

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NOS.188 OF 2013
WITH
ORIGINAL APPLICATION NOS.189 OF 2013**

DISTRICT : THANE

ORIGINAL APPLICATION NO.188 OF 2013

Shri Ravindra Vitthal Gandhe.)
Police Constable Batch No.3929,)
(Thane City), Resident of Arjun Nagar)
Complex, B-6, Shelar Chowk, Patherli,)
Dombivali (E), District : Thane.)...**Applicant**

Versus

1. The Commissioner of Police, Thane,)
Having his office at Police)
Commissionerate, Near Central)
Ground, Thane.)
2. The Director General of Police,)
M.S, having his office at Shahid)
Bhagatsingh Marg, Coloba, Mumbai.)
3. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.189 OF 2013

Shri Sunil Manohar Tawade.)
 Police Constable Batch No.4542,)
 (Thane City), Resident of Pratibha)
 Co-operative Housing Society, A/14,)
 3rd Floor, R.L/159, M.I.D.C,)
 Dombivali (E), District : Thane.)...**Applicant**

Versus

1. The Commissioner of Police, Thane)
 & 2 others.)...**Respondents**

Mr. A.J. Kandarkar, Advocate for Applicant in O.A.No.188/2013.

Shri M.D. Lonkar, Advocate for Applicant in O.A.189/2013.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J
BIJAY KUMAR, MEMBER-A

DATE : 11.03.2022

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. In these two Original Applications, the challenge it to the dismissal from service under Article 311(2) proviso (b) of Constitution of India whereby Applicants were dismissed from the post of Police Constable. O.A.No.188/2013 is filed by Police Constable R.V. Gandhe and O.A.No.189/2013 is filed by Police Constable S.M. Tawade. In the year 1997, there were complaints against the Applicants alleging their association with one notorious extortionist Gang known as 'Manchekar Gang'. The then Commissioner of Police, Thane transferred the

Applicants to Headquarter. However, they raised grievance that they have been transferred unfairly. Thereafter, discreet enquiry was conducted and having found that they were transferred unfairly, the Applicants were reposted in Vishnu Nagar Police Station. However, thereafter, again some complaints were received in November, 1998 and on the basis of that complaints after internal enquiry, it was found that the Applicants have close nexus with 'Manchekar Gang' and witnesses were not willing to come forward to depose against them. The disciplinary authority, therefore, recorded finding that it would not be reasonably practicable to hold departmental enquiry (D.E.) and invoking Article 311(2) proviso (b) of the Constitution of India suspended the Applicants. The Applicant Gandhe was suspended by order dated 02.02.1999 and Applicant Tawade was suspended by order dated 23.04.1999. The Applicants initially availed different remedies challenging their dismissal.

2. Insofar as Police Constable Gandhe (O.A.No.188/2013) is concerned, he challenged his dismissal by filing O.A.No.63/1999 before this Tribunal. However, said O.A. came to be dismissed by order dated 16.04.1999. Being aggrieved by it, Constable Gandhe had filed Writ Petition No.3791/1999 before Hon'ble High Court.

3. Whereas, insofar as Constable Tawade (O.A.No.189/2013) is concerned, he had filed representation before Director General of Police against the dismissal which was not responded, and therefore, filed O.A.No.484/1999. In the said O.A, directions were given to decide the representation. However, Director General of Police forwarded it to Government and in turn, the Government by order dated 25.05.2000 dismissed the same. Against said order, Constable Tawade also filed Writ Petition NO.7294/2013 before Hon'ble High Court.

4. Hon'ble High Court decided Writ Petition No.3781/1999 filed by Constable Gandhe and Writ Petition No.7294/2013 filed by Constable

Tawade by common order dated 17.08.2004 confirming the finding of appointing authority that holding of inquiry was not practicable as envisaged by Article 311(2) Proviso (b) of Constitution of India, but directed the appointing authority to issue notice under Section 26 of Bombay Police Act, which was not earlier issued while dismissing the Applicants. Para Nos.2, 3, 4 and 5 of the order of Hon'ble High Court are important, which are as under :-

***“2.** In these cases both the Petitioners were removed from service after it was found reasonably impracticable as contemplated under Article 311(2) of the Constitution of India to hold departmental enquiry against them. The allegation was that both the Petitioners are involved in or connected with a criminal gang called “Suresh Manchekar Gang”. The reason given for not holding departmental enquiry as envisaged by Article 311(2) of the Constitution is cogent and relevant to the enquiry required to be held.*

