MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.120 OF 2019

DISTRICT:- AURANGABAD

Yogesh s/o. Suresh Shingnare,
Age : 33 years, Occ. Nil,
R/o. Room No.06,
Shatatarka, SRPF Camp,
Group-14, Satara Parisar,
Aurangabad. **...APPLICANT**

V E R S U S

The Commandant,
State Reserve Police Force,
Gut No.14 (IRB),
Aurangabad. **...RESPONDENT**

APPEARANCE : Shri A.S.Deshmukh, Advocate for the Applicant.

: Shri M.P.Gude, Presenting Officer for the respondent.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN AND SHRI BIJAY KUMAR, MEMBER (A)

Reserved on : 11-07-2022
Pronounced on : 14-07-2022

O R D E R
(PER: JUSTICE SHRI P. R. BORA)

1. The applicant has filed the present O.A. seeking quashment of the order dated 03-01-2019 passed by respondent whereby the respondent has dismissed the

applicant from the services of State Reserve Police Force (SRPF) by invoking power under Article 311(2)(b) of the Constitution of India.

2. The applicant entered into the service of SRPF on 09-11-2007 as an Armed Police Constable. At the relevant time, applicant was posted at SRPF, Aurangabad. It is alleged that on 24-08-2018 at about 10:30 hours, applicant snatched gold necklace weighing about 15 gm. from the person of one Surekha Rajendra Thale. The said lady, therefore, filed complaint at Police Station, Satara, on the basis of which C.R.No.299/2018 was registered against the applicant for the offence punishable u/s.392 of the IPC. It is further alleged that applicant was arrested in the said crime on 12-10-2018 and was remanded to police custody till 19-10-2018. It is further alleged that while in police custody applicant confessed his role in 11 crimes of similar nature i.e. snatching of gold chain from the person of women. It is further alleged that the applicant while in custody of the police also disclosed names of goldsmiths to whom he had sold stolen gold chains. The gold chains and gold ingot in about 11 cases worth Rs.4,86,100/- were recovered at the instance of the applicant.

3. In premise of the aforesaid facts respondent recorded his opinion that considering the criminal nature and conduct of the applicant, the witnesses were not likely to come forward to depose against the applicant. The respondent further recorded that conducting departmental enquiry was not possible for one more reason that in the offence of chain snatching, the police custody was being granted by different courts and thereafter the applicant was likely to remain in judicial custody for a quite long period and as such it was not practicable to hold enquiry against the applicant. The respondent has further recorded that though enquiry may not be possible for the reasons recorded as above, in view of the strong prima facie evidence available against the applicant, it could have been fatal for SRPF to keep the applicant in service thenceforth. In the circumstances, according to the respondent, he was constrained to invoke provisions under Article 311(2)(b) of the Constitution of India.

4. The applicant has assailed the impugned order on various grounds. It is the contention of the applicant that only on the basis of the offences registered against the accused and the alleged confession given by the applicant while in custody of police, respondent has held the

applicant guilty of the offence alleged against him. It is contended that the applicant has been falsely implicated in the alleged crime. It is further contended that the order of dismissal is in utter violation of the principles of natural justice and laid down procedure under the departmental rules. It is the further case of the applicant that respondent did not make any effort to initiate a regular departmental enquiry and has thus deprived the applicant from exercising Constitutional right conferred upon him which envisages that no person holding civil post shall be dismissed or removed or reduced in rank, except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The applicant has on the aforesaid grounds sought the quashment of the order passed against him.

5. The contentions raised in the O.A. are resisted by the respondent by filing affidavit in reply. In paragraph 6 of the said affidavit in reply it is stated that since in the primary enquiry the applicant did not intentionally co-operate to the respondent and did not answer the questions put to him, the respondent has taken a decision to dismiss the applicant from services invoking the provisions under

Article 311(2)(b) of the Constitution of India. The respondent has annexed to the affidavit in reply the document dated 31-10-2018 which is described by the respondent in paragraph 6 of the affidavit in reply as the copy of the primary enquiry report.

