

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.773 OF 2019 AND  
ORIGINAL APPLICATION NO.809 OF 2019**

**DISTRICT:- PARBHANI**

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**O.A.NO.773/2019**

Babu s/o. Vishwanath Gitte,  
Age : 37 years, Occ. Nil,  
R/o. Tokwadi, Tal. Kandhar,  
Dist. Nanded.

**...APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,  
Through its Addl. Chief Secretary,  
Home Department, M.S.,  
Mantralaya, Mumbai-32.
- 2) The Director General of Police,  
Maharashtra State,  
Shaheed Bhagat Singh Marg,  
Colaba, Mumbai-01.
- 3) The Special Inspector General of Police,  
Nanded Range, Mhada Colony,  
Nanded-03.
- 4) The Superintendent of Police,  
Parbhani, Near Shivaji Maharaj Statue,  
Station Road, Parbhani-1. **...RESPONDENTS**

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**O.A.NO.809/2019**

Gautam s/o. Keshavrao Bhalerao,  
Age : 34 years, Occ. Nil,  
R/o. Samyak Niwas, Gajanan Nagar,  
Near Water Tank, Deshmukh Nagar,  
Parbhani.

**...APPLICANT**

**V E R S U S**

- 1) The Special Inspector General of Police,  
Nanded Range, Mhada Colony,  
Nanded-03.

- 2) The Superintendent of Police,  
Parbhani, Near Shivaji Maharaj Statue,  
Station Road, Parbhani-1. **...RESPONDENTS**

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APPEARANCE : Shri A.S.Deshmukh, Advocate for  
Applicants in both cases.  
: Shri M.P.Gude, Presenting Officer  
for respondents in both cases.  
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**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN  
AND  
SHRI BIJAY KUMAR, MEMBER (A)**

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**Reserved on : 01-08-2022**  
**Pronounced on : 03-08-2022**  
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**C O M M O N O R D E R**  
**(PER: JUSTICE SHRI P. R. BORA)**

1. The applicants in both these Original Applications (O.As.) have been dismissed from the police services by a common order passed by Special Inspector General of Police, Nanded Range, Nanded (hereinafter mentioned as "Disciplinary Authority") on 03-07-2019. Both the applicants have challenged the said common order on identical grounds. The order of dismissal has been passed by the Disciplinary Authority by exercising powers under Article 311(2)(b) of the Constitution of India. In the circumstances, we have heard both the matters together and deem it appropriate to decide the same by this common order.

2. Applicant in O.A.No.773/2019 was working on the post of Police Sub Inspector (PSI) at the relevant time whereas applicant in O.A.No.809/2019 was working on the post of Police Constable. Both the applicants were posted at Police Station Sonpeth, Dist. Parbhani. On 20-06-2019, FIR came to be registered at Police Station Gangakhed, Dist. Parbhani against these applicants for the offence u/s.7 and 12 of the Prevention of Corruption Act, 1988. On the backdrop of registration of the said offence, Disciplinary Authority has dismissed the applicants from the police services by invoking powers under Article 311(2)(b) of the Constitution of India. Applicants have challenged the said order as stated hereinabove.

3. The order of dismissal impugned in these O.As. reveals that the applicants were alleged to have unauthorisedly remained absent from their duties on 20-06-2019 and on the said date were alleged to have demanded and accepted Rs.20,000/- by way of bribe from a person by name Laxman Phad. The order of dismissal further reveals that after registration of crime against the applicants, instead of assisting the police in the investigation, the applicants by keeping their mobile

phones off got proceeded towards Parali and absconded. In the aforesaid circumstances, the Disciplinary Authority by observing that the applicants have committed dereliction in their duties and have violated the code of conduct and discipline which is of great significance in the disciplined police force and did tarnish the image of the police force in the eyes of public, ordered dismissal of the applicants. The Disciplinary Authority has observed in the impugned order that the applicants have indulged in illegal activities and corrupt practices with an intent of personal gain and have committed heinous offence of accepting bribe. It is further observed that having regard to the conduct of the applicants as has been revealed from the event occurred on 20-06-2019, Disciplinary Authority has reached to the conclusion that it was not reasonably practicable to hold enquiry against the applicants and it would also not be appropriate to extend an opportunity of defending the action or to issue them show cause notice, the applicants are dismissed from the police service under Article 311(2)(b) of the Constitution of India.

