यांना सेवेत ठेवल्यास चौकशी दरम्यान खात्यात गंभीर शिस्तहिनता आणि अनागोंदी होण्याची दाट शक्यता आहे.

५) दोषी पोह/पाटील यांच्या विरुध्द याबाबत चौकशी केल्यास चौकशीत अडथळा आणुन ते सर्व साक्षीदार यांना धमकी देणे, जबाबात बदल करणेस भाग पाडणे, इजा पोहचविणे, जीवास धोका निर्माण करण्याची दाट शक्यता आहे. यामुळे निर्भिड, निष्पक्ष, पारदर्शक वातावरणात चौकशी शक्य होणार नाही.

६) दोषी पोह/पाटील यांचे अश्याप्रकारे वागणे गुन्हेगारी स्वरुपाच्या मानसिकतेचे असुन त्यांना सेवेत ठेवल्यास सामान्य जनता, समाज व राष्ट्रासाठी सर्वसाधारणपणे घातक आहे.

त्यांना पोलीस खात्यात ठेवल्यास खात्याच्या शिस्तीला, प्रतिमेला तडा बसेल तसेच त्यांस पोलीस दलातर्फे प्राप्त ज्ञान, अधिकार याचा वापर करुन विघातक कृत्य

करील व ते त्या सवयीचे आहेत. तसेच त्यांच्या विरुध्द चौकशी करणे जनहितार्थ व्यवहार्य होणार नाही."

6. The above quotation will make it clear that the 1st Respondent has conclusively decided that the Applicant is guilty of the offence which is still in the legal process with a presumption of innocence. The constitutional provision hereto relevant needs to be quoted.

"**311** Dismissal, removal or reduction in rank of persons employed in civil capacities under the union or a state –

1. .....

2. No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry 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 .....

Provided further that this Clause shall not apply

a) ..... Or

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 enquiry or;

c) .....

3) If, in respect of any such person as aforesaid a question arises whether it is reasonably practicable to hold such enquiry as is referred to in clause (2) the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

7. The above constitutional provision fell for consideration of this Bench (Per : Hon'ble Vice-Chairman) in **OAs 560 and 591 of 2013 (Shri Ravindra S. Medage Vs. The Commissioner of Police, 07.07.2014**. In Para 9, we discussed three Judgments of the Hon'ble Supreme Court. Let us reproduce the entire Para 9 from that Judgment.

"**9.** This Tribunal has examined this issue at great length in O.A no 724/1993 and O.A no 82/2010 among others. In O.A 82/2010, Superintendent of Police, Nasik (Rural) has summarily dismissed the Applicant in that case, who was also a Police Constable against when a

criminal case was filed. In the judgment dated 10.6.2011, this Tribunal has quoted at length from the judgment of Hon. Supreme Court in SUDESH KUMAR Vs. STATE OF HARYANA & ORS (2005) 11 SCC 525, TARSEM SINGH Vs. STATE OF PUNJAB & Ors (2006) 13 SCC 581 and UNION OF INDIA & ANR Vs. TULSIRAM PATEL 1985 (072) AIR 1416 SC. In Tulsiram Patel's case the following observation is made by Hon. Supreme Court:

"It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned Government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the enquiry should be recorded in writing. There is no obligation to communicate the reason to the Government servant. As clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the obligation to record the

reason in writing is provided in clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the Government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the Government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the Government servant and the matter comes to the court, the court can direct the reasons to be produced and furnished to the Government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons". (emphasis supplied)

We find that the facts in the present case are strikingly similar to the facts in O.A no 82/2010. The Respondent has failed to communicate to the Applicants reasons for dispensing with the enquiry which is necessary as per judgment of Hon. Supreme Court in Tulsriam Patel's case (supra). It is mentioned in the impugned order that the Respondent did not deem it necessary to give show cause notice to the Applicants. (अशी कारणे दाखवा नोटीस देण्याची देखील आवश्यकता वाटत नाही). Why the Respondent did not deem it necessary to issue notice to the Applicants is not explained in the order nor were the Applicants informed about the same. How the Applicants would make the proposed D.E ineffective (ते आपल्या पदाचा गैरवापर करून सदर विभागीय चौकशी निष्प्रम करतील अशी आम्हांस खात्री वाटते.) is not given in the order nor are any reason given to how the Respondent was satisfied that this will happen. The Applicants were never informed about such reasons. In fact, from the material on record, there appears to be no impediment in conducting D.E against the Applicants. If the Respondent did not want to hold D.E against the Applicants, he could have waited for the result of criminal case pending

against them in the Court. The witnesses, if they had expressed any apprehension from the Applicants could have been provided protection. However, the Respondent did not take recourse to any of these actions which are taken normally in such cases and passed the impugned order which cannot be sustained as the Respondent has totally failed to make out any justifiable reason for not holding the enquiry."

8. The constitutional provision above quoted read in the light of the extracts from Hon'ble Supreme Court Judgments should make it quite clear that the essence of the matter was for the 1st Respondent to expressly state why he held it to be not reasonably practicable to hold DE. In other words, DE will have to be what can be called a rule and not holding it an exception. Such a decision is justiciable and hence, the need to abidingly adhere to its requirement. The said article has to be read as a whole and the 2nd proviso should not be read in isolation. If that be so, then as we mentioned the DE can be dispensed with only if it is not reasonably practicable. But the soul of the said article cannot be glossed over. There should not be any mechanical and artificial attempt to somehow avoid the DE. We have already quoted the salient features of the

impugned order. As indicated, it almost proceeds on the presupposition of the Applicant being guilty. Now, he could as well be proved so in the criminal trial or may not be. That is in the realm of uncertain further.

