

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.114/2015
AND
ORIGINAL APPLICATION NO.115/2015

1. ORIGINAL APPLICATION NO. 114 OF 2015

DISTRICT:-JALGAON

Shri Kamlakar s/o Devidas Rajhans,
Age : 44 years, Occu. : Nil,
R/o : Plot No. 15, Gat No. 454,
Mohadi Road, Jalgaon.

... APPLICANT

V E R S U S

- 1) The State of Maharashtra
(Copy to be served on C.P.O.,
MAT, Bench at Aurangabad).
- 2) The Director General of Police,
M.S., Mumbai.
- 3) The Inspector General of Police,
Nashik Range, Nahsik.
- 4) The Superintendent of Police,
Jalgaon District, Jalgaon.

... RESPONDENTS

W I T H

2. ORIGINAL APPLICATION NO. 115 OF 2015

DISTRICT: - JALGAON

Smt. Usha d/o Suresh Tiwane,
Age : 35 years, Occu. : Nil,
R/o : C/o Shankar R. Tidke,
Ganesh Colony, Near Gunjan
Kharedi-Vikri Kendra, Jalgaon.

... APPLICANT

V E R S U S

...2

- 1) The State of Maharashtra
(Copy to be served on C.P.O.,
MAT, Bench at Aurangabad).
- 2) The Director General of Police,
M.S., Mumbai.
- 3) The Inspector General of Police,
Nashik Range, Nahsik.
- 4) The Superintendent of Police,
Jalgaon District, Jalgaon.

... **RESPONDENTS**

 APPEARANCE : Shri A.S.Deshmukh learned Advocate for
 the applicants.

Shri M.S.Mahajan, learned Chief
 Presenting Officer for the respondents.

 CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)
 A N D
 Hon'ble Shri B. P. Patil, Member (J)

DATE: 18th August, 2017.

C O M M O N O R D E R [PER: MEMBER (J)]

1. Facts in both the O.As. are identical and similar and the applicants in both the O.As. have been removed from the services by the impugned order dated 16-07-2011, which was confirmed in the appeal and revision filed by them. Therefore, we are deciding both the Original Applications by common order.

2. The applicants have challenged the impugned order dated 16-07-2011 issued by the respondent no.4 by which they have been removed from the services on the basis of enquiry report submitted by the Enquiry Officer in the departmental enquiry, which has been confirmed in the appeal and revision by order dated 01-11-2012 and 28-01-2014 passed by respondent no.3 and 2, respectively by filing these O.As.

3. Applicant in O.A.NO.114/2015 belongs to Scheduled Tribe (S.T.) and he holds qualification of Bachelor of Arts. He entered service of respondent no.1 Government of Maharashtra on 01-12-1990 in Home Department on the post of Police Constable. He was appointed as Police Constable by the Commissioner of Police, Mumbai. He worked there from 1990 to 1995 and thereafter he was transferred on the establishment of respondent no.4 i.e. Superintendent of Police, Jalgaon. Since then he worked there till the date of his removal from service. It is contention of the applicant that after joining the establishment of respondent no.4 in the year 1995, he was designated as Naik Constable.

4. Applicant in O.A.No.115/2015 belongs to Open category and has passed 12th Standard. She entered services of respondent no.1 Government of Maharashtra on 19-03-2000 in the Home Department on the post of Lady Constable and she was working on that post till her removal from the service.

5. It is contention of the applicants that offence came to be registered with Zillapeth Police Station, Jalgaon against them for the offences punishable u/s.498, 497, 323, 504, 506 r/w. 34 of the Indian Penal Code and Sections 3 and 4 of the Protection of Women from Domestic Violence Act, 2005 and Crime No.234/2007 has been registered against them on 09-10-2007 on the basis of complaint filed by one Sangita w/o Kamlakar Rajhans. Sangita is employed in Postal Department. She has alleged that her husband Kamlakar was indulged in extramarital affair with the applicant in O.A.No.115/2015, namely, Usha Tivane, who was working as lady Constable on the establishment of respondent no.4, and therefore, her husband Kamlakar (applicant in O.A.NO.114/2015) used to ill-treat her on account of his extramarital relationship with Usha Tiwane.

On registration of the abovesaid offence, respondent no.4 was pleased to issue an order dated 15-10-2007 placing both the applicants under suspension and proposed to initiate departmental enquiry against them.

6. Applicant Smt. Usha had filed Criminal Application No.536/2008 in the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad and prayed for quashing of FIR in Crime No.234/2007 registered with Zillapeth Police Station, Jalgaon to her extent. Hon'ble High Court has allowed the Criminal Application No.536/2008 on 16-02-2008 and quashed FIR dated 09-10-2007 to her extent. Hon'ble High Court was pleased to observe that the respondent no.4 was at liberty to take departmental action against her, if any act of indiscipline had been committed by Smt. Tiwane by maintaining extramarital relationship with the Applicant Shri Kamlakar Rajhans.