6. In paragraph 7 of the affidavit in reply it is averred that because of the registration of 11 offences against the applicant, image of the SRPF has been lowered down in the general public. It is further stated that the applicant has terrorized the common man residing in Aurangabad city. It is further averred that having regard to the law and order situation, respondent has taken a conscious decision to dismiss the applicant without conducting any enquiry so as to save prestige of the department. It is the further case of the respondent that articles worth Rs.4,86,100/- are recovered at the instance of the applicant by the police, which evinces that the applicant is habitual offender and cannot be retained in the disciplined force like the SRPF. The respondent has on the aforesaid grounds prayed for dismissal of the O.A.

7. We have carefully considered the submissions advanced on behalf of the applicant and the respondent.

We have carefully perused the pleadings and the documents filed on record. It is evident that on the basis of offences registered against the applicant, the respondent has dismissed the applicant from the services by invoking provisions under Article 311(2)(b) of the Constitution of India. We deem it appropriate to reproduce the impugned order as it is in vernacular which reads thus:

"जा.क.विचौ/बडतर्फ/सपोशि–366 शिंगनारे/2019/149

औरंगाबाद दि.03/01/2019.

*विषय :– भारतीय संविधान, 1950 मधील अनुच्छेद क्रं.311(2)(**b**) अंतर्गत आदेश...*

<u>आदेश</u> :–

01. ज्या अर्थी, सपोशि/366 योगेश सुरेश शिंगनारे नेमणुक प्रशासन कंपनी राज्य राखीव पोलीस बल गट क.14 (भाराब–1), औरंगाबाद (सध्या निलंबीत) तुम्ही सशस्त्र पोलीस शिपाई असुन कायद्याचे रक्षण करणे हे कायदेशीर कर्तव्य असतांना सुध्दा तुम्ही गुन्हेगारी प्रवृत्तीचे, बेजबाबदारपणाचे व अत्यंत विघातक कृत्य केल्याचे माझ्या निदर्शनास आले आहे.

02. ज्या अर्थी उपलब्ध अभिलेखावरून तुम्ही गुन्हेगारी प्रवृत्तीचे, बेजबाबदारपणाचे व अत्यंत विघातक गैर कृत्य केले आहे. ज्या मध्ये तुम्ही दि.24.08.2018 रोजी 10.30 बी.एस.एन.एल. (टेलिफोन) ऑफिस रोडवर सातारा परिसर, औरंगाबाद येथे फिर्यादी सुरेखा राजेंद्र थाले, रा. रेणुकापुरम बीडबायपास, सातारा परीसर, औरंगाबाद हया समर्थ मंदिरात दर्शनासाठी जात असतांना त्यांचे गळयातील 15 ग्रॅम वजनाचे सोन्याचे शॉट गंठण बळजबरीने हिसकावून चोरून घेवून गेले. सदर प्रकरणी तुमच्या विरूध्द सातारा पोलीस स्टेशन येथे गुरनं.299/18 कलम 392 भांदवि, दि.24.08. 2018 रोजी 12.41 वा गुन्हा नोंद दाखल करून तुम्हास दि.12.10. 2018 रोजी 00.01 वा. अटक करण्यात आली असुन दि.12.10.2018 रोजी न्यायालय जे.एम.एफ.सी. कोर्ट–16, जि. औरंगाबाद यांचे समक्ष हजर केले असता दि.12.10.2018 ते 19.10.2018 रोजीपर्यंत पोलीस कस्टडी व नंतर मा. न्यायालयीन कोठडी देण्यात आली आहे.

03. ज्या अर्थी तुमच्या विरूध्द गुन्हा दाखल होऊन आपणास दि. 12.10.2018 ते 19.10.2018 पर्यंत रोजीपर्यंत पोलीस कस्टडी

रिमांडमध्ये असताना आपण 11 गुन्हयाची कबुली देऊन महिलांचे मंगळसुत्र हिसकावुन विविध सोनारांना विक्री केल्याचे तपासात निष्पन्न झाले आहे. त्यापैकी सहा गुन्हयातील मंगळसुत्र/गंठन तसेच पाच गुन्हयातील सोन्याची लगडी असा एकण 11 गुन्हयातील एकुण 4,86,100/– एवढया रकमेचे सोन्याचे दागिने/लगड जप्त करण्यात आले आहे. सदर प्रकरणी तुमच्या विरूध्द सकृतदर्शनी पुरावा उपलब्ध असून तुम्ही वरील प्रमाणे गुन्हा केल्याचे निष्पन्न झाल्याने तुमच्या विरूध्द मा. न्यायालयात दोषारोपपत्र दाखल करण्यात आले आहे.