9. It seems that the Applicant is in Jail. Let us assume, he has been or may be enlarged on bail. The issue is as to whether the Applicant who himself was by no means a highly placed Police Personnel without meaning any disrespect to the post as such would be in such a position as to influence the course of proceedings in the manner suggested in the impugned order. It is not necessary for us to delve into the academics of the matter and it would be suffice to mention that it is always possible that on the same set of facts, two different proceedings running parallel to each other could arise. One of them will be the criminal proceedings and the other departmental enquiry. Therefore, unless criminal trial culminates one way of the other, it is not possible to guess its outcome. Further, in the impugned order, the pendency of the criminal trial has also been mentioned and it is not as if the pendency of the criminal trial is the only circumstance to do away with the DE. The essence of the causes assigned is such that we dealt therewith in **Ravindra Medage** (supra) and did not accept the case of

the Respondents there. In so far as 1st four reasons in the impugned order are concerned, they proceed on the assumption that the Applicant was proven guilty. That indeed is ultimately within the province of the judicial authority rather than the 1st Respondent. On that guess work, the DE could not have been done away with. In so far as 6th cause is concerned, it castigates the Applicant for being a man of criminal intent and his retention being detrimental to the common public, society and even the country. This naturally proceeds on the assumption of the allegations against him having been proved. We must repeat times out of number that in so far as provision hereto relevant is concerned, the crux of the matter is as to whether the enquiry is reasonable, practicable and both the words viz. "reasonable" as well as "practicable" will have to be given due weightage. In our opinion, it is not possible to agree with the impugned order when it proceeds heavily on the assumption of the guilt having been proved.

10. The 5th cause is by far the only one where perhaps there is an indication of the mindset of the maker thereof with regard to whether the DE should be taken recourse to. It has been stated therein as already mentioned above that if the enquiry were held, the

Applicant would obstruct its course and would indulge in ensuring that the witness turn hostile or would cause harm to them and even to their life, and therefore, impartial enquiry was not possible. Now, when we exercise jurisdiction of judicial review of administrative action, it is undoubtedly true that we do not just for the asking substitute our views for that of the authorities below, but even then, as already indicated above, the impugned order is not entirely free or immune from judicial scrutiny and if that be so, we are quite clearly of the view that by a plain reading of the clause 5 of the impugned order, it would appear to be an instance of over re-action and complete ignorance of the fact that it would be the responsibility of the entire Police Force to make sure that if the enquiry went underway, it was conducted in an atmosphere free from fear. After-all, on the same set of facts, even the prosecution is pending and in the absence of convincing material on record, it is not possible to accept just for the asking that the Applicant would indulge in making scheming efforts to ensure that the witnesses turn hostile. In fact, the most important witness should be Mr. P.C. Nage, who himself was the witness to the explosion. He is serving Police Personnel and he having been a witness to the ghastly incident could not be lightly presumed to turn hostile, just to favour the Applicant or on account of scare.

There are other circumstantial objective looking evidentiary pieces like the Panchanamas, the state of vehicle post explosion, etc. They will be of corroborative value and there is no reason why the witnesses would favour the Applicant on account of some fear as apprehended in the impugned order. There is no question of they being won over, and therefore, even on a plain reading of the impugned order, we are unable to concur in its conclusion. No doubt, if the facts answer the requirements of the provision of the constitution herein relevant, then of course, the judicial forum will also examine carefully as to whether it was reasonably practicable to hold the DE or not. We are neither called upon to nor do we express any opinion on the merit of the DE because it appears that even the charge-sheet has not been prepared so far, but we cannot be one with the 1st Respondent in upholding his order of practically doing away with the DE. We are, therefore, so inclined as to interfere with the impugned order. We, however, make it very clear that we should not be understood to have expressed any opinion with regard to the suspension of the Applicant. That is not within the scope of this OA and needless to say, if the Applicant is under suspension in so far as we in this OA are concerned, he shall remain to be under suspension.

11. For the foregoing, the order herein impugned stands hereby quashed and set aside. The 1st Respondent shall hold a departmental enquiry against the Applicant for the alleged misconduct. In as much as the Applicant is in Jail under suspension for the reasons set out in the preceding Paragraph, no directions are being given about his reinstatement, and therefore, there is no question of any consequential relief be given to the Applicant. The Original Application is allowed in these terms with no order as to costs.

Sd/- Sd/-

(R.B. Malik)
Member-J
27.09.2016

(Rajiv Agarwal)
Vice-Chairman
27.09.2016

Mumbai
Date : 27.09.2016
Dictation taken by :
S.K. Wamanse.
E:\SANJAY WAMANSE\JUDGMENTS\2016\9 September, 2016\O.A.122.16.w.9.2016.doc

Correction is carried out as Per order dt:- 29/9/2016.

30/9/16
Registrar
Maharashtra Administrative Tribunal
Mumbai.