

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 705 OF 2018  
(Subject:-Dismissal from Service)**

**DISTRICT: - JALGAON**

**Akbar Khan Nadar Khan Pathan,** )  
Age: 54 Yrs., Occu: Nil, )  
R/o: Gunjal Colony, Khadka Road, )  
Near Sky Gymnasium, Bhusawal, )  
Dist. Jalgaon. )...**APPLICANT**

**V E R S U S**

**1. The Collector,** )  
Jalgaon. )

**2. The Sub Divisional Officer,** )  
Bhusawal, Dist. Jalgaon. )..**RESPONDENTS**

-----

**APPEARANCE** : Shri Avinash S. Deshmukh, learned  
Advocate for the applicant.

: Shri B.S. Deokar, learned Presenting  
Officer for the respondents.

-----

**CORAM** : **Shri V.D. Dongre, Member (J)**  
**And**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **16.02.2023.**

**Pronounced on** : **05.04.2023.**

-----

**O R D E R****(Per: Shri V.D. Dongre, Member (J))**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned order of dismissal from service of the applicant dated 03.09.2018 (Annexure 'A-12') issued by the respondent No.1 and seeking direction to the respondents to reinstate the applicant in service with all consequential service and pensionary benefits (such as continuity in service, arrears of pay & allowances, etc.).

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant entered service of the State Government on 07.09.1983 in the Class-IV/Group D category, thereby he was initially appointed by Sub Divisional Officer, Jalgaon.

(ii) In or about 1990, Bhusawal Sub Division was created by dividing the Jalgaon Sub Division, thereby the applicant was posted under the respondent No.2. As such the respondent No.2 i.e. the Sub-Divisional Officer, Bhusawal, Dist. Jalgaon is the appointing authority of the applicant.

(iii) The applicant always discharged sincere, efficient and bonafide services to the respondents as a result of which he was duly been granted the benefits of Time Bound Promotion and 2<sup>nd</sup> Assured Career Progression Scheme.

(iv) The respondent No.2 issued notice dated 06.01.2018 (part of Annexure 'A-1' collectively) to the applicant and others conveying that one Mr. Dinesh Shankarlal Upadhyay had filed a complaint dated 06.11.2017 (part of Annexure 'A-1' collectively) demanding his dismissal from service and thereby the applicant was called to remain present in his office on 12.01.2018 at 11 a.m. to put up his defense. Accordingly on 12.01.2018 at 11 a.m., the applicant presented himself before the respondent No.2 and submitted an application requesting for grant of 15 days time for filing his detailed reply to the notice dated 06.01.2018 because he was not in receipt of the documents of the said Dinesh Upadhyay.

(v) Subsequently the applicant submitted his detailed/exhaustive reply dated 20.01.2018 (Annexure 'A-3') to the notice dated 06.01.2018 of respondent No.2, thereby denying the allegations levelled against him and pointing out that the said Mr. Upadhyay is in the habit of filing false

complaints and making wild allegations against the Government Officers and employees, as he thought that the applicant was responsible for the actions of canceling various shops registered in the names of Mr. Upadhyay's brother's wife and other relatives by the District Supply Officer. It was also pointed out that some criminal cases are also pending against the family members of said Mr. Upadhyay.

(vi) Apart from submitting his abovesaid reply dated 20.01.2018 (Annexure 'A-3') to the notice dated 06.01.2018, the applicant made various representations dated 12.02.2018, 05.03.2018 and 30.07.2018 (Annexure 'A-4' collectively) to the Divisional Commissioner, Nashik seeking his protection from unscrupulous persons like Mr. Upadhyay.

(vii) In spite of all his abovesaid efforts, to his utter shock, the respondent No.2 said to issue a show cause notice of dismissal from service of the applicant dated 03.02.2018 (Annexure 'A-5') under Article 311 of the Constitution of India r/w the provisions of Rule 3 (1) (2) and (3) of Maharashtra Civil Services (Conduct) Rules, 1979. The said show cause notice was served upon the applicant on 05.02.2018 whereupon the applicant submission as application

06.02.2018 (Annexure 'A-6') to the respondent No.2 seeking supply of copies of specific documents mentioned therein so as to file reply to the show cause notice of dismissal.

(viii) Thereafter, the applicant submitted his detailed reply dated 09.02.2018 (Annexure 'A-7') to the show cause notice dated 03.02.2018 and specifically pointed out to the respondent No.2 that the action of dismissal from service u/A 311 of the Constitution of India could not be taken unless an exhaustive Departmental Enquiry as contemplated u/r 8 of the M.C.S. (Discipline & Appeal) Rules, 1979 ("the said Rules" for sort) was conducted against him.

