

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 718 OF 2017

DIST. : PARBHANI

Mohamad Arifoddin)
s/o Gulam Dastagir Farooqui,)
 Age 57 years, Occ. Service,)
 (Police Head Constable),)
 R/o Police Head Quarter, Parbhani,)
 Dist. Parbhani.) .. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,**)
 Through Principal Secretary,)
 Home Department, Mantralaya,)
 Mumbai – 32.)
- 2) The Special Inspector General**)
of Police,)
 Office of the Special Inspector)
 General of Police, Range Nanded,)
 Dist. Nanded.)
- 3) The Superintendent of Police,**)
 Office of the Superintendent of)
 Police, Parbhani, Dist. Parbhani.) .. **RESPONDENTS**

APPEARANCE :- Smt. Poonam Bodkhe Patil, learned
 counsel for the applicant.

: Shri S.S. Dambe, learned Presenting
 Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice V.K. Jadhav,**
Member (J)
A N D
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : **25.11.2024**

ORAL ORDER

1. Heard Smt. Poonam Bodkhe Patil, learned counsel for the applicant and Shri S.S. Dambe, learned Presenting Officer for respondent authorities.

2. By filing this Original Application, the applicant is seeking quashing and setting aside the impugned order passed by respondent no. 03 dated 16.09.2017 of dismissal and further seeking directions to the respondents to reinstate the applicant in service with immediate effect with all consequential benefits including the back wages.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant joined the service on 05.05.1986 in Aurangabad District as a Police Constable. In the year 2000, the applicant earned promotion as Police Head Constable. In the year 2014, the applicant was attached to the office of the Superintendent of Police, Parbhani. Deceased Khanderao Digambar Sodgir was working as Police constable at Nanalpeth Police Station, Parbhani. The residences of the applicant and of deceased Khanderao Sodgir were located at Police Colony, Building

no. 21, Police Head Quarters, Parbhani. On 06.02.2014, the deceased Khanderao Digambar Sodgir was on duty on Urus Bandobast. He was assaulted and badly injured. He was immediately moved to Civil Hospital, Parbhani, where he lastly breathed. On the complaint given by the wife of deceased Khanderao Digambar Sodgir by name Smt. Vaishali Sodgir at Kotawali Police Station, Parbhani, a FIR U/s 302 r/w 34 of IPC was registered against the applicant and other 02 persons. During the investigation, the applicant was arrested and remanded to the judicial custody. Lastly, the charge-sheet was served against the applicant and other 02 in the Court of District and Sessions Judge, Parbhani and at the time of filing the present Original Application the trial was going on.

(ii) By order dated 16.09.2017, in terms of rule 3 of the Bombay Police (Punishments and Appeals) Rules, 1956 and under article 311(2)(b) of the Constitution of India the applicant came to be dismissed from the service. Hence, this Original Application.

4. The learned counsel for the applicant submits that the applicant being a permanent Police personnel could not be dismissed without holding an enquiry under section 26 of the

Bombay Police Act, 1951 and article 311 of the Constitution of India. The principles of natural justice have been contravened by the respondents in not giving to the applicant any opportunity of being heard or an opportunity to show cause against the proposed punishment as contemplated U/s 25 of the Bombay Police Act, 1951.

5. The learned counsel for the applicant submits that in terms of provisions of rule 4 of the Bombay Police (Punishments and Appeals) Rules, 1956, no punishment specified in clauses (i), (i-a), (ii) and (iii) of sub-rule (1) of rule 3 shall be imposed on any Police Officer unless a departmental inquiry into his conduct is held and a note of the enquiry with the reasons for passing an order imposing the said punishment is made in writing under his signature. As mentioned in sub-rule (2) of rule 4, no order imposing the penalty specified in clauses (i), (ii), (iv), (v) and (vi) of sub-rule (2) of rule 3 on any Police Officer shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation, if any, has been taken into consideration before the order is passed. The learned counsel submits that the provisions of special statute and rules framed thereunder would prevail over article 311(2)(b) of the

constitution of India and, as such, the impugned order is bad in law.

6. The learned counsel for the applicant submits that for considerable period the applicant remained under suspension before his order of dismissal from service. However, he was not paid the subsistence allowance for the said suspension period. The applicant is entitled for the same.

7. The learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent nos. 02 and 03 submits that holding of departmental enquiry is not possible, since the applicant is in judicial custody. Further, holding of departmental enquiry and giving an opportunity to the applicant to show cause against the proposed punishment both do not warrant as the applicant is involved in a serious crime of murder of Police personnel deceased Khanderao Digambar Sodgir.