4. Learned Counsel for the applicants relied upon the following judgments in support of the arguments:

- (i) Judgment of Hon'ble Apex Court in case of Jaswant Singh V/s. State of Punjab reported in [1991 AIR SC 385].
- (ii) Judgment of Hon'ble Apex Court in case of Risal Singh V/s. State of Haryana & Ors. [2014 (13) SCC 244].
- (iii) Judgment of Hon'ble Apex Court in case of Tarsem Singh V/s. State of Punjab [2006 (13) SCC 581].
- (iv) Judgment of Hon'ble Delhi High Court in case of Govt. of NCT of Delhi & Ors. V/s. Sudesh Pal Rana passed in W.P. (C) No.788/2010 & CM No.20322/2010.
- (v) Judgment of learned D.B. of the M.A.T., Mumbai in case of Shri Pralhad P. Patil V/s. Superintendent of Police, Raigad & Anr. passed in O.A.No.122/2016.
- (vi) Judgment of learned D.B. of the M.A.T., Nagpur in case of Ganesh Shriram Jogdand V/s. State of Maharashtra & Anr. passed in O.A.No.781/2019.

5. Referring to the law laid down in the aforesaid judgments, the learned Counsel has argued that powers under Article 311(2)(b) are to be sparingly used. It has been further argued that there must exist a situation which would render holding of an enquiry not reasonably practicable. Learned Counsel has submitted that in the impugned order Disciplinary Authority has not discussed

any such reason which would justify the dismissal of the applicants without conducting enquiry against them. According to the learned Counsel, Disciplinary Authority has arbitrarily exercised the power vested in him. Learned Counsel has, therefore, prayed for setting aside the impugned order.

6. Shri A.S.Deshmukh, learned Counsel appearing for the applicants has assailed the impugned order mainly on the ground that the Disciplinary Authority has not followed the mandate under Article 311(2) of the Constitution before ordering dismissal of the applicants. It is further contended that merely on the basis of offence registered against the applicants at Police Station Gangakhed, presuming allegations made in the said complaint by the complainant therein to be true, without giving any opportunity to explain the charges levelled against them, the Disciplinary Authority has ordered dismissal of the applicants from the police services. Learned Counsel further submitted that applicants have denied their involvement in the alleged crime registered vide C.R.No.274/2019 at Police Station Gangakhed for the offence punishable u/s.7 and 12 of the Prevention of Corruption Act. According to the learned Counsel,

applicants are falsely implicated in the said crime. Learned Counsel further submitted that the Disciplinary Authority has utterly failed in providing adequate reasons for dispensing with the enquiry against the applicants into the charges levelled against them. As further submitted by the learned Counsel, in fact, no reasons are assigned by the Disciplinary Authority for its satisfaction in reaching the conclusion that it was not reasonably practicable to hold enquiry against the applicants before ordering their dismissal.

7. In O.A.No.773/2019, applicant has challenged the competence of respondent no.3 to dismiss him from the services of the police. When the arguments were re-heard in the present matter, learned Counsel for the applicant submitted that he is not pressing the said ground in view of the judgment delivered by the Division Bench of the Hon'ble Bombay High Court in Writ Petition No.6963/2021 on 21-07-2022. Learned Counsel has tendered across the bar copy of the said judgment also. Learned Counsel, however, maintained that even though the aforesaid ground is not pressed by the applicant, dismissal of the applicant deserves to be set aside on the sole ground that without assigning reasons for not holding the departmental enquiry

against the applicant, the applicant has been dismissed from the services of the police.

8. Learned P.O. reiterated the contentions raised in the affidavits in reply filed on behalf of the respondents in both O.As. in his arguments. It was further argued by the learned P.O. that the employees working in the Police Force are required to be more disciplined since the common man considers police person as a protector for his safety from the unscrupulous ailments in the society. It was further contended by him that ample *prima facie* evidence was available against both applicants explicitly showing their involvement in commission of the alleged crime. It was also contended by the learned P.O. that applicants being police persons the witnesses were not likely to depose against them even if the departmental enquiry would have been conducted against them into the misconduct alleged against them. The learned P.O. further submitted that as envisaged in clause (2) of Article 311 of the Constitution, the decision of the Disciplinary Authority recording his satisfaction on the issue that it may not be reasonably practicable to hold the enquiry against any employee before ordering his dismissal or removal shall be final unless it is



found to be arbitrary exercise of power by the Disciplinary Authority.

9. We have carefully considered the submissions advanced on behalf of the applicants as well as the respondent authorities. As noted hereinabove, in O.A.No.773/2019, the ground raised by the applicant that respondent no.3 was not competent to order his dismissal from service has been not pressed by the applicant. As such, we have not considered the said ground. Otherwise also, in view of the judgment delivered by the Hon'ble Bombay High Court in Writ Petition No.6963/2021, the contentions in that regard were liable to be rejected.