(ix) The respondent No.2, however, without considering the said reply of the applicant dated 09.02.2018 again sent him communication dated 01.03.2018 (Annexure 'A-8') by referring to some of his previous applications and directing that his supplementary reply be submitted within three days failing which action would be taken against him according to the Rules. The applicant submitted exhaustive reply dated 03.03.2018 (Annexure 'A-9') to the respondent No.2 in which he reiterated the submissions made previously and urged that the action of his dismissal from service cannot be taken in

violation of the provisions of the said Rules and provisions of Article 311 of Constitution of India.

(x) Surprisingly thereafter, as the action taken by the respondent No.2 was not sufficient, the respondent No.1 i.e. the Collector, Jalgaon issued show cause notice of dismissal of the applicant from service dated 03.05.2018 (Annexure 'A-10') which was served upon the applicant on 12.06.2018. The said show cause notice was issued mainly on the ground of doubtful behavior of the applicant and likelihood of the applicant again indulging in more illegal and undisciplined actions. The applicant filed detailed reply dated 18.06.2018 to the show cause notice issued by the respondent No.1 reiterating his submissions that the action of his dismissal from service cannot be taken even under Article 311 without conducting the detailed and exhaustive departmental enquiry against him under Rule 8 of the said Rules.

(xi) However, without taking into consideration the contentions raised on behalf of the applicant, the respondent No.1 straightway was pleased to issue an impugned order of dismissal under Article 311 of the Constitution of India. It is in violation of Article 311 (2) of Constitution of India and without holding departmental enquiry under Rule 8 of the

M.C.S. (Discipline and Appeal) Rules, 1979. Hence, this application.

3. Affidavit in reply is filed on behalf of the respondent No.2 by Dr. Shrikumar Baburao Chinchkar working as Sub-Divisional Officer, Bhusawal Division, Bhusawal. Thereby he denied adverse contentions raised in the Original Application.

(i) It is specifically contended that the District Supply Officer, Jalgaon vide it's letter dated 03.01.2018 forwarded a complaint of one Shri Dinesh Shankarlal Upadhyay dated 06.11.2017 addressed to Hon'ble Chief Minister, Maharashtra State against the applicant, the then Supply employee of bhusawal Tehsil and others requesting to make an inquiry and take disciplinary action.

(ii) As per direction of District Supply Officer, Jalgaon, this office made enquiry on the points mentioned in the said complaint and submitted detailed reply to District Supply Officer, Jalgaon with copy endorsed to respondent No.1 i.e. the District Collector, Jalgaon. In view of that, the District Supply Officer requested the respondent No.1 i.e. District Collector to take disciplinary action against the applicant as

per the provisions of Article 311 of Constitution of India as the applicant's behavior was suspicious and doubtful.

(iii) In view of above, the respondent No.2 i.e. the Sub-Divisional Officer, Bhusawal as well as respondent No.1 i.e. District Collector, Jalgaon, recruiting authority of Class-IV in district issued show cause notices to the applicant in accordance with law of dismissal of the applicant in accordance with law. There is no illegality in taking disciplinary action against the applicant. The Original Application is devoid of merits and is liable to be dismissed.

4. The affidavit in reply is also filed on behalf of the respondent No.1 by one Kishor Dattatraya Raje Nimbalkar working as the District Collector, Jalgaon, District Jalgaon.

(i) At the outset it is submitted that though the applicant is saying that the respondent No.2 is the appointing authority of the applicant as per G.R. dated 28.05.1954 (Exh. 'R-1'), the Sub-Divisional Officers are authorized to order transfer of peons in their respective divisions according to necessity, but the recruiting authority of Class-IV is District Collector.

(ii) It is submitted that the District Supply Officer had done Godown checking on 26.05.2017 and submitted report to

Establishment Department of Jalgaon Collector for further necessary action of removal of applicant from service as per the order of Collector as per letters dated 30.05.2017 and 29.11.2017 (Exh. 'R-2' collectively).

(iii) Moreover, one Dinesh Shankarlal Upadhyay had filed complaint against the applicant to Government on 06.11.2017 (Exh. 'R-3') requesting to dismiss the applicant from service. In view of that, the respondent No.1 i.e. the Collector, Jalgaon by issuing letter dated 09.01.2018 (Exh. 'R-4') to the respondent No.2 directed him to conduct enquiry and initiate necessary action against the applicant as per report from the District Supply Officer, Jalgaon. In view of that, the respondent No.2 issued show cause notice of dismissal dated 03.02.2018 (Exh. 'R-5') to the applicant as the applicant was liable for major punishment and the respondent No.2 i.e. the Sub-Divisional Officer, Bhusawal was not competent authority of the applicant, he submitted report to the respondent No.1 i.e. the Collector, Jalgaon for further necessary action.

