IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO 90 & 91 OF 2023
DISTRICT : PALGHAR

1) ORIGINAL APPLICATION NO 90 OF 2023

Anil Jamal Pathan)
Occ-Nil, R/at Dahanu Forest Quarter,)
Indory Gate, Dahanu East,)
Dist-Palghar 401 601.)...**Applicant**

Versus

1. The Director General,)
Railway, Station Building,)
5th floor, Churchgate,)
Mumbai 400 020.)
2. The Commissioner of Police Railways)
Wadi Bandar, 4th floor,)
Sandhurst Road,)
Near Central Railway Godown,)
Mazgaon, Mumbai 400 010.)...**Respondents**

2) ORIGINAL APPLICATION NO 91 OF 2023

Samadhan Sheshrao Narwade,)
Occ-Nil, R/at Laxminath Apartment,)
Room No. 03, Kacheri Road,)
Palghar [W], Tal & Dist-Palghar.)...**Applicant**

Versus

1. The Director General,)
Railway, Station Building,)
5th floor, Churchgate,)
Mumbai 400 020.)
2. The Commissioner of Police Railways)
Wadi Bandar, 4th floor,)
Sandhurst Road,)
Near Central Railway Godown,)
Mazgaon, Mumbai 400 010.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicants.
Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member) (A)

DATE : 31.08.2023

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. As the issues involved in these Original Applications are similar, they are heard together and disposed by common order.

2. The Applicants pray that this Tribunal be pleased to quash and set aside the impugned order dated 29.11.2022, removing the applicants from service and further direct the Respondents to reinstate the applicants in service with all consequential service benefits. The Applicants further pray that the Respondents be

directed to pay the applicants arrears of pay from the date of removal from service till reinstatement.

3. Learned counsel for the applicants has submitted that at the relevant time, the applicant in O.A 90/2023 was working as Police Naik and applicant in O.A 91/2023 was working as Police Constable. Against both the applicants, the offence was registered on 29.11.2022 for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. Pursuant to that the Commissioner of Police, Railways, Mumbai, issued the order dated 29.11.2022, removing the applicants from service, by invoking the provisions under Article 311(2)(b) of the Constitution of India. Learned counsel while challenging the said order of removal has submitted that the alleged offence has taken place on 28.11.2022. The applicants were arrested on the same day. However, the FIR was registered on 29.11.2022. Learned counsel further has submitted that the applicants were removed from service on the same day, i.e., 29.11.2022. Learned counsel has further submitted that both the applicants were behind the bar and they were bailed out on 1.12.2022. Learned counsel has further submitted that the criminal case is still pending and the charge sheet was not filed. Learned counsel has submitted that while invoking the powers under Article 311 (2)(b) of the Constitution of India, it is necessary for the competent authority to state the reasons specifically that it is not reasonably practicable to conduct the departmental enquiry. Learned counsel took us through the contents of the impugned order dated 29.11.2022 passed by the Commissioner of Police, Railways, Mumbai. Learned counsel has submitted that in the entire order no reason is given as to why it is not reasonably practicable to conduct the departmental enquiry. He submitted that the Commissioner of Police, Railways, has mentioned in the order that even it was not possible to give the notice to the

applicants. Learned counsel has relied on the affidavit in reply dated 3rd April, 2023 filed on behalf of Respondents No 1 & 2, by Shri B.B Mahajan, Assistant Commissioner of Police, in the Police Commissionerate, Railways, Mumbai, and pointed out especially to paragraph 6, wherein it is stated that the applicants were in Police custody and it was not possible to give summons to the applicants and conduct departmental enquiry. Learned counsel has submitted that these are not good and satisfactory reasons to give a go by to the departmental enquiry. Learned counsel has further submitted that it is the right of the applicants to be heard and to have audience for the misconduct or any act for which he is charged and subsequently dismissed without any audience given to him. The principle of departmental enquiry is based on principles of natural justice and hence it is breached by the Competent Authority. Learned counsel has further submitted that on the date when the applicants were dismissed from service no charges were framed and charge sheet was not issued to the applicants. Hence, the stand taken by the Competent Authority that no summons can be served on the applicants or no notice can be given is false and incorrect. Learned counsel further submitted that the order of dismissal is illegal and violative of Article 311(2)(b) of the Constitution of India and the applicants are to be reinstated in service with all consequential service benefits.

