

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 695 /2016 (D.B.)**

Shri Kuldeep Rambhau Petkar, Aged Major,  
Occupation – Nil, R/o Opposite Jafar Nagar,  
Church Plot No. 94,  
R.M.S. Colony, Ahabab Colony Road,  
Katol Road, Nagpur – 13.

**Applicants.**

**Versus**

- 1) State of Maharashtra,  
Through its's Secretary,  
Department of Home,  
Mantralaya, Mumbai – 32.
- 2) The Commissioner of Police,  
(Crimes), City Of Nagpur,  
Office of Commissioner of  
Police, Nagpur City, Nagpur.

**Respondents**

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**Shri M.R.Pillai, Id. Advocate for the applicant.**

**Shri V.A.Kulkarni, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGMENT**

**(Delivered on this 16<sup>th</sup> day of October, 2017)**

Heard Shri M.R.Pillai, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the respondents.

2. The applicant has challenged the impugned order dated 22/02/2016 (Annex-A-3) passed by Respondent no. 2.

3. Vide impugned order the applicant has been dismissed from service with immediate effect from the date of service of the order and it has been passed as per the provisions of article 311 (2)(Proviso-b) of the constitution of India.

4. According to the applicant, he was appointed as a Police Constable in 1993 and was awarded for bravery in 2006. On 19/02/2016, the applicant received a show cause notice and his statement was recorded on 20/02/2016 and vide impugned order dated 22/02/2016 he came to be dismissed. It is stated that the Respondent no. 2 is not a appointing authority of the applicant and, therefore, it cannot invoke the jurisdiction of under article 311 (b). No reasons has been recorded as to why enquiry was not possible and practicable. The dismissal order cannot be said to be in compliance with requirement as notified by the constitutional mandate. It is stated that the said order is perverse, arbitrary, unjust and contrary to the record and is totally unsustainable and hence it be quashed.

5. The Respondent no. 2, has filed reply affidavit and try to justified the order. It is stated that the applicant was working in Crime Branch since 2012 and while working there, one offence was registered against hard core criminal Mr. Diwakar Baban Kottulwar bearing number 468/2015 for the offences punishable under Sections 143, 147, 149, 341, 342, 364(a), 365, 384, 385, 386, 504 & 506 (b) of I.P.C. and under Maharashtra Organisation Crime Control Act, 1999. The said Mr. Diwakar was absconding and the Crime Branch was in search of him and during investigation it was noticed that the applicant was in contact with the said hard core criminal and was in fact helping him to run away from the police machinery. The competent authority thought that it was a serious threat to the integrity of the Police Department and since no witness will come forward, no fruitful purpose will serve in holding departmental enquiry.

6. According to the Respondent the applicant was given opportunity to show cause as to why provisions of Article 311 (2)(b) of Constitution of India shall not be invoked against him and after considering all the aspects, it was decided to dismiss the applicant in the public interest.

7. The applicant also filed counter affidavit and admitted the fact that he was in contact with hard core criminal Mr. Diwakar Kottulwar but it is stated that he was in contact with the accused as per

the instructions and directions given by the Superior Officer, i.e., Police Inspector Shri Chandrashekar Dhole and this fact has been proved. It is stated that still no action has been taken against the Superior Officer of the applicant and arbitrary action against the applicant only.

8. The Respondent no. 2, filed reply affidavit in response to the counter affidavit filed by the applicant and submitted that the action has been taken against Shri Chandrashekar Dhole, Police Inspector and the same is under process.

9. The impugned order is at paper book, page nos. 20 and 21 from which it seems that the Commissioner of Police has observed that the applicant was involved in the very grave "remiss and perverse" misconduct and such misconduct is stigma on entire Police Department and, therefore, it will be detrimental if the applicant was continued in the Police Department. The Commissioner also observed that it was not reasonably practical to hold departmental enquiry for the reasons recorded and that it was also not reasonably practical even to give an opportunity to give show cause though such opportunity was given. In view of this, Article 311 (2) (b) of the Constitution of India has been invoked.

10. Since the applicant has admitted the fact that he was in contact with hard core criminal, the confidential note sheet was called for the perusal of this Tribunal. From perusal of the reply affidavit as

well as the confidential file (note sheet), it seems that the applicant has contacted the hard core criminal Diwakar Kuttalwar on his cellphone not only once but on number of occasions i.e. atleast not less than 53 times. All these call record has been considered by the competent authority before taking action against the applicant. It seems that the Diwakar Kuttalwar is a notorious criminal and has committed number of serious offences under Sections 143, 147, 149, 201, 294, 302, 406, 420, 448, 504, 506, r/w 34, 109, 120B of I.P.C. , U/s 3,4/25 Arms Act and U/s 135 BPA RW 3 MCOCA. The applicant was well conversant with the fact that Diwakar Kuttalwar was absconding and his department was trying to arrest him earnestly, then also the applicant remained in contact with hard core criminal.

11. The applicant tried to explain that Shri Chandrashekar Dhole, P.I. (Crime Branch) directed him to be in contact with Shri Diwakar Kuttalwar. He has also placed on record some statement but that cannot help him anymore. It is further stated that the applicant was not investigating the crime under guidance of Shri Chandrashekar Dhole.

12. The Respondent has placed on record some documents to show that Departmental action is under process against Shri Dhole also and in any case the applicant cannot save himself under the garb of Shri Dhole, who directed him to contact the hard core criminal. The Respondents has placed on record the communication dated

26/02/2016, Exh. "X" from which it seems that the department has recommended dismissal of Shri Dhole also under article 311 (2) (b) of the Constitution of India to the Competent Authority i.e. State. The order, in case of applicant, has been issued by Superior Authority to the appointing authority and hence not illegal.

13. The Id. counsel for the applicant relied on the **Judgement reported in 2014 (ii) C.L.R. page 634, Risal Singh Vs. State of Haryana & Ors.** wherein it was held that dispensing with enquiry against the Sub Inspector was totally unsustainable. The fact of the present case however, clearly shows that the action taken against the applicant cannot be said to be arbitrary or illegal. The perusal of the note sheet clearly shows that the competent authority has considered all the clauses of application of Article 311 (2) (b) of the Constitution of India. I absolutely find no reason to interfere in the action taken by the competent authority in the interest of administration as well as to maintain the integrity of the Police Department. Hence the following order:-

**ORDER**

1. The O.A. stands dismissed.
2. No order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

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