***3.** We need not interfere with the finding in this case. However, the contention is that even if you dispense with an enquiry under Article 311(2) of the Constitution, you cannot dispense with a notice under Section 26(2) of the Bombay Police Act. This aspect is already decided by this Court in Writ Petition No.5248 of 1999.*

***4.** Looking to the facts, interest of justice would be met in the present case, if respondent is directed to issue notice under Section 26(2) of the Bombay Police Act, requiring the Petitioner to show causes as to why no penalty mentioned in the notice be not imposed on the Petitioners. This should be preferably done within one year.*

***5.** The Petitioners shall be deemed to be under suspension for this period of one year. During that period he shall be entitled to subsistence allowance as permissible in law.”*

[Underline supplied]

5. In pursuance of directions given by the Hon'ble High Court, the appointing authority/Commissioner of Police, Thane issued show cause notices to the Applicants belatedly on 31.05.2006. The Applicants submitted their explanation on 29.08.2006, the Applicants were, therefore, called for personal hearing on 27.09.2006. Thereafter, by order dated 31.10.2006, the appointing authority again dismissed the Applicants from service invoking Article 311(2) proviso (b) of Constitution of India.

6. Being aggrieved by dismissal, both the Applicants filed appeal before Government, which came to be dismissed on 22.01.2008 and also dismissed Review Petition by order dated 31.10.2011.

7. The Applicants then challenged the order of dismissal from service by filing O.A.Nos.188 and 189 of 2013 before this Tribunal which came to be dismissed by order dated 02.02.2015.

8. The Applicants again challenged the order passed by this Tribunal in O.A.Nos.188 and 189/2013 by filing Writ Petition No.11016/2015 and Writ Petition No.394/2016 before Hon'ble High Court. Both Writ Petitions were heard and decided by common order dated 04.03.2018. Before Hon'ble High Court, issue was raised by the Applicants that though they have filed reply to the show cause notice issued under Section 26 of Bombay Police Act, the said aspect was inadvertently not brought to the notice of Tribunal while deciding these O.As. The Applicants had sought information under RTI Act and pointed out before Hon'ble High Court that the record of the Department itself establishes that the Applicants have submitted their reply to show cause notices. The fact of filing of reply to the show cause notice was not brought on record by the Applicants as well as by Respondents during the hearing of these O.As. when they were heard in first round of litigation. The Tribunal, therefore, considered the material available on record and in the light of observation recorded by Hon'ble High Court in earlier round of litigation while deciding Writ Petition No.3791/1999 with Writ Petition No.7294/2003 wherein it has been specifically observed that "the reason for not holding DE as envisaged by Article 311(2) of the Constitution of India is cogent and relevant to the enquiry required to be held, and therefore, there is no need to interfere with the said finding" dismissed both the O.As on 02.02.2015. However, the aspect of non-production of reply to show cause notice on record of O.A. and its consideration by the concerned authority as well as by Tribunal was raised before the Hon'ble High Court during the hearing of Writ Petition No.1106/2015 and Writ

Petition No.394/2016. The Hon'ble High Court, therefore, by common order dated 04.04.2018 remitted the matter to this Tribunal for decision afresh keeping all the contentions open for determination by this Tribunal. Para No.14 of the order of Hon'ble High Court dated 04.04.2018 is operative order and material, which is as under :-

“14] Accordingly, we dispose of these petitions with the following order:

(a) The impugned judgment and order dated 2nd February 2015 made by the MAT is hereby set aside;

(b) O.A. No.188 of 2013 & O.A. No.189 of 2013 are remanded to the MAT for disposal on their own merits and in accordance with law;

(c) The petitioners are granted liberty to either amend their O.As. or to file additional affidavit by placing additional material, including, but not restricted to the information obtained by them under the Right to Information Act, within a period of 8 weeks from today. The respondents are granted time of further 4 weeks or such further time in the discretion of the MAT to file their response to amend the O.As. or additional affidavits. This time limit will commence from the date of receipt of copy of amended O.As. or filing of additional affidavits by the petitioners;

(d) Except the contention based upon non-reference to section 26(2) of the Bombay Police Act in the notices, all other contentions of the petitioners as well as the respondents are kept open for determination by the MAT, in pursuance of remand;

(e) We request the MAT to dispose of the O.As. as expeditiously as possible and preferably within a period of 8 months from today;

(f) The parties to appear before the MAT on 2nd May 2018 at 10.30 p.m. and produce authenticated copy of this order;

(g) Rule, in both the petitions, is disposed of in the aforesaid terms. There shall be no order as to costs.

