

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 167/2023 (D.B.)**

Narendra S/o Narayanrao Naik,  
Aged about 44 years, Occ. Service  
(At present dismiss from service),  
R/o I.U.D.P. Plot No. 173, Katol,  
Tahsil Katol, Dist. Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Additional Chief Secretary,  
Home Department,  
Mantralaya,  
Mumbai-400 032.
- 2) The Superintendent of Police,  
Nagpur (Rural), Dist. Nagpur.

**Respondents**

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**Shri S.P.Palshikar, Id. Advocate for the applicant.**

**Shri A.M.Ghogre, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &  
Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**

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**JUDGMENT**

**(Per:-Shri Justice M.G.Giratkar)  
21<sup>st</sup> Mar., 2023.**

Heard Shri S.P.Palshikar, learned counsel for the applicant  
and Shri A.M.Ghogre, learned P.O. for the respondents.

2. Ld. P.O. has filed reply. It is taken on record. Copy is served to the other side.

3. With the consent of both the parties matter is decided finally. As per the submission of ld. Counsel for the applicant Shri S.P.Palshikar, applicant was entered into service as a Police Constable. Applicant was further selected as a Police Sub Inspector through M.P.S.C.. As per order dated 03.06.2022, the applicant was dismissed from service for his alleged misconduct, without any departmental enquiry as per the provisions of Article 311 of Constitution of India.

4. Ld. Counsel for the applicant has pointed out the judgment delivered by this Bench in O.A. Nos. 696/2013, 829/2022 and 396/2022.

5. Ld. PO. Shri Ghogre has pointed out that there is no necessity to conduct the departmental enquiry.

6. This Tribunal has held that in view of Article 311 (2) without any enquiry employee cannot be dismissed from service. Article 311 (2) (b) is reproduced below:-

***Article 311(2)(b) of Constitution of India***

*“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.*

*(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.”*

7. It appears that without recording reasons the impugned order is passed. Admittedly there was no any departmental enquiry against the applicant. Ld. Counsel for the applicant Shri Palshikar has pointed out judgment of Hon’ble Supreme Court in the case of **Chief Secretary Officer & Ors. Vs. Singasan Rabidas (1991)1 SCC 729**. Ld. Counsel for the applicant has further relief in the case of **Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC 385**, the Hon’ble Supreme 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 Office 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”*

*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."*

8. In view of the judgment of Hon'ble Supreme Court and this Tribunal, impugned order is liable to be quashed and set aside because the applicant is dismissed from service without holding any departmental enquiry. Hence, we pass the following order:-

**ORDER**

- A. The O.A. is allowed.
- B. The impugned order dated 03.06.2022 is hereby quashed and set aside.
- C. The appointing authority is directed to reinstate the applicant in service within a period of 30 days from the date of this order.
- D. Respondent no. 2 is directed to pay 50% backwages till his joining.
- E. Respondents are at liberty to conduct the enquiry in accordance with the Law and may take necessary action if it otherwise deemed fit.
- F. No order as to costs.

**(M.G.Giratkar)**  
**Vice Chairman**

aps

Dated – 21/03/2023

**(Shree Bhagwan)**  
**Vice Chairman**

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman  
& Hon'ble Vice Chairman.

Judgment signed : 21/03/2023.  
on and pronounced on

Uploaded on : 23/03/2023.