04. ज्या अर्थी तुमच्या विरूध्द गुन्हा दाखल होउन वरील गैरवर्तनाच्या दोषारोपांचे स्पष्टीकरणानुसार आपला गुन्हयामध्ये मोठा सहभाग असल्याने आपणास अटक झाली असून तरीही या प्रकरणात तुमच्या विरूध्द जरी नियमित विभागीय चौकशी करण्याचे ठरविल्यास या प्रकरणातील तुमचे गुन्हेगारी वर्तनामुळे विभागीय चौकशीत तुमचे विरूध्द साक्ष देण्यासाठी साक्षीदार पुढे येणार नाहीत. त्यामुळे सर्वकष बाबी विचारात घेता तुमचे विरूध्द विभागीय चौकशी करणे हे वाजवी किंवा व्यवहार्य ठरणार नाही अशी माझी पुर्ण खात्री पटली आहे.

05. ज्या अर्थी आपणास मंगळसुत्र चोरीच्या गुन्हयात मा. न्यायालयाकडुन पोलीस कोठडी व न्यायालयीन कोठडीत दिर्घकाळ ठेवण्यात येत असल्याने आपणावर खातेनिहाय चौकशीसाठी अडचण निर्माण होत आहे. त्यामुळे सदर प्रकरणात नियमित विभागीय चौकशी करणे व्यवहार्य होणार नाही. या बाबत माझी पुर्ण खात्री पटली आहे.

*06. त्या अर्थी, मी सुरेश माटे, समादेशक, राज्य राखी पोलीस बल गट क.14 (भाराब) औरंगाबाद, पोलीस शिपाई या पदाचा नियुक्त प्राधिकारी म्हणुन मला भारतीय संविधान, 1950 मधील अनुच्छेद क्रं.311 (2) (**b**) द्वारे प्रदान असलेल्या अधिकाराचा वापर करून तुम्ही सपोशि/366 योगेश सुरेश शिंगनारे (सध्या निलंबीत) यास सदरील आदेश प्राप्त झाल्या पासुन **सेवेतुन बडतर्फ** करीत आहे.*

स्वाक्षरी/–
(सुरेश माटे)
समादेशक,
राज्य राखीव पोलीस बल गट क.14 (भाराब),
औरंगाबाद"

8. From the contents of the order as aforesaid, it is revealed that the respondent has conclusively decided that the applicant is guilty of the offences registered against him which are still in legal process with a presumption of

innocence. We have stated hereinabove the allegations against the applicant pertaining to the offences registered against him. The applicant has not denied the fact that C.R.No.299/2018 has been registered against the applicant on 12-10-2018 and thereafter 10 more crimes have been registered against him during the period between 22-10-2018 to 03-11-2018 at Police Station, Satara u/s.392 or u/s.394 of the IPC. The applicant has also not denied that in all those offences he was arrested by the police. It is matter of record that the applicant was released on bail in all those cases under the orders of the competent criminal court. It is also a matter of record that in 11 matters, the charge sheets have been filed by the police after having conducted investigation in each of the said crimes. In view of the facts as aforesaid, criminal court which would conduct the trial in the aforesaid cases only can decide the culpability of the accused in commission of the offences alleged against him, based upon the evidence which may be adduced before the said court by giving due opportunity to the applicant to defend the charges levelled against him. Needless to state that the burden is on the prosecution to bring before the court all incriminating material against the applicant and to

examine the necessary witnesses to prove the guilt of the accused beyond reasonable doubts. One thing is however certain that unless the competent criminal court holds the applicant guilty of the charges levelled against him, the applicant shall be presumed to be innocent.

