

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI  
NAGPUR BENCH, NAGPUR  
ORIGINAL APPLICATION NO.781 OF 2019**

**DISTRICT : CHANDRAPUR**

Shri Ganesh Shriram Jogdand, )  
Age about 30 years, occ. Nil, )  
R/o Matte Layout, Padoli, Chandrapur )..Applicant

Versus

1. The State of Maharashtra, )  
Through its Secretary, )  
Home Department, Mantralaya, Mumbai-32 )

2. Superintendent of Police, )  
Civil Lines, Chandrapur )..Respondents

Shri R.V. Shiralkar – Advocate for the Applicant

Shri V.A. Kulkarni – Presenting Officer for the Respondents

CORAM : Shri Shree Bhagwan, Vice-Chairman  
Shri A.D. Karanjkar, Member (J)

DATE : 7<sup>th</sup> February, 2020

PER : Shri A.D. Karanjkar, Member (J)

**J U D G M E N T**

1. Heard Shri R.V. Shiralkar, learned Advocate for the Applicant and Shri V.A. Kulkarni, learned Presenting Officer for the Respondents.
2. Ld. PO files reply on behalf of respondent no.2. We have heard submissions on behalf of the applicant and Ld. PO for the respondents.
3. It seems from the facts that it was alleged that the applicant who was serving as Police Constable attached to Padoli Police Station, D.B. Squad, took advantage of his official position and he demanded illegal gratification from Mohammad Sarfaroaz Shagir to continue trade of illegal sale of liquor and its transportation and for this purpose the applicant demanded bribe Rs.10,000/- per month. A complaint was lodged by Mohammad Sarfaroaz Shagir with the Anti Corruption Bureau authorities, consequently trap was arranged. It is case of the respondents that the applicant was trapped while accepting bribe amount on 8.9.2019, consequently, Crime No.1134/2019 was registered under Section 7 of the Prevention of Corruption Act, 1988.
4. Later on respondent no.2 passed the impugned order dated 12.9.2019 observing that the applicant was having connections with the criminals and he tarnished the image of the police department. It was also observed that if the applicant was permitted to resume duties and DE was conducted then applicant would get opportunity to support illegal activities and it will damage the image of the police department in public. In view of the observations, the respondent no.2 exercised powers under Article 311(2)(b) of the Constitution of India and dismissed the applicant from service.
5. It is submitted on behalf of the applicant that procedure followed by the respondent no.2 is entirely in violation of the spirit under Article

311(2)(b) of the Constitution of India. It is submitted that as per the provisions in the Constitution, it was obligatory on respondent no.2 to record specific reasons and circumstances disclosing why it was practically not possible to conduct enquiry. It is submitted that the reasons recorded are not sufficient to accept that it was not reasonably practicable to conduct the enquiry, therefore, the order impugned is in violation of Article 311(2)(b) of the Constitution of India and it required to be quashed.

6. Ld. PO submitted that reasons are recorded by respondent no.2 in the order and these reasons are sufficient to accept that there was no need to conduct enquiry as contemplated in the MCS (Discipline & Appeal) Rules, therefore, the order is within four corners of Article 311(2)(b) of the Constitution of India. It is further submitted that the applicant was caught while accepting illegal gratification and the reason for accepting the gratification was to permit the criminals to transport and sell liquor in the dry area. It is submitted that considering the act of the applicant the reasoned order is passed by respondent no.2 and consequently there is no illegality in the order and no substance in the OA.

7. We would like to point out that the legal position is very cleared by the Hon'ble Apex Court. The law is explained by the Hon'ble Supreme Court in the case of Chief Security Officer & Ors. Vs. Singasan Rabidas (1991) 1 SCC 729, Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC 385 and Sudesh Kumar Vs. State of Hariyana & Ors. (2005) II SC 525. The Hon'ble Supreme Court has laid down that the DE is a rule and deviation from this principle is an exception. It is laid down that the power conferred on the disciplinary authority under Article 311(2)(b) cannot be exercised in a routine manner and before exercising such power the disciplinary authority is bound to satisfy itself whether there are reasons sufficient to record a finding that it is not reasonably practicable

to hold enquiry. Bare perusal of the word in Article 311(2)(b) is not sufficient to satisfy the legal requirement. The satisfaction of the disciplinary authority recording the findings that as it is not reasonably practicable to hold enquiry must be supported also by the circumstances and if such observations are not supported by the circumstances then the findings recorded by the disciplinary authority has no legal base.

8. After reading the impugned order Exhibit A-2 dated 12.9.2019 it seems that offence was registered against the applicant on 8.9.2019 and order is passed on 12.9.2019. The respondent no.2 did not take care to conduct preliminary enquiry and know whether really there were circumstances to exercise the powers under Article 311(2)(b) of the Constitution of India. Moreover, the reasons which are recorded are that the applicant would establish connections with the criminals and again he would participate in the illegal activities. In our opinion these are not substantial reasons for dispensing with the disciplinary enquiry. What was the practical difficulty in conducting the enquiry or what was the threat is nowhere mentioned in the impugned order, therefore, we are of the firm view that the impugned order cannot be sustained. Hence, we pass the following order.

9. Original Application is allowed. The impugned order dated 12.9.2019 Exhibit A-2, is set aside. The respondent no.2 is at liberty to proceed against the applicant as per the MCS Rules. No order as to costs.

**(A.D. Karanjkar)**  
**Member (J)**  
**7.2.2020**

**(Shree Bhagwan)**  
**Vice-Chairman**  
**7.2.2020**

\*Dictation taken by: S.G. Jawalkar.

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

Name of Steno : S.G. Jawalkar

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

Judgment signed on : 07/02/2020.

Uploaded on : 11/02/2020.