7. On 22-01-2008, departmental enquiry had been initiated against both the applicants. A common departmental enquiry was initiated against them though no order to that effect was issued by respondent no.4. Memo of charge had been served on them along with annexures

alleging that both were indulged in illicit and extramarital relationship which had resulted in mental and bodily ill-treatment to wife of Applicant Kamlakar Rajhans, namely Smt. Sangita w/o. Kamlakar Rajhans. The departmental enquiry was initiated in respect of allegations made by Sangita w/o. Kamlakar Rajhans in the complaint filed by her with the Police Station on the basis which Crime No.234/2007 has been registered. The departmental enquiry proceeded ahead but the enquiry office recorded statements of the witnesses in the absence of both the applicants. On 07-04-2008, both the applicants were absent before the Enquiry Officer as they were on election bandobast duty at Jamner on account of Municipal Council Elections. Not only this but on next date of hearing fixed on 25-05-2008 also both the applicants had not attended the proceedings as applicant Kamlakar was on Sick Leave and applicant Usha Tiwane had no intimation about it. Thereafter, on 30-05-2008, the applicant Usha remained absent in the departmental enquiry proceedings as she had no intimation of the departmental enquiry. The applicant Kamlakar submitted an application through his next friend seeking adjournment but the same was not accepted and

the statements of the witnesses have been recorded in their absence. The Enquiry Officer conducted the departmental enquiry ex-parte against them in illegal manner and in undue haste. Meanwhile, on 19-03-2008, respondent no.4 issued an order and reinstated them in service.

8. Being aggrieved by the act of the Enquiry Officer to conduct enquiry behind their back they filed application before respondent no.3 and raised their grievance. Because of this, respondent no.4 was pleased to issue order dated 30-08-2008 ordering de-novo enquiry from the stage of examination of witnesses in the departmental enquiry. Prior to that respondent no.4 issued order dated 03-07-2008 and thereby placed the applicants under suspension subject to the disciplinary action to be taken against them. On 08-07-2008, respondent no.4 initiated another departmental enquiry against the applicants in relation to which also respondent no.4 had not issued necessary order as contemplated under the rules for conducting joint or common enquiry. The memo of charge along with annexures had been served on them. It is their contention that charges levelled in the said departmental

enquiry against them are one and the same as in the first departmental enquiry. The enquiry has been conducted by the enquiry officer in both the departmental enquiries and out of 15 witnesses statement of 6 witnesses were recorded on different dates. When the enquiries were in progress, on 20-09-2008 respondent no.4 issued order dismissing both the applicants from the services by exercising extraordinary powers vested in him by virtue of Article of Articles 311(2)(b) of the Constitution of India. Respondent no.4 had not waited for the result in the departmental enquiries pending against the applicants and resorted to the provisions of Articles 311(2)(b) of the Constitution of India and the departmental enquiries were kept on dormant file.

9. The applicants approached this Tribunal by filing O.A.Nos.452/2009 and 453/2009 challenging their dismissal orders. Both the O.As. were heard together and disposed of by common order dated 10-09-2009 by which the Tribunal was not only pleased to quash and set aside the orders of dismissal of the applicants but was also pleased to direct their reinstatement in service with clarification that quashment of the dismissal order shall not

take away right of the disciplinary authority to proceed with the departmental enquiries as per rules. Tribunal was further pleased to order that the applicant should be treated as under suspension by virtue of order dated 03-04-2008.

10. In pursuance of the decision of the Tribunal on 10-09-2009, respondent no.4 issued two separate orders on 06-11-2009 and reinstated the applicants in service and further ordering continuation of their suspension and to conduct the departmental enquiry already initiated against them. Thereafter, the respondent no.4 filed Writ Petition Nos.1220/2010 and 1221/2010 before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad challenging order of this Tribunal passed on 10-09-2009. However, those Writ Petitions were not pressed before the Hon'ble High Court by the respondent no.4 and Government of Maharashtra and in view of the order dated 06-11-2009 reinstating the applicants in the service. Therefore, both the Writ Petitions have been disposed of on 22-02-2010.

11. On 21-11-2009, respondent no.4 issued two more

orders directing re-opening of departmental enquiries against the applicants, which were previously ordered to be kept on dormant file. The memos of charge have been forwarded to them. It was the same charge which was issued against them on 22-01-2008. By the said order, the Police Inspector of Shanipeth Police Station was appointed as Enquiry Officer to conduct the departmental enquiries. The departmental enquiries commenced against the applicants from 01-12-2009. Number of dates were fixed in the year 2010 but no material development/progress took place in the proceedings in the year 2010.