10. We deem it appropriate to reproduce hereinbelow the impugned order as it is in vernacular, which reads thus:

“जावक क.विचौ/पोउपनि—गिते व पोशि १३४ भालेराव/१९/३६३२  
दि.०३/०७/२०१९.

संदर्भ :- पोलीस अधिक्षक, परभणी यांचे पत्र क.विचौ/पोउपनि—गिते व पोशि—१३४ भालेराव/अेसीबी/कसुरी—अहवाल/२०१९/३४६५, दिनांक २६.०६.२०१९

ज्याअर्थी विशेष पोलीस महानिरिक्षक, नांदेड यांची पोउपनि/बाबु विश्वनाथ गिते व पोशि/१३४ गौतम केशव भालेराव, दोघेही नेमणूक पास्टे, सोनपेठ, जि. परभणी यांचे विषयी अशी खात्री झाली आहे की, आपण कतव्यात बेशिस्त, बेजबाबदार, संशयीत, विपर्यस्त, हेकेखोर, नैतिक अधःपतनाचे गैरवर्तन कले आहे.

आणि ज्याअर्थी आपण दि.२०.०६.२०१९ रोजी पोस्टे सोनपेठ येथील वरिष्ठांची कोणतीही परवानगी न घेता परस्पर अनाधिकृत रित्या

कर्तव्यावर गैरहजर राहून गैरवर्तन केले आहे. तसेच आपण शासकीय कर्तव्यावर नसताना भ्रष्ट मार्गाने पैसा कमविण्याच्या प्रलोभनाला बळी पडून खाजगी इसम नामे लक्ष्मण फड यांच्या मार्फतीने तडजोडीअंती दि. २०.०६.२०१९ रोजीचे १८.१८ वाजता रूपये २०,०००/- स्विकारून परळीच्या दिशेने भरधाव वेगाने फरार झाले आहात म्हणुन तुम्ही कर्तव्याशी अप्रमाणिकपणे जाणुन बुजून कलंकीत नितीमत्ता अंगी बाळगून भ्रष्ट मार्गाचा अवलंब करून नैतिक अधःपतनाचे गैरवर्तन केले आहे. म्हणुन पोस्टे गंगाखेड येथील गरनं २७४/२०१९ कलम ७, १२ अन्वये लाचलुचपत प्रतिबंधक कायदा-१९८८ प्रमाणे गुन्हा दाखल झाला म्हणुन सामान्य जनमानसात पोलीस खात्याची प्रतिमा मलिन झाली आहे.

दि.२०.०६.२०१९ रोजी गुन्हा दाखल झालेनंतर होणा-या कारवाईला सामोर न जाता संशयास्पदरित्या स्वतःचा मोबाईल बंद ठेवुन फरार होवून कर्तव्याशी विपर्यस्त वर्तन केले आहे. तसेच पोलीस नियमावली भाग-१ मधील नियम ४४८ (१) (अ) नुसार पोलीस दल ही शिस्त असलेली लोकांची संस्था असल्याने या खात्यातील शिस्तीचा दर्जा हा शासनाच्या इतर खात्यातील शिस्तीपेक्षा उच्च असुन पोलीस दल हे “सद्रक्षणाय खलनिग्रहणाय” या ब्रिद वाक्याप्रमाणे कार्य करण्यासाठी त्यांना पोलीस विभागामार्फत प्रशिक्षण देवुन नियुक्ती करीत असतात परंतु त्यांनी कर्तव्यात ब्रिद वाक्याच्या पुर्णतः विपरीत स्वतःसाठी उपयोग करून जनतेशी अयोग्यरित्या वागुन गुन्हेगारीचे हीन गैरवर्तन केले आहात. म्हणुन त्यांच्याविरूद्ध प्रशासकीय पध्दतीने प्राथमिक/विभागीय चौकशी कारवाई करणे सार्वजनिक हिताच्या व लोकहिताच्या दृष्टीने व्यवहार्य होणार नाही. म्हणुन आपणास बचावाची संधी देणे किंवा कारणे दाखवा नोटीस बजावणी योग्य नसल्याने आपणास पोलीस सेवेतुन बडतर्फ करणेच योग्य आहे. असेही माझे ठाम मत आहे.

