

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 288 of 2022 (D.B.)**

- (1) Roshan Dattatraya Ugale,  
aged about 52 years, Occ. Was in service,
- (2) Khushi Roshan Ugale,  
aged 18 years, Occ. Student,  
Both Resident of Tarodi (Bu),  
Tahsil Kamptee, District Nagpur.

**Applicants.**

**Versus**

- 1) State of Maharashtra,  
through its Principal Secretary,  
Department of Home, Mantralaya, Mumbai-32.
- 2) Commissioner of Police,  
Nagpur City, Civil Lines, Nagpur.

**Respondents.**

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**S/Shri R.V. and N.R. Shiralkar, Advs. for the applicants.**  
**Shri A.M. Khadatkhar, learned P.O. for respondents.**

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

**Dated :- 22/08/2022.**

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**JUDGMENT**

**Per :Shri Justice M.G. Giratkar, Vice-Chairman.**

Heard Shri R.V. Shiralkar, learned counsel for applicants  
and Shri A.M. Khadatkhar, learned P.O. for respondents.

2. The applicant Roshan Ugale was working as a Police  
Constable in the Police Station, Wathoda under the authority of

respondent no.2. The applicant was arrested on 10/09/2021 for the offence punishable under the N.D.P.S. Act. As per the allegation against him, he was found in possession of 21 Kg. Marijuna (Ganja). He was suspended on 13/09/2021. Without any departmental inquiry, the respondent no.2 dismissed the applicant from service as per the order dated 24/09/2021 under the provisions of Article 311 (2) (b) of the Constitution of India.

3. Heard learned counsel for applicant Shri R.V. Shiralkar. He has submitted that without any departmental inquiry harsh punishment cannot be given. There is nothing to show that it was not reasonably practicable to hold inquiry against the applicant. Hence, the applicant's case is not made out under Article 311 (2) (b) of the Constitution of India. He has pointed out the Judgment of this Tribunal in O.A. 781/2019.

4. Heard learned P.O. Shri A.M. Khadatkar. He has submitted that the offence punishable under the N.D.P.S. Act is very serious. The applicant was working as a Police Constable. Being a Police Constable it was his duty to arrest the accused, instead the applicant himself was found in possession of 21 Kg. Ganga. The applicant was arrested and he was in the custody of Police.

5. Even assuming that applicant was found in possession of Ganga, then also it was incumbent on the part of respondent no.2 to

initiate departmental inquiry to give opportunity to the applicant. Without any opportunity, the harsh punishment is awarded by respondent no.2.

6. The Article 311 (2) (b) of the Constitution of India reads as 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*

7. This Tribunal in para-7 of the Judgment in O.A.No.781/2019 observed as under-

*"7. We would like to point out that the legal position is very cleared by the Hon'ble Apex Court. The law is explained by the Hon'ble Supreme Court in the case of Chief Security Officer & Ors. Vs. Singasan Rabidas (1991) 1 SCC 729, Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC 385 and Sudesh Kumar Vs. State of Hariyana & Ors. (2005) II SC 525. The Hon'ble Supreme Court has laid down that the DE is a rule and*

*deviation from this principle is an exception. It is laid down that the power conferred on the disciplinary authority under Article 311(2)(b) cannot be exercised in a routine manner and before exercising such power the disciplinary authority is bound to satisfy itself whether there are reasons sufficient to record a finding that it is not reasonably practicable to hold enquiry. Bare perusal of the word in Article 311(2)(b) is not sufficient to satisfy the legal requirement. The satisfaction of the disciplinary authority recording the findings that as it is not reasonably practicable to hold enquiry must be supported also by the circumstances and if such observations are not supported by the circumstances then the findings recorded by the disciplinary authority has no legal base”.*

8. In view of the Judgment of Hon’ble Apex Court in the case **Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC 385 and Sudesh Kumar Vs. State of Hariyana & Ors. (2005) II SC 525**, it is clear that the harsh punishment of dismissal from service cannot be awarded without holding any departmental inquiry. There is nothing on record to show that it was not reasonably practicable for the respondent no.2 to hold such departmental inquiry to award punishment to the applicant. Hence, the impugned punishment appears to be illegal. Therefore, we pass the following order –

### **ORDER**

- (i) The O.A. is allowed.
- (ii) The impugned order of punishment dated 24/09/2021 is hereby quashed and set aside.
- (iii) The respondents are directed to reinstate the applicant on his post which was held by him before the dismissal.

- (iv) The respondents are directed to decide the back wages of the applicant.
- (v) It is made clear that the respondents are at liberty to initiate departmental inquiry, as per law.
- (vi) No order as to costs.

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

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

**Dated** :- 22/08/2022.

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 Vice Chairman.

Uploaded on : 25/08/2022.

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