12. It is contention of the applicant that RCC No.614/2007 filed on the basis of complaint filed by Sangita w/o Kamlakar Rajhans had ended in acquittal of the applicant Kamlakar in view of the judgment of the Judicial Magistrate First Class, Jalgaon dated 07-12-2010. Said prosecution was based on the identical set of allegations levelled against the applicants in the departmental enquiry. Therefore, on 14-01-2011 when the departmental enquiry was posted for hearing the applicants submitted the application before the Enquiry Officer

pointing out said development of his acquittal by the criminal court and requested to drop the departmental enquiry. He referred to the provisions of manual of departmental enquiry in support of his contention. The applicants have submitted copy of the application to the respondent no.4 and requested to issue necessary orders closing departmental enquiry against them. Respondent no.4 has not taken proper decision on the said application. The Enquiry Officer issued letters to the applicants informing them that he has rejected the request made by them and no further adjournment would be granted in the departmental enquiries and enquiry will be proceeded further ex-parte against them, if they fail to appear before him. Said letters were served on the applicants on 12.50 noon and 1.10 p.m. Applicants were in the process of submitting one more application to the Enquiry Officer with request to stay the proceedings in the departmental enquiry till issuance of proper order by the respondent no.4 on their request but the Enquiry Officer left Police Station under the pretext to attend Crime Conference (xlfqsi fj"kn) without giving any explanation to them. It is their contention that in fact it was obligatory on the part of the Enquiry Officer to wait

for reasonable time for appropriate decision of the respondent no.4 on the request made by the applicant but he expressed his intention to proceed further without waiting for further order of respondent no.4 in the matter. After leaving Police Station by the Enquiry Officer, the applicant submitted an application in the Police Station at 01.35 p.m. and requested that departmental enquiry against them be stayed till final decision on their application submitted with the respondent no.4. By that time, nothing happened in the departmental enquiry. No evidence of the witnesses was recorded. They waited till 02.00 p.m. in Shanipeth Police Station but the Enquiry Officer had not returned. Therefore, they left Shanipeth Police Station at 02.00 p.m. They did not receive message from the Enquiry Officer or from Shanipeth Police Station regarding enquiry throughout the day. This shows that no evidence of the witness has been recorded on that day in the departmental enquiry. They collected the extract of station diary of Shanipeth Police Station and weekly diary of Police Inspector of Shanipeth Police Station showing that nothing happened in the departmental enquiry till they left the Police Station.

13. One Jayant Bhanudas Choudhary, Police Constable attached to Jalgaon Crime Branch was asked to carry out video recording of the departmental enquiry proceeding against them. Accordingly, he carried out video recording in the departmental enquiry proceeding. It is their contention that on 25-01-2011 respondent no.4 informed them that their application to stay the departmental enquiry had been rejected as the charges levelled against them in the criminal case and departmental enquiry are different and informed them that the departmental enquiry would be conducted on priority basis. A copy of the said letter was sent to the Enquiry Officer.

14. The Enquiry Officer then informed the applicants to remain present before him On 05-02-2011 for enquiry. Accordingly, both attended enquiry proceedings before him on 05-02-2011. At that time, Enquiry Officer informed them that evidence of 6 witnesses has already been completed on 14-01-2011 though in fact no evidence has been recorded on that date. On 14-02-2011, their next friend Shri Jadhav informed the Enquiry Officer about his inability to conduct the departmental enquiry on behalf of

them. It is their contention that the Enquiry Officer has conducted the departmental enquiry against them with prejudiced mind. It is their contention that on 15-02-2011 they tried to submit an application to appoint another next friend Shri Vaidya since Shri Jadhav had withdrawn his authority in the enquiry. But the Enquiry Officer refused to accept the applications and asked them to give their statements. The Enquiry Officer has not given proper and sufficient opportunity to them to defend the enquiry and asked them to submit their final written statement on 22-02-2011. As the applicant failed to file their final written statement in the departmental enquiry on 22-02-2011, the departmental enquiry was adjourned on 04-03-2011. On that date, applicants submitted applications to the Enquiry Officer stating that they were not in a position to submit their final written statement unless and until respondent no.4 takes decision on their representations dated 15-02-2011, which had been filed by them before the respondent no.4 but the Enquiry Officer has not given heed to their request and proceeded further in the departmental enquiry and rejected the request on 05-03-2011. As the Enquiry Officer decided to proceed

ex-parte against them on 14-03-2011, they sent their final defense statement to the Enquiry Officer by Register Post A.D. but the Enquiry Officer refused to accept the same. Meanwhile, the Enquiry Officer prepared his final report dated 10-03-2011 putting back date on it. On the basis of enquiry report, respondent no.4 issued show cause notice of dismissal from service to them along with report of the Enquiry Officer. The applicants submitted their reply to the notice on 06-04-2011 mentioning all these facts but the respondent no.4 without considering their reply accepted the findings recorded by the Enquiry Officer and issued the impugned order dated 16-07-2011 imposing punishment of removal from service on the applicants.