#### आदेश

त्याअर्थी मी, प्रकाश मुत्याल, विशेष पोलीस महानिरीक्षक, नांदेड परिक्षेत्र, नांदेड मला भारतीय संविधानाच्या १९५० मधील अनुच्छेद क्रं.३११(२)(ब) द्वारे प्राप्त झालेल्या अधिकारान्वये

पोडपनि/बाबु विश्वनाथ गिते व पोशि/१३४ गौतम केशव भालेराव, दोघेही नेमणूक पास्टे सोनपेठ, जि. परभणी यांना सदर आदेश प्राप्त झाल्याच्या दिनांकापासुन “सेवेतुन बडतर्फ **(Dismissal From Service)**” करीत आहे.

स्वाक्षरी / —  
**(प्रकाश मुत्त्याल)**  
 विशेष पोलीस महानिरीक्षक,  
 नांदेड परिक्षेत्र, नांदेड”

11. On perusal of the impugned order, it reveals that the Disciplinary Authority has conclusively decided that the applicants are guilty of the offence which was still in the legal process with a presumption of innocence. It is a matter of common knowledge that the police do not submit charge sheet against any accused unless the entire investigation is completed and unless sufficient material is collected evidencing the culpability of the said accused in committing the crime alleged against him. Many times it happens that if no sufficient material is collected, the police do not file charge sheet in the said matter. For completing the investigation and for filing the charge sheet in the court, time is provided of 60 days, 90 days and 180 days, as the case may be, under the provisions of Criminal Procedure Code. In the instant matter, Disciplinary Authority however, reached to the conclusion that the applicants are guilty of the offence within 15 days of the registration of crime against the applicants. When

investigation was not concluded, on what basis respondent reached to the conclusion and held the applicants guilty of the offence, is not explained by the respondents. It is obvious that the Disciplinary Authority has held the applicants guilty relying on the sole document i.e. the FIR filed against them. The course adopted by the respondents is unconscionable and impermissible.

12. As we have mentioned hereinabove, without completion of the investigation in the crime registered against the applicants, the order of dismissal was passed by the Disciplinary Authority. Thus, we have no hesitation in holding that without there being any conclusive material against the applicants except the FIR filed against the applicants, Disciplinary Authority by making undue haste has passed the impugned order. The fact apart that in absence of any convincing material placed on record by the respondents, we are constrained to hold that the conclusion recorded by the Disciplinary Authority holding the applicants guilty of the alleged charges only on the basis of the FIR filed against the applicants, cannot be sustained, the moot question is whether the Disciplinary Authority has recorded the reasons to justify that it was not reasonably practicable to hold the enquiry against the

applicants before ordering their dismissal ? and the next question would be, if such reasons are recorded, whether they are sustainable ?

13. The Disciplinary Authority must satisfy the situation in existence which according to him had rendered holding of enquiry not reasonably practicable. If the normal course of conducting an enquiry against the delinquent and to give him reasonable opportunity of being heard in respect of charges against him is to be deviated, as has been laid down by the Hon'ble Apex Court in the case of Jaswant Singh V/s. State of Punjab reported in [1991 AIR SC 385], following two conditions must be satisfied to sustain an action taken under Article 311(2)(b) of the Constitution of India: 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.

The question of practicability would depend on the existing fact, situation and other surrounding circumstances. The question of reasonable practicability, therefore, has to be

judged in light of the circumstances prevailing in that particular case on the date of passing of the order.

14. In the impugned order the Disciplinary Authority has not at all explained as to how it was not reasonably practicable to hold the enquiry before passing the order of dismissal against the applicants. It has to be stated that whether to conduct or not to conduct the enquiry before ordering dismissal or removal of the delinquent or reducing him in rank, is not within the discretion of the Disciplinary Authority. As mandated by Article 311(2) of the Constitution of India, no person holding a civil post shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges levelled against him and given an opportunity of being hearing in respect of those charges. Thus, to conduct an enquiry before imposing any punishment on an employee is a rule and to award such punishment without conducting an enquiry is an exception.

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 Disciplinary Authority has adopted a wrong and illegal method in ordering dismissal of the applicants from the police services. The order so passed by the Disciplinary Authority 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 respondents have 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. The Disciplinary Authority 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 matters.

16. In view of the fact that no material has been placed by the respondents to establish that it was not reasonably practicable to conduct a normal enquiry against the applicants 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 respondents are directed to reinstate the applicants 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 respondents to initiate the departmental enquiry against the applicants if they so desire. 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 applicants shall ensure that the enquiry proceedings are not delayed or protracted at their instance.



The Original Applications are 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 : 3<sup>rd</sup> August, 2022