9. The respondent has, however, merely on the basis of the fact that the police has filed charge sheets against the applicant in 11 cases for the offences punishable u/s.392 or 394 of the IPC has conclusively held the applicant guilty of the said offences. The course so adopted by the respondent is, prima facie, against the constitutional protection provided to the applicant. Article 311(2) of the Constitution of India provides that no person holding civil post (applicant is holding civil post) can be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. In the present matter, it is the contention of the respondent that such an attempt was made by the respondent but the applicant did not co-operate with the respondents. As we have mentioned hereinbefore, one document is filed which is termed as primary enquiry report. We have carefully gone through the said document.

First paragraph of the said document is in the form of confession, however, it nowhere reveals that the applicant has in any way confessed and / or admitted that it was he, who snatched the gold necklace from the person of one Surekha Rajendra Thale. What is stated in the said paragraph is the fact that gold chain was snatched from the person of the said lady and in that connection offence has been registered against the applicant in Satara Police Station at Aurangabad. The so-called enquiry report further contains the fact that in relation to the aforesaid incident of chain snatching some questions were put to the applicant. The very first question is, "whether you admit the guilt ?" (*सदर गुन्हा आपणास मान्य आहे काय* ?). The applicant is alleged to have answered the said question stating that his mental condition is not well and he is therefore unable to give any reply to the said question. The applicant then refused to put his signature also below the said so-called report. The further questions are like this, which we are reproducing hereinbelow in vernacular:

> "***1)*** *आपणावर कलम 392 भादंवि दि.24.08.2018 रोजी 12:41 वा. अन्वये गुन्हा दाखल झालेला असुन दि.12.10.2018 रोजी 00:01 वाजता अटक करण्यात आली. सदर गुन्हा आपणास मान्य आहे काय ? याबाबत आपले म्हणणे काय* ?
>
> *उत्तर – सदर प्रश्नांची उत्तरे माझी मानसिक स्थिती ठिक नसल्याने मी जबाब व कोणत्याही प्रकारची उत्तरे देउ शकत नाही व स्वाक्षरी देखील करीत नाही.*

2) सदर गुन्हा करणेबाबत आपला कोणता हेतु होता ?

3) सदर गुन्हा संबंधी आपणावर आणखी कोणते गुन्हे दाखल करण्यात आले आहे ?

4) सदर गुन्हा हा आपण कोणाच्या सांगण्यावरून केला किंवा आपणास कोणी सहकार्य करीत होते काय ?

5) सदर गुन्हे आपण कोणत्या परिस्थितीत केले, रजेवर असताना किंवा आपण साप्ताहीक सुटटीवर असताना ?

6) जर आपणास पैशाची अडचण होती तर आपण सदर बाब गुन्हा करणे पुर्वी वरिष्ठांना का कळविली नाही ?

7) सदर गुन्हा करतेवेळी आपणास कोण–कोण सहाय्य करित होते ?

8) सदर गुन्हयातील हस्तगत केलेले मालमत्तेचे आपण काय केले ?

9) आपण आतापर्यंत किती वेळा व कोणकोणते प्रकारची गुन्हे केलेले आहे. किंवा कोणत्या गुन्हयामध्ये आपण सहभाग घेतला आहे का ?

10) या अगोदर आपणावर गुन्हा दाखल झालेला आहे अथवा आपणास एखादया गुन्हयासंबंधी अटक झालेली आहे अगर कसे ? ”

10. We are constrained to observe that a totally impermissible course was adopted by the respondent in conducting such type of enquiry and in putting such type of questions to the applicant. Law is well settled that, if a criminal prosecution is pending, even the departmental enquiry cannot be simultaneously conducted on the same charges as are there in the criminal case and on the same set of facts or evidence which is there in the criminal case for the reason that the delinquent cannot be compelled to open his defence which he may take in defending the

criminal prosecution against him. When the criminal prosecution was pending, it is unconscionable why the questions like 'whether he admits the charge' and further that 'what was his intention in committing such crimes' were put to applicant.

11. In the order of dismissal, respondent has cited the same reason for dismissing the applicant without holding any enquiry against him. It appears to us that respondent has recorded reasons justifying how it is not necessary to conduct the enquiry in view of the evidence collected against the applicant during the investigation conducted in the crimes registered against the applicant. While invoking the provisions under Article 311(2)(b), following two conditions must be satisfied to sustain any action taken thereunder. These are: -

(i) There must exist a situation which renders holding of any enquiry, "not reasonably practicable; and

(ii) The disciplinary authority must record in writing its reasons in support of its satisfaction.