8. Learned Presenting Officer submits that the applicant was in Magistrate Custody since the date of his arrest. Further, due to crime of murder committed by the applicant, the image of the Police Department in the society was badly shaken. In view of the same, the respondent no. 03 has

concluded to dismiss the applicant from service by exercising the powers conferred upon him under rule 25 of the Bombay Police Act, 1951 and rule 3 of the Bombay Police (Punishments and Appeals) Rules, 1956 with article 311(2)(b) of the Constitution of India. There is no substance in the present Original Application and the same is liable to be dismissed.

9. We have carefully gone through the impugned order of dismissal dated 16.09.2017. There is specific reference in the said order that on 06.02.2014 when deceased Khanderao Digambar Sodgir, Police Constable, Nanalpeth Police Station, Parbhani was posted for Urus Bandobast at Hanuman Chowk, Darga Road, Parbhani, the applicant along with his 02 companions allegedly committed murder of deceased Khanderao Digambar Sodgir by using sharp weapons. Further, motive as revealed in connection with the said crime that the deceased Khanderao Digambar Sodgir has sexual relation with the wife of co-accused Mohamad Arifoddin s/o Gulam Dastagir Farooqui. It is further alleged that because of registration of said crime and arrest of the applicant in connection with the said crime, the image of the Police Department was maligned in the society. Further, the allegations were of such a nature that not only the image of the Police Department in the society was maligned, but

also violative of the discipline of the Police Department. Consequently, the Superintendent of Police, Parbhani has formed an opinion that it is not reasonably practicable to hold such a departmental enquiry and accordingly by taking aid of the provisions of article 311(2)(b) of the Constitution of India r/w section 25 of the Bombay Police Act, 1951 and rule 3 of the Bombay Police (Punishments and Appeals) Rules, 1956 imposed the punishment of dismissal from service on the applicant.

10. In this context article 311(2)(b) of the Constitution which is relevant for the present discussion is only reproduced herein below:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State –

(1) -- -- -- --

(2) *No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.*

(a) -- -- -- --

(b) *where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;*

(c) -- -- -- --

(3) -- -- -- --”

11. In the given set of allegations against the applicant, we find it appropriate on the part of respondent no. 03, the Superintendent of Police, Parbhani, who is empowered to remove or dismiss the person or reduce him in rank, to form an opinion that it is not reasonably practicable to hold such an enquiry. The applicant has allegedly committed the murder of his colleague deceased Khanderao Digambar Sodgir, who was working as a Police Constable along with other co-accused persons.

12. Learned counsel for the applicant by referring the provisions of rule 4 of the Bombay Police (Punishments and Appeals) Rules, 1956 has vehemently submitted that the applicant, who is a permanent employee of the Police Department, could not have been dismissed from service unless the departmental enquiry into his conduct was held and the provisions of the special statute namely the Bombay Police Act, 1951 r/w the aforesaid provisions will prevail over the article 311(2)(b) of the Constitution of India.

13. We find no substance in the aforesaid submission of the learned counsel for the applicant. It is not necessary to reiterate here that no authority is created under the

Constitution is supreme and it is the Constitution of India, which is supreme. Further, section 26 of the Bombay Police Act, 1951, which prescribes the procedure to be followed while awarding punishment, also carve out the exception, which the learned counsel for the applicant has failed to observe. Section 26 of the Bombay Police Act, 1951 is reproduced herein below:-

“26. Procedure to be observed in awarding punishment-

Except in cases referred to in the second proviso to clause (2) of article 311 of the Constitution of India, no order of punishment under sub-section (1) of section 25 shall be passed unless the prescribed procedure is followed.”

14. It is thus clear from section 26 of the Bombay Police Act, 1951 that except in the cases referred to in the second proviso to clause (2) of article 311 of the Constitution of India, no order of punishment under sub-section (1) of section 25 shall be passed unless the prescribed procedure is followed, meaning thereby that those cases referred in second proviso to clause (2) of the article 311 of the Constitution of India, the provisions of rule 25 of Bombay Police Act, 1951, as well as, provisions of rule 4 of the Bombay Police (Punishments and Appeals) Rules, 1956 are not applicable.

15. So far as the subsistence allowance as claimed by the applicant is concerned, there is no prayer to that effect. However, considering the fact that the applicant is in jail undergoing the punishment passed in the criminal trial, we grant liberty to the applicant to file the appropriate application/representation before the concerned respondent authority for grant of subsistence allowance for the period during which the applicant was under suspension through the Jailor of the Jail where he is undergoing the sentence of imprisonment, if any, and upon receiving such an application/representation, it would be appropriate on part of the concerned respondent to decide the same on its own merits. With these observations, we pass the following order:-

ORDER

- (i) The Original Application No. 718/2017 is hereby dismissed.
- (ii) In the circumstances, there shall be no order as to costs.

MEMBER (A)

MEMBER (J)

Place : Aurangabad

Date : 25.11.2024