(h) All concerned to act on an authenticated copy of this order.”

9. It is on the above background, the Applicants have filed substituted O.A. instead of making amendment to the original O.A. with the permission of Tribunal to which Respondents have filed Affidavit-in-reply.

10. 11. Shri M.D. Lonkar and Shri A.J. Kandarkar, learned Advocates for the Applicants sought to assail the impugned order of dismissal *inter alia* contending that it does not qualify or fulfill necessary requirement for dismissal of Government servant under Article 311(2) proviso (b) of Constitution of India. They emphasized that there was no such objective assessment of the situation as required to be done and dismissal order was passed mechanically. According to them, no such case is made out wherein it could be said that holding of regular D.E. was impracticable. All these contentions are raised pointing out that while remitting the matter to the Tribunal, Hon'ble High Court in order dated 04.04.2018 kept all the questions open for determination by MAT.

11. The learned Advocates for the Applicants further vehemently urged that there is no consideration of the reply filed by the Applicant to the show cause notice which was issued to the Applicant under Section 26 of Bombay Police Act and the orders passed on 31.10.2016 are replica of the initial orders of dismissal passed on 02.02.1999 and 23.04.1999. On this line of submission, learned Advocates for the Applicants submits that impugned action of dismissal is totally arbitrary and liable to be quashed. Since both the Applicants attained age of superannuation in meantime, the submission was advanced to quash and set aside the impugned action and to grant all consequential service benefits in the nature of pay and allowances and pension.

12. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer has pointed out that in earlier round of litigation in O.A.63/1999 filed by Constable Gandhe, the legality of impugned action of dismissal by order dated 02.02.1999 is already upheld. Apart, the legality of impugned order dated 02.02.1999 when challenged in Writ Petition No.3791/1999 was also upheld while deciding the said Writ Petition along with Writ Petition No.7294/2003 filed by Constable Tawade by common order dated 17.08.2004. She has pointed out that Hon'ble High Court held in Para No.2 held that the reason given for not holding DE as envisaged by

Article 311(2) of Constitution of India is cogent and relevant to the enquiry required to be held and Hon'ble High Court see no reason to interfere about the findings recorded by appointing authority. She, therefore, submits that now the question of legality of finding cannot be re-agitated and all that, matter was remitted for placing on record reply submitted by the Applicants to the show cause notice and nothing more. She, therefore, submits that on receipt of reply to the show cause notice, the appointing authority has considered the same, gave personal hearing and on consideration of the same, issued fresh orders of dismissal on 31.10.2016.

13. Shri M.L. Lonkar, learned Advocate for the Applicant referred the decision of Hon'ble Supreme Court in **Satyavir Singh Vs. Union of India [1986 SCC (L & S) 1** in which the legal principles laid down by Hon'ble Supreme Court in **Tulsiram Patel's case [1985 SCC (L & S) 672]** were reiterated. In **Tulsiram Patel's** case, in Para No.55 onwards, Hon'ble Supreme Court summarized legal principles as follows :-

***(55)** There are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311 (2) can be applied. These conditions are:*

(i) there must exist a situation which makes the holding of an inquiry contemplated by Article 311 (2) not reasonably practicable, and

(ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry.

***(56)** Whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so.*

***(57)** It is not a total or absolute impracticability which is required by clause (b) of the second proviso. What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.*

***(58)** The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that*

clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

(59) *It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be -*

(a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or

(b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

(60) *The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and must fail.*

(63) *The recording of the reason for dispensing with the inquiry is a condition precedent to the application of clause (b) of the second proviso. This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. It is, however, not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated.*

(64) *The reason for dispensing with the inquiry need not contain detailed particulars but it cannot be vague or just a repetition of the language of clause (b) of the second proviso.*

(65) *It is also not necessary to communicate the reason for dispensing with the inquiry to the concerned civil servant but it would be better to do so in order to eliminate the possibility of an allegation being made that the reason was subsequently fabricated.*

(66) *The obligation to record the reason in writing is provided in clause (b) of the second proviso so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc.*

(67) *It is, however, better for the disciplinary authority to communicate to the concerned civil servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an*

allegation being made that the reason had been subsequently fabricated. It would also enable the civil servant to approach the High Court under Article 226 or, in a fit case, the Supreme Court under Article 32."

14. In view of order of Hon'ble High Court dated 04.04.2018, the matter is remitted to the Tribunal keeping all the contentions open for the consideration of MAT. Therefore, we need to deal with the contentions and submissions advanced before us on merit.