15. The applicants preferred an appeal against the impugned order passed by the respondent no.4 on 16-07-2011 and 12-09-2011. The appeal was dismissed by the respondent no.3 on 01-11-2012. Thereafter, the applicants preferred revision challenging order passed by the respondent no.3 on 01-11-2012 before the respondent no.2 on 18-01-2013. They have submitted another application mentioning detail facts to the respondent no.2. Respondent

no.2 rejected the revision application on 28-01-2014 and upheld the orders passed by the appellate authority and the disciplinary authority. Therefore, the applicants approached this Tribunal and challenged the above said orders passed by the respondents.

16. It is contention of the applicants that the Enquiry Officer has not conducted the enquiry as per the provisions of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. No opportunity to defend themselves in the enquiry was given to them by the Enquiry Officer. The Enquiry Officer had prepared false record showing that he conducted enquiry on 14-01-2011 and recorded statements of the witnesses and applicants remained absent on that date. It is their contention that Enquiry Officer has shown undue haste in conducting the departmental enquiry and without giving proper opportunity to the applicants, he concluded the departmental enquiry. It is their contention that the respondent o.4 has also taken decision on the report of the enquiry without considering the contentions raised by the applicants and there was unreasonable haste on the part of the respondent no.4 and the Enquiry Officer.

They bent upon to remove the applicants from the service and they conducted the enquiry with biased and prejudiced mind. They had not followed the principles of natural justice. It is their contention that the appellate authority had not considered their appeal and revision properly, and therefore, wrongly rejected the appeal and revision. Therefore, they prayed to quash the impugned orders passed by the respondent nos.2 to 4 and to reinstate them in service.

17. Respondents have filed their affidavit in reply and resisted the contentions of the applicants. They have not denied the facts regarding joining dates of the applicants, their postings, initiation of departmental enquiry, registration of criminal case, so also the proceedings filed by them and Writ Petition filed by the applicant Usha Tiwane before the Hon'ble High Court and orders passed therein. They have admitted that two departmental enquiries were initiated against the applicants about their misconduct. They have admitted the fact that Police Inspector of Shanipeth Police Station was appointed as the Enquiry Officer in the said departmental enquiries. It is

their contention that the Enquiry Officer has conducted the enquiry as per rules. After initiation of departmental enquiry, applicants intentionally tried to avoid facing departmental enquiry and they had not co-operated with the Enquiry Officer. It is their contention that applicants tried to delay the enquiry by hook or crook. It is their contention that the Enquiry Officer issued written intimation dated 06-04-2008 and directed the applicants to attend the enquiry and the orders were served on them. In spite of that, they had not obeyed orders of the Enquiry Officer. On 07-04-2008 both of them remained absent. Therefore, Enquiry Officer proceeded ex-parte in the departmental enquiry against them. It is their further contention that the applicants were solely responsible for it. It is their contention that on 25-05-2008 applicant Kamlakar remained absent. Applicant Usha Tiwane and her next friend were present but they refused to conduct the enquiry and left the office of the Enquiry Officer. They had not attended the office after 02.00 p.m. Hence, the Enquiry Officer conducted the departmental enquiry ex-parte against them. On 30-05-2008 neither applicants nor their next friend attended the departmental enquiry

proceedings. It is their contention that during the course of enquiry on 18-02-2008 wife of applicant Kamlakar Rajhans filed application at Zillapeth Police Station against applicant Kamlakar Rajhans alleging that applicant Kamlakar has illicit relationship with applicant Usha Tiwane since 3 years and they were caught red handed when they were in compromising position. The confidential report had been filed accordingly with the superiors. The image of the Police Department was maligned due to conduct of the applicants, and therefore, they were dismissed from the service by the respondent no.4 but they were reinstated in the service in view of the order passed by this Tribunal. Thereafter, respondent no.4 issued order of de-novo enquiry from the stage of examination of witnesses vide order dated 21-11-2009. Thereafter, respondent no.4 issued order of suspension of both the applicants on 03-07-2008 as the applicant Kamlakar Rajhans made a show of kidnapping Smt. Tiwane. Respondent no.4 by order dated 21-11-2009 directed reopening of the departmental enquiries against the applicants which were previously kept on dormant file. One Shri Nagesh Jadhav, Police Inspector Shanipeth Police Station, Jalgoan was appointed as Enquiry Officer.

