

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 561/2020 (D.B.)

Ramesh S/o Baban Ghogare,
Age 53 years, Occ. Service,
R/o At Post Bharatpur, Tq. Balapur,
Dist. Akola,
Unnati Nagar, Mhada Colony,
Kaulkhed, Akola, Tah. & Dist. Akola.

Applicant.

Versus

- 1) State of Maharashtra,
through its Chief Secretary,
Home Department, M.S., Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Police Head Quarter,
ShahidBhagat Singh Marg,
Kulaba, Mumbai-400 001.
- 3) The Superintendent of Police,
Akola, Tah. & Dist. Akola.

Respondents.

Shri V.R.Deshpande, Id. Advocate for the applicants.
Shri H.K.Pande, Id. P.O. for respondents.

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri Justice M.G.Giratkar, Member (J).**

Dated :- 20/01/2022.

JUDGMENT

Per : Vice Chairman.

Heard Shri V.R.Deshpande, Id. Counsel for the applicant and
Shri H.K.Pande, Id. P.O. for the Respondents.

2. The applicant is challenging the impugned order dated 05/06/2020 by which the respondent no. 3 dismissed the applicant from service after exercising powers under Article 311(2) (b) of the Constitution of India. The learned counsel for the applicant submitted that the reason for the dismissal was Crime No. 173/2020 registered and it was under investigation and for showing favour to the person involved in that crime, illegal gratification was demanded by the applicant. There was complaint before the ACB, the trap was arranged and the trap was successful, consequently, the applicant was arrested. It is contended that merely because the Crime No. 173/2020 under Section 7 of the Prevention of Corruption Act, 1988 was registered against the applicant, therefore, the extra ordinary power is exercised by the respondent nos. 1&2 though there was no circumstance or reason to exercise the power.

3. It is submission of the ld. P.O. that it is necessary to examine the circumstances for which this power was exercised by the respondent nos. 1 & 2 and therefore it is necessary to give opportunity to the respondents to file their reply.

4. We have perused the order Annex-P-1 which is at page no. 11. It is true that as a result of the trap Crime No. 173/2020 under the Prevention of Corruption Act was registered and the applicant was arrested in this Crime. The respondent nos. 1 & 2 observed that the

conduct of the applicant was irresponsible, reckless and indecent and due to this conduct he has defamed the Police Department and lowered down the image of the Police Department in the esteem of the Society and therefore it was not suitable to retain the applicant in service of the Police Force. The respondent no. 3 in the last but one para of the order has mentioned that he gave hearing to the applicant in person and after hearing the applicant, the respondent no. 3 formed opinion that it was not necessary to give opportunity to defend the applicant and consequently the respondent nos. 1 & 2 dismissed the applicant from the service.

5. In order to decide whether the order Annex-P-1 was in within four corners of the Article 311 (2) (b) of the Constitution of India, it must be examined only in view of the reasons which are recorded in the order itself. After reading this order, it seems that no circumstance is discussed by the respondent no. 3 as to why it was not reasonably practicable to hold the inquiry as contemplated by the Services Rules by which the applicant is governed. As a matter of fact, the disciplinary proceeding as provided in the Service Rules was a rule and deviation from this procedure was permissible only in rarest of the rare case where there were strong circumstances to adopt same. While deciding similar matters i.e. O.A. Nos. 696/2019,313/2019,356/2019 and 126/2019

decided on 22/11/2019, similar orders were examined by this Bench in view of the law laid down by the Hon'ble Apex Court in cases of **Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC,385** and **Sudesh Kumar Vs. State of Hariyana & Ors. (2005) II SCC,525**. It is held by the Hon'ble Apex Court in both the Judgments that the authority dispensing with the inquiry under Article 311 (2) (b) must satisfy itself for reasons to be recorded in writing that it is not reasonably practicable to hold an inquiry. This is crux of the matter. In the present matter, it seems that the inquiry is dispensed with only for the reason that the applicant was arrested in Crime punishable under the Prevention of Corruption Act for the reason that by the conduct, the applicant has defamed the Police Department. In our opinion, this cannot be a ground for deviating from the normal rule to conduct the inquiry before dismissal as a natural justice. In view of this, in our opinion it is not a case where opportunity to file reply be given to the respondents, because as no reason is mentioned in the order to bring it under the scope of Article 311(2) (b) and now supplying the reasons is not permissible.

6. According to the 'Constitution of India' Article 311 (2) (b) provision is as below:-

“(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. The Id. P.O. has filed office note of respondent no. 3 as per order dated 10.01.2022 of this Tribunal. Office note is perused by the Bench. However, after perusing the office note it appears that the applicant was trapped while taking bribe second time, therefore, without departmental enquiry he is dismissed from service by the impugned order. Now, it is well settled Law that employee cannot be dismissed without giving him any opportunity of show cause/holding departmental enquiry.

8. In view of the Judgment in the case of **Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC,385** employees cannot be dismissed directly without conducting departmental enquiry Hon'ble Supreme Court has held in the case of **Sudesh Kumar Vs. State of Hariyana & Ors. (2005) II SCC,525** "Article 311 (2) violated as holding of enquiry by informing all the charges and giving reasonable opportunity of being heard. The Rule of dispensing therewith is exception and dismissal order liable to be set aside. In the present matter nothing on record to show that case of the applicant is an exceptional matter dispensing the Rule of Natural Justice of conducting of departmental enquiry."

9. In view of this, the O.A. deserves to be allowed. Hence, the following order-

ORDER

- A. The O.A. stands allowed.
- B. The order of dismissal Annex-P-1, dated 05.06.2020 is hereby set aside.
- C. The respondent no. 3 is at liberty to conduct enquiry as per Rule prescribed and to follow the procedure and take necessary decision after the outcome of enquiry.
- D. No order as to costs.

(M.G.Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 20/01/2022.

*aps.

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

Name of Steno : A.P.Srivastava

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 20/01/2022.

Uploaded on : 21/01/2022.