4. Learned counsel for the applicants has relied on the following judgments of the Hon'ble Supreme Court.

(i) Union of India & Anr. Vs. Tulsiram Patel & Anr, AIR 1985 SC 1416.

(ii) Tarsem Singh Vs. State of Punjab & Ors, (2006) 13 SCC 581.

(iii) Risal Singh Vs. State of Haryana & Ors (2014) 13 SCC 244.

5. Learned P.O while opposing the Original Applications defended the order passed by the Commissioner of Police, Railways. Learned P.O relied on the noting of the concerned authority wherein the reason is separated stated that how it is not reasonably practicable to conduct the departmental enquiry. Learned P.O has submitted that both the applicants have committed offence under the Prevention of Corruption Act, 1988. Learned P.O has further submitted that the demand of money made by the applicants and the conversation between the complainant and the applicants are recorded and after hearing the said conversation and considering the material on record the Competent Authority has arrived at the conclusion with subjective satisfaction that it is not reasonably practicable to conduct the departmental enquiry. Learned P.O has submitted that the Police personnels are protector of law and it is their duty to protect the Society and prevent the crime. Further, the applicants ignored their responsibilities and duties of controlling the Gutka smuggling.

6. Learned P.O relied on the following judgments of the Hon'ble Supreme Court.

(i) Satyavir Singh & Ors Vs. Union of India & Ors, (1985) 4 SCC 252.

(ii) Ved Mitter Gill Vs. Union Territory Administration, Chandigarh & Ors, (2015) 8 SCC 86.

7. Considered the submissions of the learned counsel for the applicants and the learned Presenting Officer. Article 311(2)(b) of the Constitution of India is reproduced below:-

Article 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—.....
(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

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

8. On the point of summary dismissal or removal from service, without conducting departmental enquiry, the law is laid down in the case of **Tulsiram Patel, AIR 1985 SC 1416 and Satyavir Singh (1985) 4 SCC 252 (supra)**. In both the cases, it is held that to conduct the departmental enquiry is a rule and summary dismissal or removal from service is an exception. The article specifies the exceptional circumstances as "reasonably not practicable to conduct the departmental enquiry". In both the

judgments it is held that it is a matter of subjective satisfaction, but it should be based on objective material. Thus, such circumstances preventing the Competent Authority to conduct the departmental enquiry should be reflected in the order. After going through the impugned order passed against the Applicants as we find that the reason given for not conducting the departmental enquiry as stated in Paragraph 3, i.e., the applicants are arrested in the offence and therefore it was not possible to give them notice and also to conduct the departmental enquiry and the image of the Police department is malign due to the act of the applicants as it is published in the social media and newspaper.

9. It is necessary to reproduce the ratio and the guiding principles laid down by the Hon'ble Supreme Court in **TULSIRAM PATEL's case (supra)**.

> "*130.....It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to given evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through other threatens, intimidates and terrorizes the officer who is the disciplinary authority or member of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause(3) of Article 311 makes the decision of the disciplinary authority on this question final. A 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 government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty."

"133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). 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."