15. In view of submissions, pivotal issue arises whether there was any such situation holding inquiry not reasonably practicable and decision taken so is outcome of objective assessment of the situation appealing to a prudent/reasonable person. It is not totally or absolute impracticability and what is required that it is not reasonably practicable to hold an enquiry in the opinion of competent authority who is the best judge of the situation. Therefore, mere mention in the impugned order that it is not reasonably practicable to hold an enquiry is not decisive and material placed on record must satisfy the test of impracticability to hold any such regular enquiry. Undoubtedly, when such contentions are raised, the Courts/Tribunal have jurisdiction/power to satisfy itself as to whether decision to dispense with the enquiry is reasonable and not arbitrary.

16. The perusal of record reveals that the incidents giving rise to the dismissal is started from 1998. Initially, Senior Police Inspector, Crime Branch, Thane by letter dated 06.10.1997 informed C.P, Thane that he had received confidential information that Applicants have close contacts with 'Manchekar Gang' which was notorious for extortion, etc., and therefore, recommended for their transfer from Vishnu Nagar Police Station. The Applicants were transferred to Head Quarter by letter dated 09.10.1997. It appears from record that the report was called from DCP, Kalyan Zone (Shri Shinde) who in turn submitted report on 05.01.1998 (Page No.24 of P.B.) stating that he has not noticed any such involvement of the Applicants with 'Manchekar Gang' and further stated that they

were transferred from Vishnu Nagar Police Station unfairly. Thereon their transfer was cancelled by letter dated 09.01.1998. This aspect of cancellation of transfer and report of Shri Shinde was much focused and emphasized by the learned Advocates for the Applicant and tried to contend that in view of cancellation of transfer, it amounts to clean chit to the Applicants. Insofar as this aspect is concerned, significant to note that it was not the end of the matter. Therefore, even if Applicants transfer were cancelled and they were reposted in Vishnu Nagar Police Station that *ipso-facto* cannot be construed that they were given clean chit. What happens thereafter is important which is the foundation for the impugned action of dismissal.

17. In this behalf, the perusal of record (confidential file) tendered by learned P.O. to the Tribunal reveals that CP, Thane then again received anonymous complaints from the residence of Dombivali and Kalyan stating that Applicants are closely associated with 'Manchekar Gang' and they provide information about Police activities to 'Manchekar Gang' and make them cautious and unless they are not transferred elsewhere Police will not succeed to nab 'Manchekar Gang'. It appears on receipt of said anonymous complaint, the confidential report was called from P.I, Crime Branch, Thane who in turn by report dated 02.09.1998 stated that he made discreet enquiry from Builders and other people and found that Applicants are closely associated with 'Manchekar Gang' and they provide every information to the said Gang. Simultaneously, DCP, Kalyan Zone (Shri Saverkar) received report from ACP, Dombivali dated 11.08.1998 stating that Applicants are suppling material to Builders and also protecting the Builders from extortion threats. The CP, Thane then again directed DCP, Kalyan Zone to record statement of some witnesses in camera and submit the report. Accordingly, DCP, Kalyan submitted report on 30.09.1998 stating that he has recorded the statement of one Builder in Camera who stated in his statement that Applicants used to meet Builders and assuring them if sites of construction are given to them, they will not receive any threats of extortion and in this manner,

Applicants have obtained 10 to 15 sites of construction. He further stated in his statement that nobody would come forward openly against the Applicant. The DCP, Kalyan Zone also recorded statement of one more person who on the condition of anonymity stated that Applicants were closely associated with 'Manchekar Gang' and used to contact Builders and obtained 10 to 15 sites of construction and in turn, Applicants were protecting them from extortion threats. He also stated that nobody would come forward openly to depose against the Applicant. As such, it is difficult to say that the findings of C.P, Thane that it was reasonably impracticable to hold an enquiry is not objective assessment of the situation. What is requisite is that holding of enquiry is not practicable in the opinion of reasonable man taking a reasonable view of the prevailing situation. The C.P, Thane on assessment of situation got satisfied that it is not reasonably practicable to hold such inquiry and accordingly, he has made specific mention of it in impugned order. Therefore, the submission advanced by the learned Advocates for the Applicants that there is no application of mind or objective assessment of the situation holds no water.

