

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO. 441/2015**

Sunil Jagatrao Nemane,  
Aged about 35 years,  
R/o Risod,  
Distt. Washim.

-----**Applicant.**

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya Mumbai.
2. The Superintendent of Police,  
Washim Distt. Washim. -----

**Respondents-**

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1. Shri A.D. Girdekar, Advocate for the applicant.
  2. Shri M.I. Khan, Presenting Officer for the Respondents.

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**CORAM :** B. Majumdar : Vice Chairman  
and  
S.S. Hingne: Member ( J )

**DATE :** 8<sup>th</sup> February, 2016

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**ORDER****PER VICE-CHAIRMAN**

The applicant , a Police Constable has approached us by filing this O.A. challenging an order of his dismissal under Article 311 ( 2 ) ( b ) of the Constitution.

2. The applicant was appointed as a Constable on 18/11/2006. In May, 2015, a criminal case under Sections, 376, 306 and 506 ( 2 ) of the IPC was registered against him following suicide committed by a young girl with whom he was found to be involved . On 13/4/2015 the S.P. Washim ( R/2 ) issued an order of his termination under Article 311 ( 2 ) ( b ).

3. The applicant submits that after he was arrested in the criminal case, he was granted anticipatory bail. The criminal charges held against him are not serious in nature and there are no grounds as to why the R/2 could not hold a departmental enquiry before terminating his services. He further submits that the R/2 did not follow the provisions of

Section 26 of the Bombay Police Act, which require granting reasonable opportunity of being heard before an order of termination under Article 311 ( 2 ) ( b ) was issued.

4. The S.P. Washim ( R/2 ) submits that the applicant was involved in a serious criminal offence and he was responsible for the death of a girl. He had thus committed serious misconduct. Considering the allegations made against him, an order of termination under Article 311 ( 2 ) ( b ) was required to be issued.

5. Shri A.D. Girdekar, Id. Counsel for the applicant submitted that the affidavit filed by R/2 nowhere explains as to the circumstances under which it was practically impossible to conduct a DE which is relevant as the Article 311 ( 2 ) ( b ) clearly stipulates that it can be invoked only if the disciplinary authority find it not reasonably practical to hold a DE. He thereafter relies on the order of hon'ble the High Court of Bombay in State of Maharashtra -Vs S.P. Kalamkar [ 2008 ( 4 ) Mh.L.J. 553 ], wherein it was held that

an order issued under article 311 ( 2 ) ( b ) without following the provisions of Section 26 of the Bombay Police Act, was unsustainable.

6. Shri M.I. Khan, Id. P.O. for the respondents after reiterating the submissions of R/2, fairly conceded that in view of S.P. Kalamkar, R/2 had erred in not following the provisions of Section 26 of the Bombay Police Act while terminating the applicant's services under Article 311 ( 2 ) ( b ).

7. On going through the impugned order of termination dtd. 13/4/2015, we find that it states as follows:-

“तसेच तुम्ही पोशि/११३२ सुनील जगतराव नेमाणे नेमणुक पो. स्टे. रिसोड मयतास मरणाचे पुर्वीपर्यंत वेळोवेळी मोबाईल फोनवरून संपर्क केलेला आहे व तिचेवर शारिरीक संबंध ठेवण्याचा दबाव आणलेला आहे. त्या त्रासाला कंटाळून कु. शारदा रामभाऊ टोले हिने दिनांक ५.४.२०१५ चे सकाळी ०९.०० वा. पुर्वी आत्महत्या केलेली आहे तुमचे हे वर्तन अत्यंत विकृत व घृणास्पद असुन पोलीस खात्यास काळीमा फासणानेचे वस्तुस्थिती पाहता तुमचे विरुद्ध संपूर्ण विभागीय कार्यवाही प्रक्रीयेचा अवलंब करुन आदेश काढणे व्यवहार्य होणार नाही असे मला खात्रीपूर्वक वाटते.”

8. R/2 has stated in his reply that the impugned order of termination was issued under the provisions of Article 311 (2) (b) as the applicant committed serious misconduct and the offence registered against him under the provisions of Sections 376, 306 and 506 (2) of the IPC was of serious nature.

9. From the above we find that the impugned order as well as the reply of R/2 does not at all contain any convincing reasons as to the circumstances under which it became impossible to conduct a regular DE against the applicant. It is the settled law that conducting of a DE for purpose of taking disciplinary action like termination of service is the rule and the second proviso appended to Article 311 (2) (a) provides an exception, and the existence of such an exceptional situation must be shown to exist on the basis of relevant materials. (**Prithipal Singh vs. State of Panjab** [(2007) (1) SLR-1].

10. It is also undisputed that R/2 did not follow the provisions of Section 26 of the Bombay Police Amendment Act, 2005. It reads as follows :-

***“ Procedure to be observed in awarding punishment – when any officer passes an order for fining, suspending, reducing, removing or dismissing a Police Officer, he shall record such order or cause the same inquiry made, in writing , under his signature :***

***Provided that no order for reducing, removing or dismissing a Police Officer shall be passed without giving him a reasonable opportunity of showing cause against the action proposed to be taken against him except in cases referred to in the proviso ( a ) to clause ( 2 ) of Article 311 of the Constitution. ”***

Thus, under S/26 an order of termination under Article 311 ( 2 ) ( b ) is required to be preceded by issuing of a show cause notice.

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11. Hon'ble the High Court of Bombay in State of Maharashtra Vs S.P. Kalamkar [ 2008 ( 4 ) Mh.L.J. 553 ) in para 25 held as follows :-

Para 25 : " This Court held that " an exception which is provided under Sec. 26 is two fold. Departmental inquiry need not be held in cases covered by Article 311 ( 2 ). It is , however, provided that even if holding of inquiry may be dispensed with, if recourse is taken to Article 311 ( 2 ), opportunity to show cause against the proposed punishment will have to be given according to provisions of section 26 of the Bombay Police Act. The proviso very clearly states that <sup>no</sup> ~~an~~ order for reducing, removing or dismissing a Police Office, shall be passed without giving him a reasonable opportunity of showing cause, against the action proposed to be taken against him. A plain reading of the provisions of section 26 therefore, shows that holding of departmental inquiry may be dispensed with in cases covered by Article 311 ( 2 ). But even if such inquiry is dispensed with, an opportunity as contemplated by proviso to section 26 of the Bombay Police Act

*will have to be given. Admittedly, no such opportunity is given in the present case. Therefore, the order impugned is liable to be set aside as no show cause notice asking the petitioner to show cause as to why he should not be discharged from service was issued. The statutory right of showing such cause which vested in the petitioner by reason of section 26 was therefore, imposed by the State. On this ground alone, the impugned order is liable to be set aside."*

12. In view of the law as laid down above and also that <sup>the impugned order</sup> it does not state any convincing reasons why a DE could not be practicable, we hold that the impugned order of dismissal dtd. 13/4/2015 is not at all sustainable and hence it needs to be quashed and set aside. Accordingly, the O.A. stands disposed of in terms of the following directions :-

- a) The impugned order dtd. 13/4/2015 is quashed and set aside.



- b) Consequently, R/2 is directed to reinstate the applicant forthwith with all consequential benefits of pay, allowances and continuity in service.
- c) R/2 is however at liberty to proceed against the applicant after duly following the provisions of Section 26 of the Bombay Police Amended Act, 2005 as well as Article 311 ( 2 ) ( b ).
- d) No order as to costs.

sd/-

( S.S. Hingne )  
Member ( J )

sd/-

( B. Majumdar )  
Vice-Chairman.

Skt.