10. In the case of **RISAL SINGH (supra**), the delinquent was also from Police Department was prosecuted and dismissed on account of corruption charges. The Hon'ble Supreme Court observed as under:-

"*9. Tested on the touchstone of the aforesaid authorities, the irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the inquiry is totally unsustainable and is hereby annulled. As the foundation founders, the order of the High Court giving the stamp of approval to the ultimate order without addressing the lis from a proper perspective is also indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction.*

10. Consequently, we allow the appeal and set aside the order passed by the High Court and that of the disciplinary authority. The appellant shall be deemed to be in service till the date of superannuation. As he has attained the age of superannuation in the meantime, he shall be entitled to all consequential benefits. The arrears shall be computed and paid to the appellant within a period of three months hence. Needless to say, the respondents are not precluded from initiating any disciplinary proceedings, if advised in law. As the lis has been pending before the Court, the period that has been spent in Court shall be excluded for the purpose of limitation for initiating the disciplinary proceedings as per

rules. However, we may hasten to clarify that our observations herein should not be construed as a mandate to the authorities to initiate the proceeding against the appellant. We may further proceed to add that the State Government shall conduct itself as a model employer and act with the objectivity which is expected from it."

11. In the case of **TARSEM SINGH (supra)**, the Hon'ble Supreme Court held as under:-

"14. In view of the fact that no material had been placed by the respondents herein to satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) appended to Clause (2) of Article 311 of the Constitution of India, we are of the opinion that the impugned orders cannot be sustained and they are set aside accordingly. The appellant is directed to be reinstated in service. However, in view of our aforementioned findings, it would be open to the respondents to initiate a departmental enquiry against the appellant if they so desire. Payment of back wages shall abide by the result of such enquiry. Such an enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of communication of this order."

12. In the case of **Ved Mitter Gill (supra**), the Hon'ble Supreme Court observed as under:-

"23. The first ingredient, which is a prerequisite to the sustainable application of the above clause (b) is, that the delinquency alleged should be such as would justify, any one of the three punishments, namely, dismissal, removal or reduction in rank.

26. The second ingredient which needs to be met, for a valid exercise of clause (b) to the second proviso under Article 311(2) of the Constitution of India, is the satisfaction of the competent authority, that it was not reasonably practicable, to hold a regular departmental enquiry, against the employees concerned. On the question whether it was reasonably practicable to hold an inquiry, the competent authority has recorded its conclusion in the paragraphs, preceding the one depicting the involvement of the appellant/petitioners.

28. The third essential ingredient, for a valid application of clause (b) to the second proviso under Article 311(2) of the Constitution of India, is that, the competent authority must record, the reasons of the above satisfaction in writing."

13. In the case of **Satyavir Singh & Ors (supra)**, the Hon'ble Supreme Court observed as under:-

"(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.

(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.

(70) The contention that where an inquiry into the charges against a civil servant is not reasonably practicable, none the less before dispensing with the inquiry there should be a preliminary inquiry into the question whether the disciplinary inquiry should be dispensed with or not is illogical and is a contradiction in terms. If an inquiry into the charges against a civil servant is not reasonable practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable."

14. We are of the considered view that the Respondent No. 3, as Disciplinary Authority had failed to disclose in the order dated 29.11.2023 for Dismissal from Service of the Applicant as what were the specific reasons to conclude that it was not Reasonably Practicable to conduct the Departmental Enquiry against the

Applicant as was mandatorily required to be recorded by him in writing under Article 311(2)(b) of the Constitution of India.

15. In view of the above, the following order is passed:-

O R D E R

(i) The order dated 29.11.2022 of Removal from Service passed against the Applicant by Respondent No. 3, as Disciplinary Authority invoking powers under Article 311(2)(b) of the Constitution of India is hereby quashed and set aside with directions to reinstate the Applicant in service within a period of One Month.

(ii) The Respondent No. 3, as Disciplinary Authority will be at liberty to initiate Departmental Enquiry against the Applicant if so desired but it must be initiated as expeditiously as possible from the date of communication of this order and in any case within Two Months.

(iii) The amount of the Pay and Allowances to which the Applicant would have been entitled to had he not been subjected to order of Dismissal from Service on 29.11.2022 under Article 311(2)(b) of the Constitution of India, be determined as per provisions of Rule 71(2)(a) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.

Sd/-

(Debashish Chakrabarty)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 31.08.2023
Dictation taken by : A.K. Nair.