The applicants filed several applications on one or the other grounds before him with intention to delay the enquiry in the departmental enquiry. They never co-operated the Enquiry Officer. Therefore, the Enquiry Officer had conducted the enquiry ex-parte against them.

18. The Enquiry Officer had conducted enquiry on 14-01-2011 during 11.00 a.m. to 1.30 p.m. On that day, statements of 6 witnesses have been recorded. The applicants were present but they had not participated in the departmental enquiry and they had not conducted cross-examination of the witnesses. He had issued notice to them intimating that enquiry will proceed further ex-parte if they fail to remain present. The applicant received notice/intimation and put their signature on it alongwith date and time. Video shooting of departmental enquiry proceeding was recorded but there was nothing objectionable happened in departmental enquiry, and therefore, the videographer had deleted the said data. It is their contention that, Enquiry Officer as well as the respondent no.4 rejected the applications filed by the applicants for staying/dropping departmental enquiry, on

account of decision in the criminal case. On 15-02-2011, statements of the delinquents were to be recorded but the applicants submitted false applications for prolonging the matter, and therefore, they were directed to remain present on 26-02-2011 for recording their statements but the applicants remained absent on that date. Therefore, the enquiry was proceeded further. Thereafter, the Enquiry Officer sent their final statement to the applicants by Registered Post on 26-02-2011, which was received by them on 02-03-2011 and 03-03-2011, respectively. Ample opportunities were given to the applicants to defend themselves but they had not co-operated the Enquiry Officer. Therefore, the Enquiry Officer again issued letter dated 01-03-2011 and directed the applicants to remain present before him on 05-03-2011 for recording their defense statements. Both the applicants remained absent, and therefore, he submitted his report in the Enquiry to respondent no.4 on 10-03-2011. It is their contention that respondent no.4 issued notice along with report of the Enquiry Officer to the applicants to file their Say. Opportunity was given to them to be heard, and thereafter, he passed the impugned order removing them from the

services. It is their contention that respondent no.2 and 3 had also given opportunity to the applicants of being heard before deciding the appeal and revision preferred by them, and thereafter, they passed the impugned orders. It is their contention that there was no illegality in the order passed by them. They followed the principles of natural justice. The applicants intentionally remained absent and prolonged the enquiry. The applicants had not approached the Tribunal with clean hands, and therefore, they prayed to reject the O.As.

19. We have heard Shri A.S.Deshmukh learned Advocate for the Applicants and Shri M.S.Mahajan learned Chief Presenting Officer for the respondents in both the O.As. and perused the documents placed on record by the parties.

20. Most of the facts in the applications are admitted to either of the parties. Admittedly, the applicant Kamlakar joined services in Home Department on 01-12-1990 as Police Constable and appointed by the Commissioner of Police, Mumbai. He served there up to the year 1995 and thereafter transferred on the establishment of respondent no.4 and designated as Naik Constable. The applicant in

O.A.No.115/2015, namely Usha Tiwane was appointed as Lady Police Constable on 19-03-2000 and since then she is working on that post. Admittedly, Crime bearing No.234/2007 was registered against both the applicants with Zillapeth Police Station, Jalgaon for the offences punishable u/s.498, 497, 323, 504, 506 r/w. 34 of the Indian Penal Code and Ss.3 and 4 of the Protection of Women from Domestic Violence Act, 2005 on the complaint filed by Sangita w/o. Kamlakar Rajhans on 09-10-2007 alleging that the applicant Kamlakar was indulged in extramarital affairs with the applicant Usha and they used to ill-treat her on that ground. Admittedly, respondent no.4 issued order dated 15-10-2007 and placed the applicants under suspension. It is not much disputed that the applicant Usha Tiwane filed Criminal Application No.536/2008 before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad and prayed to quash FIR in Crime No.234/2007 registered with Zillapeth Police Station, Jalgaon to her extent. Her application came to be allowed by the Hon'ble High Court on 16-02-2008 and the FIR to her extent had been quashed with liberty to the respondent no.4 to take departmental action against her.

Admittedly on 22-01-2008, the departmental enquiry has been initiated against the applicants alleging that both were indulged in extramarital relationship causing bodily and mental harassment to the wife of applicant Kamlakar, namely Sangita. Admittedly, the enquiry was in progress. Statements of the witnesses were recorded in the absence of the parties as they remained absent. In the meanwhile, the applicants were reinstated in service by the respondent no.4 by his order dated 19-03-2008. It is an admitted fact that the applicant raised their grievance about the manner in which the departmental enquiry was conducted by the Enquiry Officer by filing application before respondent no.3. Respondent no.4 then issued order dated 30-08-2008 ordering de-novo enquiry from the stage of examination of witnesses. Thereafter, again respondent no.4 passed order dated 03-07-2008 and placed both the applicants under suspension subject to disciplinary action to be taken against both of them.

