IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.825 OF 2016

DISTRICT : SATARA

Shri Dharmraj Baburao Kalokhe)
Age 53 years, Police Hawaldar (Dismissed),)
Address : P. Kaneheri, Tal. Khandala,)
Dist. Satara.)....Applicant

Versus

1. The State of Maharashtra,)
Through Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032)
2. The Commissioner of Police,)
Brihan Mumbai, Police)
Commissionerate, D.N. Road,)
Opp. Crawford Market, Dhobi Talav,)
Fort, Mumbai 400 001)....Respondents

Shri C.T. Chandratre – Advocate for the Applicant
Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 24th August, 2023
PRONOUNCED ON: 12th September, 2023
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

Brief facts:

2. The applicant who was working as Police Havaldar, Marine Drive Police Station, Mumbai challenges his dismissal order dated 9.4.2015 passed by respondent no.2 under the provisions of Article 311(2)(b) of the Constitution of India.

3. On 9.3.2015 the applicant attached to Marine Drive Police Station, Mumbai came to be arrested by Satara Police from his native place i.e. Kaneheri, Taluka Khandala, District Satara for possession of 112.29 kilograms of dangerous Narcotic substance known as Mephedrone. Subsequently, on 10.3.2015 in the presence of Panchas the personal locker of the applicant at Marine Drive Police Station, Mumbai was opened wherein another 11.476 kilograms of dangerous Narcotic substance known as Mephedrone was seized. The only key of the said locker was in exclusive possession of the applicant. Also, Indian currency and foreign currency (Dollar) amounting to Rs. 2,35,92,000/- (Rupees two crores thirty five lakhs ninety two thousand only) were seized from the locker.

4. An F.I.R. was registered against the Applicant under Section 9(c), 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985) on 10.3.2015 and the applicant was taken in Policy custody on the same day and released on bail on 14.12.2015. Hence, the Applicant was dismissed by order dated 9.4.2015 passed under provisions of Article 311(2)(b) of the Constitution of India.

5. Ld. Advocate for the applicant challenges the order on the ground that nowhere in the order it has been stated why it was not reasonably practicable to hold such a Departmental Enquiry (DE). He submitted that the reason for dismissal is not based on an objective assessment but is subjective and an enquiry was possible in this matter. He further pointed out that mere lodging of an FIR for a serious offence is not a ground for invoking the said Article 311(2)(b) of the Constitution.

6. He further pointed out that as per the report of the Regional Forensic Science Laboratory, Pune the said sample was not a Narcotic Drug but it was Sodium Glutamate, which is not contraband or substance prescribed under the NDPS Act, 1985. He further referred to report by the Central Forensic Science Laboratory, Hyderabad dated 3.11.2015 which did not give positive test for the presence of Mephedrone. However, Monosodium Glutamate which is not a Narcotic was detected.

7. Ld. Advocate pointed out that the applicant was dismissed from service on 9.4.2015 under Article 311(2)(b) of the Constitution of India by respondent no.2. He further pointed out that the order of dismissal was hurriedly passed and the officer should have passed the order after confirming presence of Narcotic substance. He stated that the apprehension of tampering evidence of witnesses is baseless as the witnesses were from the Police Department and hence the order is bad in law.

8. Learned Advocate for the applicant in support of his contentions relied on the following judgments:-

(i) **Judgment of the Hon'ble Bombay High Court dated 10th March, 2010, Shri Shantilal D. Jadhav Vs. The Commissioner of Police, Mumbai, W.P 1753/2009**.

The applicant, a Police Personnel was dismissed from service on the ground of misconduct of trying to shield a drug and psychotropic substances racket by replacing Cocaine with boric powder is a serious matter. In the said matter, the Division Bench held that the gravity of misconduct may be one of the reasons why it is not practicable to hold departmental enquiry, but it cannot be the sole reason for not holding departmental enquiry.

(ii) Judgment of this Tribunal **dated 7.5.2009 in OA No.617/2008 Shri Pradeep R. Sharma Vs. Director General of Police**. In the said case, the learned Advocate for the Respondent-State has fairly stated from the record that none of the Officers of the State have indicated that they were not willing to depose in the court or before any authority against the applicant. However, in the said case the statement of the private witnesses were recorded under Section 164 of the Cr. P.C before the learned Addl. Chief Metropolitan Magistrate. The Tribunal held that therefore this was not a case wherein no departmental enquiry could be held on account of fear or non-availability of the witnesses.

(iii) Judgment of the Hon'ble Supreme Court in the case of **TARSEM SINGH Vs. STATE OF PUNJAB & ORS, (2006) 13 SCC 581**. In the said case, the applicant was charge sheeted for misconduct for rape of a woman. While dismissing the application, the competent authority has mentioned that the offence is grave and heinous in nature and would bring a bad name to the Police force of the State or whole and also apprehension of fear was expressed that

witnesses might not come forward to depose against the applicant due to fear of any injury or danger to their lives. The authority held that though there is a subjective satisfaction arrived at by the statutory authority, it should be based upon the objective criteria that holding of departmental enquiry is reasonably not practicable.

9. Per contra Ld. PO refutes submissions made by the Ld. Advocate for the applicant. She relied on the affidavit in reply dated 23.6.2017 filed by Dattatraya Devidas Padsalgikar, Commissioner of Police, Mumbai as per the directions of this Tribunal dated 3.5.2017 wherein it mentioned that his predecessor, Shri Rakesh Maria, had arrived at the conclusion as to how it was not reasonably practicable to hold a regular DE against the present applicant and had decided to invoke the provisions of Article 311(2)(b) of the Constitution of India and has passed the impugned order of dismissal. He pointed out the reasons recorded by his predecessor for dispensing with the regular DE against the applicant.

