

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1580 OF 2023

DISTRICT : PUNE
Sub.:- Dismissal from Service

Shri Amit Suresh Jadhav.)
Age : 37 Yrs, Occu.: Ex-Police Officer,)
Pune City and R/at 57, Bhavani Peth)
Police Line, Pune – 411 002.)...**Applicant**

Versus

The Additional Commissioner of Police)
[Administration], Office of Commissioner)
of Police, Near GPO, Sadhu Vaswani Road,))
Camp, Pune – 411 001.)...**Respondent**

Shri K.R. Jagdale, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondent.

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Shri Debashish Chakrabarty, Member-A

RESERVED ON : 20.06.2024

PRONOUNCED ON : 29.08.2024

JUDGMENT

1. The Applicant has challenged his 'Summary Dismissal' under 'Clause (b)' of '2nd Proviso' of 'Article 311' of 'Constitution of India' by Order dated 20.11.2023 of 'Additional Commissioner of Police (Admin), Pune City'. The Applicant was dismissed for the incident which took place on 02.10.2023 when he was on 'Guard Duty' escorting an accused lodged in Yerwada Central Prison, Pune. The

accused was admitted in 'Prisoners Ward' of 'Sasoon General Hospital, Pune'. The accused was charged with offences punishable under Section 8(c), Section 22(c) & Section 29 of 'NDPS Act' and Section 201 of the 'Indian Penal Code'.

3. The learned Advocate for Applicant submits that 'Charge-Sheet' for the 'Joint Departmental Enquiry' ordered by 'Joint Police Commissioner, Pune City' on 30.10.2023 was served on Applicants for the incident which occurred on 30.09.2023. Thereafter, the 'Enquiry Officer' was appointed on 29.11.2023 who even called Applicants for 'Preliminary Enquiry'.

4. The learned Advocate for Applicant submits that one prosecution witness was to be examined by the 'Enquiry Officer'. Earlier Applicant as delinquent was allowed to appoint 'Friend Officer' for the 'Departmental Enquiry'.

5. The allegations against the Applicant is that when he was on sentry duty and after completing his duty he handed over the sentry duty charge to PC/Bansode and he went to toilet which was inside the lock-up guard room. Further, again at about 19.15 hrs. when the Applicant was in the toilet this accused Mr. Lalit Patil was again taken out of Lock-up for X-ray by PN/N.Kale which is situated at the ground floor of Sasoon Hospital all alone. After the Applicant returned from the toilet, he was rushed to the X-ray room to help PN/N.Kale who was alone escorting the accused handed over to him by HC/Shivankar (guard in-charge). That, while on the way to the X-ray room the Applicant saw PN/N.Kale, who was standing alone near the canteen which was located just near the X-ray room. On asking PN/N.Kale about the whereabouts of the accused Mr. Lalit Patil he replied that WPSI Dongre knows it better, you go and ask her. Thereafter the Applicant hurriedly ran back to the lock-up and narrated this incident to WPSI Dongre and HC/Shivankar. This duo

went down and asked PN/N. Kale about the accused Mr. Lalit Patil, but he told them that the accused gave jerk to his hand due to which he fell down and the accused took advantage of this situation and ran away. Thereafter the Applicant along with this trio went helter-skelter to search this accused Mr. Lalit Patil but to no avail. Hence, 'Additional Commissioner of Police (Admin), Pune City' considered the gravity of omission observed in performance of 'Guard Duty' duty by the delinquents and their alleged direct connivance with the accused as unbecoming of 'Police Personnel' who serve are expected to as disciplined force in uniform responsible for maintaining law and order in society and came to conclusion that it was not reasonably practicable to conduct Departmental Enquiry against the delinquents and thereupon dismissed all the Applicants by exploring powers under 'Clause (b) of 2nd Proviso' of 'Article 311' of 'Constitution of India'.

6. The learned Advocate for Applicant pointed out in Order dated 20.11.2023 of 'Additional Commissioner of Police (Admin), Pune City' that nothing is mentioned by him as 'Disciplinary Authority' why it was not reasonably practicable to conduct 'Departmental Enquiry'.

7. The learned CPO submitted that considering the gravity of offence registered against the accused which are under Section 8(c), Section 22(c), Section 29 of 'NDPS Act' and Section 201 of the 'Indian Penal Code' and the brazen manner in which the incident took place on 02.10.2023 within the 'Prisons Ward' of 'Sasoon General Hospital, Pune', it was necessary to take stringent action against the Applicants by way of 'Summary Dismissal' under 'Clause (b)' of '2nd Proviso' of 'Article 311' of Constitution of India. She accordingly justified the Orders passed on 20.11.2023 by 'Additional Commissioner of Police (Admin.), Pune City'. She further submitted that as the matter pertains to 'Police Department', therefore it was all

the more serious. Hence, it was not reasonably practicable to conduct 'Departmental Enquiry' against the Applicants.

