

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 204 of 2024 (D.B.)**

Mahesh Shivratan Yadav,
aged 42 years, Occ. Service (At present dismissed from service),
R/o Plot No.48, Raymond Colony, Waghoda, Saoner,
Tq. Saoner, Dist. Nagpur.

Applicant.

Versus

1. The State of Maharashtra,
Through Its Additional Chief Secretary,
Home Department, Mantralaya, Mumbai-32.
2. The Commissioner of Police,
Having its Office Civil Lines, Nagpur.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri A.M. Khadatkhar, P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Dated :- 15/07/2024.

J U D G M E N T

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2. The learned P.O. has filed letter dated 11/07/2024. It is marked Exh-X for identification. As per this letter, the respondents prayed to keep this O.A. before regular Division Bench.

3. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble

Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc.

4. The present O.A. is covered by the Judgment of this Tribunal in O.A.No.167/2023, decided on 21/03/2023. Hence, the O.A. is heard and decided finally.

5. The case of the applicant in short is as under –

The applicant was appointed as a Police Shipai in the year 2007. Thereafter, he was posted at Police Head Quarter, Nagpur City in the year 2018-2019. On 22/06/2019, it is alleged that the applicant remained unauthorized absent from duty.

6. The applicant was asked to remain present in the office of respondent no.2 as per letter dated 12/10/2020. On 24/02/2021, respondent no.2 passed an order dismissing the applicant from service under Article 311 (2) (b) of the Constitution of India, without conducting departmental inquiry. On 29/02/2024, delay was condoned by this Tribunal. Therefore, the applicant has approached to this Tribunal for the following reliefs –

“ (8) That this Hon'ble Tribunal be pleased to call for the entire record from the respondent No.2 and after perusal of the same be pleased to:-

- i) quash and set aside order dated 24/02/2021 as illegal, bad in law;*
- ii) further be pleased to direct the respondent No.2 to reinstate the applicant in service forthwith by granting him 50% of backwages from 24/02/2021 still he is actually reinstated in service;*

7. The respondents have filed reply. It is submitted that the applicant was continuously absent from duty. Therefore, he is dismissed from service as per the Article 311 (2) (b) of the Constitution of India. Hence, the O.A. is liable to be dismissed.

8. During the course of submission, the learned counsel for applicant has pointed out the Judgment of this Tribunal in O.A.No.696/2013 alongwith connected matters, decided on 22/11/2019, O.A.No.396/2022, decided on 06/06/2022, O.A.No.829/2022, decided on 06/09/2022 and O.A.No.167/2023, decided on 21/03/2023.

9. Heard learned P.O. Shri A.M. Khadatkhar. He has pointed out the Judgment of the Hon'ble Supreme Court in Civil Appeal No.4969/2008 (arising out of SLP (C) No.13011 of 2006) in the case of **State of Punjab Vs. Dr. P.L. Singla**, decided on 31/07/2008. In the said judgment, the Hon'ble Supreme Court has observed that there were two charges against *Dr. P.L. Singla* in respect of absenteeism and disobeying the orders of Superior Officer. Based on two charges

Dr. P.L. Singla was dismissed from the service as per the Article 311 (2) (b) of the Constitution of India.

10. The learned P.O. has submitted the applicant was continuously absent, therefore, he is dismissed from service. As per Article 311 (2) (b) of the Constitution of India, opportunity should be given to the employee before taking decision of dismissal. Article 311 (2) (b) of the Constitution of India is very clear. As per this provision, 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.

11. The applicant was not given any opportunity of hearing. No any departmental inquiry was initiated against the applicant for absenteeism. This Tribunal in O.A. No.167/2023 has observed in para-7 and 8 as under –

*"7. It appears that without recording reasons the impugned order is passed. Admittedly there was no any departmental enquiry against the applicant. Ld. Counsel for the applicant Shri Palshikar has pointed out judgment of Hon'ble Supreme Court in the case of **Chief Secretary Officer & Ors. Vs. Singasan Rabidas (1991)1 SCC 729**. Ld. Counsel for the applicant has further relief in the case of **Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC 385**, the Hon'ble Supreme Court has observed as under:-*

"3. The decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the concerned authority. 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 the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the instant case, it was alleged that the delinquent Police Officer instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors. It was also alleged that he threw threats to beat up the witnesses and the Inquiry Officer if any departmental inquiry was held against him. No particulars were given. It was not shown on what material the concerned authority came to the conclusion that the delinquent had thrown threats. The satisfaction of the concerned authority was found to be based on the ground that the delinquent was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. It was not shown that the concerned authority had verified the correctness of the information leading to the said allegation. Therefore, it could not be said that the subjective satisfaction of concerned authority as to dispensation of departmental enquiry against the delinquent was fortified by independent material. Thus the order of dismissal passed against the delinquent would not be sustainable”

*In case of **Sudesh Kumar Vs. State of Haryana & Ors. (2005) II SCC,525.** In para-5 the legal position is laid down as under-*

“(5) It is now established principle of law that an inquiry under Article 311 (2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311 (2) (b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311 (2) (b), as extracted above, would clearly show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order are that the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing

with the inquiry. On the other hand, it is not disputed that by order dated 23/12/1999, the visa of the complainant was extended upto 22/12/2000. Therefore, there was no difficulty in securing the presence of Mr. Kenichi Tanaka in the inquiry."

8. In view of the judgment of Hon'ble Supreme Court and this Tribunal, impugned order is liable to be quashed and set aside because the applicant is dismissed from service without holding any departmental enquiry. Hence, we pass the following order:-

ORDER

- A. The O.A. is allowed.*
- B. The impugned order dated 03.06.2022 is hereby quashed and set aside.*
- C. The appointing authority is directed to reinstate the applicant in service within a period of 30 days from the date of this order.*
- D. Respondent no. 2 is directed to pay 50% backwages till his joining.*
- E. Respondents are at liberty to conduct the enquiry in accordance with the Law and may take necessary action if it otherwise deemed fit.*
- F. No order as to costs."*

12. In the present O.A., the respondents have not initiated any departmental inquiry. The respondents are at liberty to conduct the departmental inquiry and if the misconduct is found to be proved, then respondents can remove the applicant from the service, but without any departmental inquiry / without giving any opportunity of hearing, the respondents cannot remove the applicant from service. Hence, the following order –

ORDER

- (i) The O.A. is allowed.

(ii) The impugned order dated 24/02/2021 is hereby quashed and set aside.

(iii) The Appointing Authority is directed to reinstate the applicant in service within a period of 30 days from the date of receipt of the order of this order.

(iv) The respondents are at liberty to the conduct inquiry in accordance with law, if necessary.

(v) No order as to costs.

Dated :- 15/07/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 15/07/2024.