12. It is thus, evident that reasons are to be recorded to justify how it was not reasonably practicable to hold the enquiry against the applicant before ordering his dismissal. Whether or not to hold an enquiry is not within the

discretion of the respondents. Normal rule is that no person can be dismissed, removed or reduced in rank without conducting an enquiry in which the said person has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Aforesaid course can be deviated only in the circumstances rendering holding of an enquiry not reasonably practicable. The constitutional right conferred upon the delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid holding of an enquiry.

13. In the instant matter, respondent has utterly failed in justifying his action of not holding enquiry against the applicant before ordering his dismissal. As is revealing from the contents of the impugned order, the reason as has been assigned is that because of the criminal conduct of the applicant no witness will dare to depose against him even if the departmental enquiry is held. One more reason has been assigned that since the applicant was in police custody and then in magistrate custody for quite a long period, it was difficult to conduct the departmental enquiry against the applicant. Both the aforesaid reasons are liable to be rejected at the threshold. It cannot be accepted that

the witnesses were not likely to come forward to depose against the applicant in the departmental enquiry. Moreover, names of such witnesses are not disclosed by the respondents. Further, the complainants who did not fear in lodging reports in the respective cases with the police were not likely to have any fear in deposing before the enquiry officer had the regular departmental enquiry conducted against the applicant. Similarly, other witnesses who may be panch witnesses on recovery, the police officers who recorded the statement of the applicant in pursuance of which the alleged recoveries are set to be made were also not likely to have any fear in deposing before the Enquiry Officer in the enquiry proceedings. Thus, the aforesaid cannot be an acceptable reason for not conducting the regular departmental enquiry against the applicant.

14. The remand of the applicant, first in police custody and then in magistrate custody, even if it may be of longer period, cannot be a ground for dispensing with the enquiry against the applicant. Having regard to the facts and circumstances existing in the matter, it appears to us that it was very much possible for the respondent to conduct regular enquiry against the applicant by giving due

opportunity to the applicant to defend the charges levelled against him.

15. The law is well settled that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or merely in order to avoid holding of an enquiry. According to us, the reasons as have been canvassed by the learned Presenting Officer are neither objective nor reasonable in the facts of the present case. It appears to us that the respondent has adopted a wrong and illegal method in ordering dismissal of the applicant from the Police services. The order so passed by the respondent is in utter disregard of the principles of natural justice. As has been held by the Hon'ble Apex Court in the case of **Jaswant Singh Vs. State of Punjab [1991 AIR (SC) 385**, the decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the concerned authority. The Hon'ble Apex Court has further held that when the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those, who support the order to show that satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. The respondent has utterly failed in convincing us that any such circumstance

was prevailing so as to dispense with the enquiry envisaged by Article 311(2) of the Constitution. Respondent has, thus, arbitrarily exercised the power vested in him. Though the learned Presenting Officer has placed reliance on the judgment of the Hon'ble Apex Court in the case of **Ved Mitter Gill Vs. Union Territory Administration, Chandigarh and others [(2015(3) SLR 739 (SC)]**, the facts in the said matter were altogether different than the facts involved in the present matter.

16. In view of the fact that no material has been placed by the respondent to establish that it was necessary to dispense with a normal enquiry against the applicant in terms of proviso (b) appended to clause (2) of Article 311 of the Constitution, we are of the opinion that the impugned order cannot be sustained and deserves to be set aside. It is accordingly set aside. The respondent is directed to reinstate the applicant in service within one month from the date of this order. However, in view of the discussion made by us in the body of judgment it would be open to the respondent to initiate the departmental enquiry against the applicant if he so desires. Payment of back-wages shall abide by the result of the said enquiry. Such enquiry, if any, must be initiated as expeditiously as possible and not

later than two months from the date of passing of this order and shall be completed within six months from its commencement. The applicant shall ensure that the enquiry proceedings are not delayed or protracted at his instance.

The Original Application is allowed in the aforesaid terms. There shall be no order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 14th July, 2022

YUK O.A. NO.120.2019 PRB