18. True, as pointed out by learned Advocates for the Applicants, no FIR was lodged by Builder or anybody else alleging threats or extortion by the Applicants. However, as stated above, nobody was willing to take risk of his life to come forward and lodge FIR. Therefore, non-registration of crime or FIR *ipso-facto* is not determining factor. What is important to see what was the situation existed and material placed before C.P, Thane. In impugned order, it is reiterated that no witnesses is forthcoming to depose against the Applicants because of the terror created by them and because of their links with 'Manchekar Gang', and therefore, the question of holding any such regular DE was impracticable. Indeed, it was not a total or absolute impracticability which is required and what is requisite that it is not practicable to hold inquiry in prevalent situation. The submission advanced by the learned Advocate for the Applicants that Police Officers or Police Personnel would

have come forward in regular DE, and therefore, holding of DE cannot be said non-practicable is totally misconceived and fallacious. In any such inquiry, material witnesses would be the persons to whom threats were given but since they were not willing to depose against the Applicants, holding of such enquiry must be said not reasonably practicable as held by C.P, Thane in impugned orders.

19. The learned Advocate for the Applicants sought to contend that there was only one FIR registered against the Applicant on the complaint of Pramod Khanvilkar arising from incident dated 17.12.2016 for the offences under Sections 342, 506 read with 34 of Indian Penal Code, but in that case, B-summary was granted by the learned Magistrate. In this behalf, perusal of FIR dated 07.12.2016 reveals that Applicants allegedly assaulted complainant Pramod Khanvilkar for parking vehicle in the premises of Police Station. However, later, B-summary was submitted and learned Magistrate accepted the same. Indeed, this incident was an isolated incidence arising from assault to Pramod Khanvilkar and it has nothing to do with the impugned action of dismissal, which is arising from totally different context.

20. The submission advanced by the learned Advocate for the Applicants that there was no consideration of reply to show cause notice given to the Applicants by C.P, Thane in impugned order dated 31.10.2016, and therefore, the impugned action is arbitrary also holds no water. True, in impugned orders dated 31.10.2016, there is no specific mention about the consideration of reply submitted by the Applicants to show cause notice. However, the perusal of record clearly reveals that C.P, Thane considered reply to show cause notice and also heard the Applicants in person on 27.09.2016, and thereafter, passed impugned orders. In file noting (Page No.61 of P.B. in O.A.No.188/2013), the C.P, Thane noted as under :-

“I have gone through all the papers in this file including all the previous correspondence, MAT case papers, High Court, Supreme Court papers, etc.

The evidence for passing order under Article 311(2)(b) was based on various reports from DCP Shri Saverkar and other Sr. Officers.

All allegations were involvement of these two Constables in the Manchekar gang. About their activities, behaviours of constables we would not get open evidence from people, policeman are others. They are not willing to come forward to give open evidence due to the same reason.

However, the H.C. passed an order that C.P. Thane should issue Show Cause Notice to the two constables and hear them in person. I issued Show Cause Notices, are also heard them in person on 27.9.2006 they have not produced evidence to prove their innocence.

Hence I am convinced that there is no scope for public inquiry and large opportunity has been given to them by way of show cause notice and personal hearing.

After hearing I am convinced about the facts of the case and I am of the opinion that both the constables be dismissed under Article 311(2)(b) of the Indian Constitution. Issue orders.”

21. Suffice to say, C.P, Thane has given consideration to the reply submitted by the Applicants to show cause notice. Indeed, in reply to show cause notice, the Applicants merely denied the allegations made against them and nothing substantial is shown to take contrary view. It may be recalled that initially, Hon’ble High Court by order dated 17.08.2004 recorded finding that the reason given for not holding DE are cogent and see no reason to interfere about the finding recorded by appointing authority. However, the matter was remitted for compliance of Section 26 of Bombay Police Act which was later complied with as discussed above. Apart, we have examined the issue on merit again and see reason to take other view.

22. The learned Advocate for the Applicants referred to certain decisions which reiterated well settled legal principles summarized by Hon’ble Supreme Court in **Tulshiram Patel’s** case. Needless to mention, it is well settled principle of law in the matter of applying precedents, the Court should not place reliance on decision without

discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The decision is a authority for what it actually decides and not what logically follows from it, since little difference in the facts or single additional fact may make a lot of difference in a precedential value of a decision. The decision referred by the learned Advocate for the Applicants are as follows :-

(a) **2008(2) ALL.M.R. 649 [State of Maharashtra Vs. S.P. Kalamkar]**

In this case, dismissal of Police Officers under Section 311(2) proviso (b) of Constitution of India was challenged. The Tribunal quashed the impugned order on the ground of non-compliance of notice under Section 26 of Bombay Police Act. Hon'ble High Court accepted the finding recorded by Commissioner of Police that it was not reasonably practicable to hold DE. However, maintained the decision of MAT for non-compliance of issuance of notice under Section 26 of Bombay Police Act.