21. On 08-07-2008, respondent no.4 initiated another departmental enquiry against them raising similar allegations and charges against them. Both the enquiries

were commenced and statements of 6 witnesses out of 15 witnesses had been recorded. Admittedly, meanwhile, respondent no.4 had dismissed both the applicants from services resorting to the provisions of Articles 311(2)(b) of the Constitution of India and kept departmental enquiries on dormant file.

22. Both the applicants challenged order of dismissal issued by the respondent no.4 by filing O.A.No.452/2009 and 453/2009 before this Tribunal. This Tribunal allowed both the O.As. on 10-09-2009 and quashed and set aside the orders of dismissal of the applicants and directed their reinstatement in service with clarification that quashment of dismissal order would not take away right of the disciplinary authority to proceed with the departmental enquiry. It was also ordered that the applicants should be treated as under suspension by virtue of the order dated 03-04-2008. Accordingly, respondent no.4 reinstated the applicants in service by his orders dated 06-11-2009 and ordered continuation of their suspension and to conduct departmental enquiries against them.

23. Thereafter, respondent no.4 and Government of

Maharashtra i.e. respondent no.1 filed Writ Petition No.1220/2010 and 1221/2010 before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad challenging order of the Tribunal passed on 10-09-2009 but thereafter the Writ Petitions were disposed of on 22-02-2010 in view of the order dated 06-11-2009 issued by the respondent no.4 reinstating the applicants in service.

24. Thereafter, departmental enquiries have been proceeded further. Police Inspector of Shanipeth Police Station was appointed as Enquiry Officer. Admittedly, in the meanwhile, the applicant Kamlakar was acquitted of the offences punishable u/s. 498, 497, 323, 504, 506 r/w. 34 of the Indian Penal Code and Sections 3 and 4 of the Protection of Women from Domestic Violence Act, 2005 in RCC No.614/2007 by the Judicial Magistrate First Class, Jalgaon on 07-12-2010.

25. Admittedly, on 14-01-2011 hearing in the departmental enquiry was kept before the Enquiry officer. The applicants moved applications to drop/stay departmental enquiries against them on the ground that criminal case in which similar charges have been levelled

against the applicants Kamlakar had ended in the acquittal of Applicant Kamlakar. They had also submitted similar application with the respondent no.4. Enquiry Officer had rejected their applications on the very day and decided to proceed further in the departmental enquiry. Respondent no.4 had also rejected their applications on 25-01-2011 and directed the Enquiry Officer to conduct the enquiry on priority basis. It is not much disputed that the applicant remained absent in the further proceedings of the departmental enquiry, and therefore, the Enquiry Officer submitted his final report to the respondent o.4 on 10-03-2011. Admittedly, on the basis of enquiry report, respondent no.4 issued show cause notice to the applicant and he provided copy of the report to them. On considering the reply filed by them he passed the impugned order dated 16-07-2011 and removed the applicants from services.

26. Learned Advocate of the applicant has submitted that the Enquiry Officer had not given proper and fair opportunity to the applicant to defend themselves in the departmental enquiry. He has submitted that the enquiry officer had decided the departmental enquiries in haste

without giving sufficient time to applicants to defend themselves. He has submitted that on 14-01-2011 Enquiry proceeding was fixed for recording evidence of witnesses. On that date, the applicants were present before the Enquiry Officer till 01.30 p.m. The applicants submitted applications to stay/drop the enquiries in view of the acquittal of applicant Kamlakar in criminal case.

27. They had submitted similar applications with respondent no.4 but the Enquiry Officer rejected the application in haste without giving opportunity to the applicant. He has submitted that the respondent no.4 had not taken decision on the said applications submitted by them on 14-01-2011 and the Enquiry Officer ought to have adjourned the enquiry till decision of the respondent no.4 on their applications but without waiting for the orders of the respondent no.4, Enquiry Officer proceeded further on that date. He has submitted that nothing happened in the enquiry on 14-01-2011 till 02.00 p.m. The Enquiry Officer left the office at Shanipeth Police Station at 01.30 p.m., and thereafter, he had not turned to the police station. Therefore, the applicant left the Police Station on

02.00 p.m. after waiting for him for a long period. He has submitted that the statement of witness had not recorded on that day but the Enquiry Officer has prepared false record showing that he recorded statement of 6 witnesses on that day and the applicants remained absent, and therefore, Enquiry proceeded ex-parte against them. He has submitted that thereafter also the applicants were not informed about the next date in the enquiry and they were asked to give their final statements without giving them sufficient opportunity to defend themselves. He has submitted that the Enquiry Officer acted malafidely and concluded enquiry proceedings in haste and submitted its report to respondent no.4 on 10-03-2011. He has submitted that principles of natural justice have not been followed by the Enquiry Officer and on the basis of report of the Enquiry Officer respondent no.4 passed the impugned order dated 06-07-2011. He has submitted that the charges levelled against the applicant have not been proved by the cogent evidence, and therefore, it is just and proper to quash the impugned orders as well as the orders passed by the respondent nos.3 and 2 in the appeal and revision.