(iv) Moreover, the respondent No.2 conducted enquiry about the allegations levelled against the applicant and submitted his report dated 16.02.2018 (Exh. 'R-6') to District Supply

Officer, Jalgaon. Moreover, one Dinesh Upadhyay had given complaint to Government on 06.11.2017. In respect of the same, District Supply Officer submitted his report to Establishment Department of Jalgaon Collectorate. The respondent No.1 directed the respondent No.2 to further conduct detailed enquiry and necessary action. Accordingly, the respondent No.2 issued show cause notice of dismissal under Article 311 of Constitution of India to the applicant. However, the powers of dismissal under Article 311 of Constitution of India vested into Head of the Office and therefore, the respondent No.2 i.e. Sub-Divisional Officer, Bhusawal submitted his report to the respondent No.1 i.e. the Collector, Jalgaon for further necessary action. Accordingly, show cause notice of dismissal and ultimately the impugned order of dismissal under Article 311 of Constitution of India were issued by the respondent No.1. There is difference between enquiry under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and dismissal under Article 311 of Constitution of India. The respondent has followed proper procedure before passing impugned order of dismissal of the applicant. It is legal and proper. There is no merit in the Original Application and is liable to be dismissed.

5. I have heard at length the arguments advanced by Shri A.S. Deshmukh, learned Advocate for the applicant on one hand and Shri B.S. Deokar, learned Presenting Officer representing the respondents on other hand.

6. Perusal of the impugned order of dismissal of the applicant dated 03.09.2018 (Annexure 'A-12') would show that the said order of dismissal is passed by the respondent No.1 by invoking the provisions of Article 311 of Constitution of India and by issuing show cause notice of dismissal from service dated 03.05.2018 (Annexure 'A-10'). Hence, the basis of impugned order of dismissal dated 03.09.2018 is show cause notice of dismissal dated 03.05.2018 (Annexure 'A-10').

7. Moreover, earlier show cause notice of dismissal dated 03.02.2018 (Annexure 'A-5') was issued by the respondent No.2 i.e. Sub-Divisional Officer, Bhusawal, District- Jalgaon to the applicant. The applicant submitted his reply dated 09.02.2018 (Annexure 'A-2') to the said show cause notice dated 03.02.2018 denying the allegations made thereof. It is also a matter of record that the applicant had given reply dated 18.06.2018 (Annexure 'A-11') to the show cause notice of dismissal dated 03.05.2018 (Annexure 'A-10') issued by the respondent No.1. Thereafter, the impugned order of dismissal

dated 03.09.2018 (Annexure 'A-12') came to be issued by the respondent No.1.

8. Further perusal of the impugned order of dismissal dated 03.09.2018 (Annexure 'A-12') issued by the respondent No.1 would show that for issuing the said impugned order of dismissal, the respondent No.1 relied upon the preliminary inspection report submitted by the District Supply Officer about certain illegalities found while inspection of Godown on 26.05.2017, wherein the applicant though was working merely as a Cleaner, it was found that the applicant was maintaining the registers and the applicant's behavior was suspicious and the applicant by taking help of other people was complaining against the higher officials.

9. Further there is reference to the direction given by the respondent No.1 to the respondent No.2 to conduct enquiry regarding the conduct of the applicant and to submit the report. Accordingly, the respondent No.2 after conducting enquiry also issued notice of dismissal under Article 311 of Constitution of India to the applicant. The applicant was also given an opportunity to explain his conduct by submitting his reply to the show cause notice. One more show cause notice was also issued by the respondent No. 1 to respondent No.2

to which the respondent No.2 also filed reply. However, replies submitted by the applicant were not satisfactory. In view of the same, the respondent No.1 by invoking provisions of Article 311 of Constitution of India issued dismissal order of the applicant.

10. In view of the said scenario, we have to see the scope of Article 311 of Constitution of India. For ready reference the provisions of Article 311 is reproduced herein under:-

**“ 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—** (1) *No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

*[(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—]*

(a) *where a person is dismissed or removed or reduced in rank on the ground of conduct*

*which has led to his conviction on a criminal charge; 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 inquiry; or*
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.*

*(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry 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.]*

11. Clause No.1 of the Article 311 of Constitution of India empowers the appointment authority and above to issue the dismissal or removal order. In this case, the order of dismissal is issued by the respondent No.1 who is head of the recruitment process of Class-IV and higher official of respondent No.2, who is stated to be appointing authority of the applicant. In such circumstances, there is no illegality on that count.