10. Ld. P.O relied on the following judgments:-

(i) Judgment of the Hon'ble Supreme Court in **Satyavir Singh & Ors. Vs. Union of India & Ors., (1985) 4 SCC 252**.

(ii) Judgment and order dated 11.3.2022 passed by this Tribunal in **OAs No.188 & 189 of 2013 Ravindra V. Gandhe Vs. The State of Maharashtra & Ors.**

11. In order to justify the order passed under Article 311(2(b) of the Constitution of India, the Court needs to look into the impugned order passed by the Competent Authority. Every misconduct is different from the other in view of the attaining circumstances in the matter. We have considered the judgments and the ratio laid down in those judgments as

mentioned above, cited by the learned counsel for the applicant. We need to find out whether the Competent Authority has assessed the situation objectively while arriving at the conclusion that it is not reasonably practicable to conduct departmental enquiry. The law framers have used the word 'reasonably'. Thus the competent authority is not required to consider that it is not completely practicable to conduct the enquiry but the authority has to assess the prevailing factors objectively and then arrive at a conclusion that conducting the DE is not reasonably practicable. Thus, it is a subjective decision, which should not be arbitrary, fanciful, based on imaginary apprehension. Hence, we advert to the order itself which reads as under:-

> The respondent no.2 in his note has given detailed reasons as to why holding of DE was not reasonably practicable. Some of the reasons are reproduced below:
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> *"Drug peddling not only is destroying a whole generation of youth but financial proceeds from drugs go a long way in providing a boost to terrorists and anti-nationalism. Also, Police – Underworld nexus is a very sensitive issue. The act(s) of the delinquent HC has prompted the media to create a suspicion in the minds of the general public as regards the bonafides of the Police Department. This has invited scotching criticism from all corners of society. Escalation of such emotions of mistrust about the Law-Enforcement Agency amongst the general public definitely is detrimental to the security and peace in the society as a hole. Therefore, it is imperative to initiate immediate and unprecedented corrective measures to contain/nip such gross misconduct amongst the ranks. If exemplary stern action is not taken against such erring police personnel it could snowball into indiscipline in the entire Police Force and spread like an epidemic amongst others. If not contained immediately, it will without any doubt, impact on the*

dependability and reliability of the Mumbai Police Force as a whole. The people's trust and confidence in the Force will be totally eroded.

Further, the fear and reach of the underworld/drug cartels will make it well high impossible for witnesses to freely come forward to depose against the delinquent HC. As such, it is totally impractical to hold a regular departmental enquiry against the delinquent HC."

12. Careful perusal of the record shows that it was not reasonably practicable to hold a regular DE against the applicant in view of the fact that respondent no.2 has applied his mind to the serious charges leveled against the applicant. The respondent no.2 had put everything relevant to the case in writing as to why he had come to the conclusion that the applicant be dismissed by invoking the provisions of Article 311(2)(b) of the Constitution of India. It is seen that all the procedure has been followed by respondent no.2. He has clearly mentioned that due to the connections of the applicant with the underworld nobody will dare to depose against the applicant, which is why he reached to the conclusion that this is a fit case wherein the regular DE should be dispensed with and the applicant be dismissed from service summarily by invoking the provisions of Article 311(2)(b) of the Constitution of India.

13. In the case of **Satyavir Singh & Ors (supra)** the orders of dismissal passed without holding enquiry against employees of Research and Analysis Wing (RAW) who took leading part in their All India Agitation were upheld and dismissal orders were held as valid. The Hon'ble Supreme Court observed as under:

(4) It was not disputed at the hearing of these two Appeals that they fall to be decided in the light of what was held in Union of India and another v. Tulsiram Patel and other connected matters. [1985] 3 S.C.C. 398. By the

decision in Tulsiram Patel's Case a large number of writ petitions either filed in this Court or in various High Courts and transferred to this Court and several Appeals by Special Leave, all involving the interpretation of Articles 309, 310 and 311 of the Constitution and in particular of the second proviso to Article 311 (2), were disposed of by a five-judge Constitution Bench of this Court, with one learned judge dissenting except as regards the interpretation to be placed upon clause (c) of the second proviso to Article 311 (2).

(58) The reasonable practicability of holding an inquiry is a matter of assessment to be made be 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*

(61) The word "inquiry" in clause (b) of the second proviso includes a part of an inquiry. It is, there fore, not necessary that the situation which makes the holding of an inquiry not reasonably practicable should exist before the inquiry is instituted against the civil servant. Such a situation can also come into existence subsequently during the course of the inquiry, for instance, after the service of a charge sheet upon the civil servant or after he has filed his written statement thereto or even after evidence has been led in part.

(62) It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it, the civil servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority.

(108) In examining the relevancy of the reasons given for dispensing with the inquiry, the Court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the Court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the Court will not, however, sit in judgment over the reasons like a Court of first appeal in order to decide whether or not the reasons are germane to clause (b) of the second proviso or an analogous service rule. The Court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a Court-room, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere.

14. We also rely on the ratio laid down in the case of **Ravindra V. Gandhe's case (supra)** it is observed as under:-

"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."

15. We have carefully examined the impugned order passed by respondent no.2. In this case it is clear that respondent no. 2 has applied his mind and has stated the reasons for dismissal of applicant under Article 311(2)(b) of the Constitution of India.

16. Looking at all these factors and the ratio laid down by the Hon'ble Supreme Court in *Satyavir Singh* (supra), we are of the view that there is no merit in the application and the same deserves to be dismissed.

17. Original Application is dismissed. No orders as to cost.

Sd/-	**Sd/-**
(Medha Gadgil)	**(Mridula Bhatkar, J.)**
Member (A)	**Chairperson**
12.9.2023	**12.9.2023**

Dictation taken by: S.G. Jawalkar.

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