8. We have gone through the facts of the case so also orders of 'Summary Dismissal' passed by 'Disciplinary Authority' by invoking provisions of 'Clause (b)' of '2nd Proviso of Article 311' of Constitution of India. We reproduce these provisions which reads as under :-

"311(2)(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."

9. The Order dated 20.11.2023 passed by 'Additional Commissioner of Police (Admin), Pune City' under 'Clause (b)' of '2nd Proviso of Article 311' of 'Constitution of India' mentions no specific reasons as to why it was not reasonably practicable to conduct 'Departmental Enquiry' against the Applicants. The most bearing fact that appeals to us is that the 'Disciplinary Authority' had already initiated 'Departmental Enquiry' against them on 30.10.2023 within One Month from the occurrence of incident on 30.09.2023 at the 'Prisons Ward' of 'Sasoon General Hospital, Pune'.

10. The facts which were pointed by learned Advocate for Applicant clearly discloses that 'Enquiry Officer' had also been appointed on 29.11.2023 and 'Departmental Enquiry' had formally commenced with Applicant but his request to engage 'Friend Officer' was denied.

11. The learned Advocate for Applicant relied on the Judgment in **OA 541 of 2020 (Jayprakash C. Kamble Vs. State of Maharashtra & 2 Ors.) decided on 01.09.2023** wherein the Tribunal has relied on landmark Judgments of Hon'ble Supreme Court of India in **(i) Union of India & Anr. Vs. Tulsiram Patel & Anr., AIR 1985 SC 1416,** **(ii) Satyavir Singh & Ors. Vs. Union of India & Ors., (1985) 4**

SCC 252 & (iii) Ved Mitter Gill Vs. Union Territory Administration, Chandigarh & Ors., (2015) 8 SCC 86 which lay down Specific Guidelines as to when Government Servants can be subject to 'Summary Dismissal' under 'Clause (b)' of '2nd Proviso of Article 311' of 'Constitution of India'.

12. The learned Advocate for Applicant also relied on the Judgment of Hon'ble Supreme Court in **State of Maharashtra Vs. S.P. Kalamkar, reported in 2008(4)Mh.L.J.** on the point of granting back-wages to dismissed Government Servants.

13. Under such circumstances, we fail to understand why Joint Departmental Enquiry which had been instituted on 30.10.2023 was suddenly dropped against the Applicant and he instead was subjected to 'Summary Dismissal' under 'Clause (b)' of '2nd Proviso of Article 311' of 'Constitution of India'. The 'Departmental Enquiry' which had been instituted on 30.10.2023 could have been dropped half way in between; but then it was mandatory for 'Disciplinary Authority' to give specific reasons for dropping the 'Departmental Enquiry' against Applicant and thereafter exercise option of 'Summary Dismissal' under 'Clause (b)' of '2nd Proviso' of 'Article 311' of 'Constitution of India'.

14. Thus, we are of the considered view that Order passed by 'Additional Commissioner of Police (Admin), Pune City' on 20.11.2023 without recording why it was not reasonably practicable to conduct the 'Joint Departmental Enquiry' and reasons given for 'Summary Dismissal' of Applicant is not contemplated under 'Clause (b)' of '2nd Proviso' of 'Article 311' of Constitution of India. Hence, the 'Summary Dismissal' of Applicant by Order passed by 'Additional Commissioner of Police (Admin), Pune City' on 20.11.2023 is liable to be set aside.

15. Considering the facts and circumstances narrated above, we pass the following order.

ORDER

- (i) The 'Summary Dismissal' of Applicant by Order dated 20.11.2023 passed by 'Additional Commissioner of Police (Admin), Pune City' under 'Article 311(2)(b)' of 'Constitution of India' are hereby quashed and set aside.
- (ii) The Applicant is accordingly directed to be reinstated on his post of 'Police Constable' within a period of 'Four Weeks' from the date of uploading of this order.
- (iii) The 'Pay and Allowances' to which Applicant would have been entitled to had he not been subjected to order of Dismissal from Service under 'Article 311(2)(b)' of the 'Constitution of India' be determined as per provisions of 'Rule 71(2)(a)' of the 'Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981'.
- (iv) The Respondent may proceed with 'Departmental Enquiry' initiated on 30.10.2023 or order fresh 'Departmental Enquiry' against the Applicant. However, if it is initiated, then it must be expedited and completed as early as possible keeping in view the ratio laid down by Hon'ble Supreme Court in Civil Appeal No.958 of 2010 [***Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr., decided on 16 December, 2015***].

Sd/-

(DEBASHISH CHAKRABARTY)
Member-A

Sd/-

(MRIDULA BHATKAR, J.)
Chairperson

Mumbai

Date : 29.08.2024

Dictation taken by :

S.K. Wamanse.

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