(b) **2006 (13) SCC 581 [Tarsem Singh Vs. State of Punjab & Ors.]**

In this case, formal inquiry was dispensed with on the ground that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means. However, no material was placed or disclosed either in the said order or before the Court to show that subjective satisfaction arrived at by the statutory authority was based upon objective criteria. In the dismissal order, it was stated that there was no need for regular DE relying on the basis of preliminary inquiry. It is in that context, Hon'ble Supreme Court interdicts the dismissal order stating that if preliminary enquiry could be conducted, then there could be no reason as to why formal DE could not have been

initiated and secondly, there was no such subjective satisfaction while applying objective criteria.

(c) 1991 SCC (L & S) 282 [Jaswant Singh Vs. State of Punjab]

In this case, again the legal principles enumerated in **Tulshiram Patel's** case are reiterated and further held that the decision to dispense with DE cannot be rested solely on *ipse-dixit* on the concerned authority and it is incumbent on the part of authority to show that satisfaction is based on certain objective facts and it is not the outcome of the whims or caprice of the concerned Officer. In that case, it was found that subjective satisfaction recorded by the authority was not fortified by any material to justify dispensing with the enquiry, and therefore, the impugned order was quashed.

(d) 1991 SCC (L & S) 415 [Chief Security Officer & Ors. Vs. Singasan Rabi Das]

In this case, recourse of Section 311(2) proviso (b) was taken on the ground that it was not feasible or desirable to procure witnesses, since that would expose the witnesses and make them vulnerable in future if those witnesses were asked to appear in inquiry and they were likely to suffer personal humiliation and insult. It is in that fact situation, the Hon'ble Supreme Court held that there was absence of substantial material for dispensing with the material, since they were normal witnesses and they could not be said to be placed in any such delicate situation in which asking them to appear in inquiry could render them subject to any danger.

(e) 1996 SCC (L & S) 870 [Chandigarh Administration, Union Territory, Chandigarh & Others]

In this case, the dismissal was quashed, since there was no such objective assessment of the situation that holding of DE is not reasonably practicable. The authority in that case passed order of dismissal against Sub-Inspector pursuant to complaint of extortion filed by complainant who was an Advocate. It was found that complainant initially not appearing when called by the authority in connection with the complaint on the ground of his engagement in the Court and subsequently, expressed his willingness to pursue the complaints on the ground of having reached compromise with Sub-Inspector. The Hon'ble Supreme Court held that in absence of any such statement by the complainant or any other witnesses to that effect, merely from unwillingness of the complainant to pursue the complaint, it cannot be inferred that the complainant had been terrorized or intimidated by the Sub-Inspector. Therefore, in fact situation, it was concluded that there was no material before authority to conclude that holding of DE was not reasonably practicable.

(e) 2000 SCC (L & S) 315 [Ex-Constable Chhotelal Vs. Union of India.

In this case, the Appellant Constable was dismissed from service invoking Article 311(2)(b) of Constitution of India which was assailed in SLP before Hon'ble Supreme Court. The authority tried to support the impugned action stating that the Applicant himself being Police Constable could have influenced the witnesses who have come in DE, and therefore, holding of enquiry was dispensed with. Therefore, in fact situation, Hon'ble Supreme Court held that the action is not in consonance with law. As such, there was no such material and objective decision to dispense with the enquiry.

23. As stated above, the decision is an authority what it actually decides and not what logically follows from the decision. The decisions referred to above are given in fact situation. When particular order is

under challenge, the Tribunal is required to examine the facts to find out whether the decision referred applicable to the facts of a case in hand. Therefore, in my considered opinion, these decisions are hardly of any assistance to the Applicants in the facts and circumstances of the present matter. In the present case, the decision taken by appointing authority that it was not reasonably practicable to hold regular DE cannot be said arbitrary or without material. The decision is fortified by sufficient material on the basis of which objective assessment was done which ultimately culminated into the order of dismissal of the Applicants.

24. The totality of aforesaid discussion leads us to conclude that the challenge to the impugned orders dated 31.10.2016 is devoid of merit and O.As are liable to be dismissed. Hence, the order.

ORDER

Both the Original Applications are dismissed with no order as to costs.

Sd/-
(BIJAY KUMAR)
Member-A

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 11.03.2022
Dictation taken by :
S.K. Wamanse.

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