28. Learned Advocate of the applicant has attracted our attention towards copy of the Station diary of Shanipeth Police Station filed at paper book page 103 and 104 and extract of weekly diary of the Enquiry Officer then Police Inspector of Shanipeth Police Station. He has submitted that the Enquiry Officer issued notices to the applicants on 14-01-2011 informing that their applications to stay the enquiry had been rejected (paper book page 109) and same had been received by the applicants at 01.10 p.m. He has submitted that entry in the Station Diary shows that at 1.30 p.m. Enquiry Officer left the Police Station for attending Crime Conference. Thereafter, he attended Crime Conference up to 05.00 p.m. as mentioned in the Weekly Diary (paper book page 105), and therefore, no question of returning the Enquiry Officer again for conducting the departmental enquiry arises. He has submitted that the documents at Annexure 108 to 113 show that one Police Constable Jayant Bhanudas Choudhary carried out work of video shooting of the enquiry proceeding as per directions of the Enquiry Officer and he had stated that nothing objectionable had happened, and therefore, he deleted the data. He has submitted that these documents show that

no evidence of witnesses has been recorded on that date till 02.00 p.m. He has submitted that paper book page 113 shows that no evidence of the witnesses had been recorded on that day by the Enquiry Officer as he had to attend the Crime Conference. He has argued that insptie of this, the Enquiry Officer had prepared false record showing that he recorded statements of 6 witnesses on that day and opportunity of cross-examination was given to the applicants but they failed to cross examine the witnesses, and therefore, the enquiry was proceeded ex-parte.

29. Learned Advocate for the applicant has further submitted that thereafter also the Enquiry Officer had not given opportunity to the applicants to defend themselves. Then the Enquiry Officer prepared final report and submitted it before the respondent no.4. He has submitted that all these facts show that the Enquiry Officer has concocted the record of the enquiry with malafide intention to hold the applicants guilty in the enquiry. He has submitted that the respondent no.4 had passed impugned order in haste without scrutinizing the evidence on record and without considering the facts. He has submitted that

the respondent nos.2 and 3 had also not considered the said aspect, and therefore, he prayed to quash and set aside the impugned orders and reinstate the applicants in service by quashing and setting aside the orders of the dismissal from the services.

30. Learned CPO has submitted that the documents on record show that proper opportunity had been given to the applicants to defend themselves in the enquiry proceedings but they had not availed those opportunities and they intentionally avoided in participating in the enquiry proceedings. They have not co-operated the Enquiry Officer, and therefore, the Enquiry Officer had recorded the statements of the witnesses in their absence. He has further submitted that the Enquiry Officer as well as the respondent no.4 had given ample and sufficient opportunities to defend the applicants but they had not participated in the enquiry. Therefore, the impugned orders came to be passed by the respondents. He has submitted that there was no violation of principles of natural justice by the Enquiry Officer in conducting the departmental enquiry, and therefore, he submitted enquiry report and

orders passed by the respondents. He has submitted that entries in the station diary dated 14-01-2011 show that the enquiry was conducted during 11.00 a.m. to 01.30 p.m. Therefore, it cannot be said that the Enquiry Officer concocted the record and prepared the false record showing that he recorded statements of 6 witnesses on that day. He has submitted that the allegations made by the applicants are baseless, and therefore, he prayed to reject the O.A.

31. We have perused the documents produced on record minutely. Material and important issue involved in this case is whether witnesses were in fact examined on 14-01-2011 or not. Admittedly, the applicants had attended the enquiry proceedings on that day and they had moved application for dropping/staying the enquiry in view of the judgment in criminal case in which the applicant Kamlakar Rajhans was acquitted. Admittedly, they moved similar applications before the respondent no.4 on the very day but the respondent no.4 had not taken decision on the said application on that day. However, the Enquiry Officer rejected the applications of the applicant and informed the applicants accordingly by his letter dated 14-01-2011

which is at paper book page 100. Those letters were received by the applicants on that day at 01.10 p.m. The applicant Kamlakar Rajhans had noted time on the said application. Prior to that, one notice was issued to the applicants by the Enquiry Officer which is at page 99 and by which he directed them to participate in the enquiry proceedings, failing which it was cautioned that he will proceed ex-parte against them. It means that till 01.10 p.m. statements of witnesses were not recorded.