12. Clause No.2 of the Article 311 of Constitution of India is most important provision which requires of informing of the charges against the Government servant and to give a

reasonable opportunity of being heard in respect of those charges. First proviso of clause-2 refers to take into consideration evidence during such enquiry.

13. Moreover, the learned Advocate for the applicant in this regard has placed reliance on the citation of the Hon'ble Supreme Court of India reported in 1958 AIR (SC) 300 in the matter of **Khem Chand Vs. Union of India** while interpreting the provisions of Article 311 (2) and more particularly paragraph No.19 which is laid down as under:-

*“19. To summarise: the reasonable opportunity envisaged by the provision under consideration includes- (a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based; (b) an opportunity to defend himself by crossexamining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant. In short the substance of the protection provided by rules, like r. 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in s. 240 (3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Art. 311 (2) so as to convert the protection into a constitutional safeguard.”*

14. Some principles is followed in following citations relied upon by the learned Advocate for the applicant.

- (i) 2005 (11) SCC 525 in the matter of **Sudesh Kumar Vs. State of Haryana and Others**
- (ii) AIR 1991 (SC) 1043 in the matter of **Chief Security Officer Vs. Singasan Rabi Das.**

15. Learned Advocate for the applicant further placed reliance on the citation of the Hon'ble Supreme Court reported in 2006 (13) SCC 581 in the matter of **Tarsem Singh Vs. State of Punjab.** In paragraph Nos. 10 and 11 it is observed as follows:-

*10. It is now a well-settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry. The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under Section 377 IPC. However, it may not be necessary for us to go into the said question.*

*11. We have noticed hereinbefore that the formal enquiry was dispensed with only on the ground that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means. No material has been placed or disclosed either in the said order or before us to show that subjective satisfaction arrived at by the statutory authority was based upon objective criteria. The purported reason for dispensing with the departmental proceedings is not supported by any document. It is further evident that the said order of dismissal was passed, inter alia, on the ground that there was no need*

*for a regular departmental enquiry relying on or on the basis of a preliminary enquiry. However, if a preliminary enquiry 9 OA No. 2097/2019 could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canons of fair play and justice. The appellate authority, as noticed hereinbefore, in its order dated 24-6-1998 jumped to the conclusion that he was guilty of grave acts of misconduct proving complete unfitness for police service and the punishment awarded to him is commensurate with the misconduct although no material therefor was available on record. It is further evident that the appellate authority also misdirected himself in passing the said order insofar as he failed to take into consideration the relevant facts and based his decision on irrelevant factors.”*

16. In the background of the abovesaid ratio laid down in the various citations if the facts of the present case are considered, it can be seen that the impugned order of dismissal of the applicant dated 03.09.2018 (Annexure ‘A-12’) is issued by the respondent No.1 only by issuing show cause notice dated 03.05.2018 (Annexure ‘A-10’) by himself and show cause notice dated 03.02.2018 (Annexure ‘A-5’) being issued by the respondent No.2. The applicant submitted his reply dated 18.06.2018 (Annexure ‘A-11’) and 09.02.2018 (Annexure ‘A-7’) respectively denying the allegations. However, no formal enquiry as contemplated under Rule 8 of

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 for major punishment was conducted against the applicant.

17. In this regard, the respondent No.1 relied upon the report submitted by the District Supply Officer as well as the Respondent No.2 i.e. the Sub-Division Officer, Jalgaon. No formal charge-sheet was issued to the applicant. No evidence was adduced. No opportunity of hearing was given to the applicant to adduce evidence and to examine witnesses, if required. It is evident that the impugned order of dismissal of the applicant is issued totally in disregard to the provisions of Article 311 (2) of Constitution of India. In view of the same, the impugned order of dismissal of the applicant is not sustainable in the eyes of the law and the same is liable to be quashed and set aside. The applicant is entitled for reinstatement and consequential monetary reliefs in accordance with law. The respondents, however, are not precluded from initiating departmental proceedings against the applicant in accordance with law and more particularly, the departmental enquiry as contemplated by invoking Rule 8 of M.C.S. (Discipline and Appeal) Rules, 1979 at the earliest.

In view of the same, this petition is disposed of by passing following order:-

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned order of dismissal of the applicant dated 03.09.2018 (Annexure 'A-12') issued by respondent No.1 is quashed and set aside and the respondents are directed to reinstate the applicant in accordance with law and to pay consequential service and monetary benefits within the period of six weeks from the date of receipt of the certified copy of this order.
- (C) The respondents are at liberty to initiate departmental proceedings as contemplated under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 in accordance with law.
- (D) No order as to costs.

**MEMBER (A)**

**MEMBER (J)**

**Place:-Aurangabad**  
**Date : 05.04.2023**  
SAS O.A.705/2019