32. Statement of Police Constable Jayant Choudhary, who was assigned the work of video recording of the departmental enquiry proceedings has been recorded, copy of which is at paper book page 110. He has specifically stated that on that date he recorded video shooting of the proceedings but he noticed that nothing abnormal happened during the proceedings, and therefore, he deleted the recording of the said video shooting. He has stated that he recorded incident of 4 to 5 minutes, in which, there was talk between the Enquiry Officer and the delinquent applicants. It shows that no evidence or statements of witnesses had been recorded in his presence. Not only this,

but on going through the report of Jayant Choudhary (page 102 & 103) it reveals that the statement of anybody has not been recorded on that date by the Enquiry Officer. Entries in Station diary filed at paper book page 98 also shows that the Enquiry Officer left Police Station premises at 01.30 p.m. for attending a Crime Conference. This fact is also supported by the entries in the weekly diary maintained by the Enquiry Officer and then Police Inspector (paper book page 105). He has specifically mentioned therein that he conducted departmental enquiry in between 11.00 a.m. to 01.30 p.m., and thereafter, he attended Namaaz bandobast from 01.30 p.m. to 02.00 p.m. and then he attended Crime Conference during 02.00 p.m. to 05.05 p.m. Thereafter, he was on patrolling duty from 06.30 p.m. to 10.45 p.m. It means after 01.30 p.m. work of departmental enquiry had not been conducted by the Enquiry Officer. Till 01.30 p.m. applicants as well as Police Constable Shri Jayant Choudhary were present and during that period statement of none of the witnesses has been recorded. However, the enquiry report shows that the Enquiry Officer recorded statements of 6 witnesses out of 15 witnesses on that day and he has given opportunity to the applicants to

cross-examine them but the applicants have not availed this opportunity. These documents and circumstances show that the Enquiry Officer has prepared the documents showing that he recorded statements of 6 witnesses on 14-01-2011 with ulterior motive and intentionally. On the basis of said documents, the Enquiry Officer had prepared report dated 10-03-2011. On the basis of the said report, respondent no.4 passed the impugned order dated 16-07-2011 removing the applicants from the services.

33. On considering the above said documents, it is crystal clear that the enquiry conducted by the Enquiry Officer was not conducted in free and fair manner. Witnesses were not examined by him on 14-01-2011 but he prepared false record in that regard. Fair opportunity was not given to the applicants to defend themselves on 14-01-2011 and thereafter also. The Enquiry Officer conducted the enquiry in haste and submitted his report to the respondent no.4 without giving proper opportunity to the applicants to defend themselves. Enquiry Officer had not waited till filing final defence statements of the applicants. All these facts show that the Enquiry Officer conducted the enquiry

proceedings with ulterior motive and in biased manner and with prejudiced mind and submitted his report to respondent no.4.

34. Thereafter, respondent no.4 without considering the said aspects relied on the report of the Enquiry Officer and passed order dated 16-07-2011, which is illegal. It appears that the principles of natural justice have not been followed by the Enquiry Officer and the disciplinary authority. Respondent nos.2 and 3 had also not considered the irregularities on the part of the Enquiry Officer while conducting departmental enquiry. In these circumstances, in our view, entire departmental enquiry is vitiated as fair opportunity was not given to the applicants to defend themselves in the departmental enquiry. Therefore, the impugned order passed by the respondent no.4 on 16-07-2011 as well as order passed by the respondent no.3 and 2 in the appeal and revision required to be quashed and set aside by allowing the O.As.

35. In view of the abovesaid discussion, we pass following order:

ORDER

(i) O.A.No.114/2015 and O.A.No.115/2015 are allowed.

(ii) Order dated 16-07-2011 issued by the respondent no.4 by which they have been removed from the services on the basis of enquiry report submitted by the Enquiry Officer in the departmental enquiry and the orders passed on 01-11-2012 in appeal and on 28-01-2014 in revision by respondent no.3 and 2, respectively, confirming the impugned order dated 16-07-2011, are hereby quashed and set aside.

(iii) Respondent no.4 is directed to reinstate the applicants in service within a period of one month from the date of this order.

(iv) Departmental Enquiry against the applicants be conducted afresh by giving an opportunity to the applicants to defend themselves and by giving opportunity to cross-examine the witnesses.

(v) Departmental Enquiry be concluded within a period of 3 months from the date of this order.

(vi) Applicants shall co-operate the Enquiry Officer in the Departmental Enquiry.

(vii) Respondent no.4 is also directed to pass necessary order/s as regards period of suspension of the applicants in accordance with the rules.

(viii) There shall be no order as to costs.

(B. P. Patil)
Member (J)
Place : Aurangabad
Date : 18-08-2017.

(Rajiv Agarwal)
Vice-Chairman (A)