

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO.832/2022(D.B.)**

Shri Sandip s/o Sampatrao Paunikar,  
Aged about 41 yrs., Occu. Terminated,  
R/o. Sharda Chowk, Mukesh Nagar,  
Plot No. 17, Borgaon Road, Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
- 2) The Commissioner of Police,  
Nagpur.
- 3) The Deputy Commissioner of Police,  
Nagpur City, Nagpur.

**Respondents**

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S/Shri G.G.Bade, P.P. Khaparde, Ld. Advocates for the applicant.  
Shri S.A.Sainis, Ld. P.O. for the respondents.

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**Coram:-** Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &  
Hon'ble Shri Nitin Gadre, Member (A).

**Dated:-** 08<sup>th</sup> August, 2024.

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### **JUDGMENT**

Heard Shri G.G.Bade, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under-

The applicant was working as Naik Constable. One F.I.R. lodged against the applicant for the offences punishable under Sections 452, 326, 324, 323, 294, 506 and the same came to be registered vide Crime No.357/2022. On account of registration of the said offence, applicant came to be suspended vide order dated 15.07.2022. The respondent no.3 subsequently issued the charge sheet on 08.07.2022, thereby 2 charges levelled against the applicant in respect of absence from duty.

3. The respondents without conducting the departmental enquiry, dismissed the applicant from service by the impugned order dated 27.07.2022 as per the provisions of Article 311 (2) (b) of Constitution of India. Hence, the applicant approached to this Tribunal for the following relief-

***i) Quash and set aside the order dated 27/07/2022 issued by the respondent no. 2 at (Annexure-A1) and thereby direct the respondent Department to reinstate the applicant in service.***

4. The respondents have strongly opposed the O.A. by filing reply. It is submitted that the enquiry was not possible and therefore

looking to the seriousness of offence and conduct of the applicant, he is dismissed from service as per the provisions of Article 311(2)(b) of the Constitution of India.

5. During the course of submission, the learned counsel for the applicant has pointed out the Judgment of the Hon'ble Bombay High Court in the case of **State of Maharashtra Vs. S.P.Kamlakar**, decided on 31<sup>st</sup> January, 2008 and the Judgment of this Tribunal in O.A.No.167/2023, decided on 21.03.2023.

6. The learned counsel for the applicant has submitted that without conducting the departmental enquiry, the respondents cannot dismiss the applicant from service. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Supreme Court in the case of **Jaswant Singh Vs. State of Punjab & Ors. AIR 1991 SC 385**, and submitted that the departmental enquiry is to be conducted for dismissal of service. He has also pointed out Judgment of the Hon'ble Supreme Court in the case of **Sudesh Kumar Vs. the State of Hariyana & Ors. (2005) II SCC 525** and submitted that "the departmental enquiry under Article 311 (2) is a Rule and dispensing with the enquiry is an exception." Learned counsel for the applicant has submitted that the criminal case is pending before the Criminal Court. The learned counsel for the applicant has submitted that in

view of the Judgment of this Tribunal in O.A.No.167/2023 the impugned order is liable to be quashed and set aside.

7. The learned P.O. submitted that there was no possibility of coming forward of any witnesses, therefore looking to the conduct of the applicant he is dismissed from service as per the provisions of Article 311(2)(b) of Constitution of India.

8. There is no dispute about power in respect of dismissal as per Article of 311(2)(b) but that power is to be exercised in exceptional cases. The Hon'ble Supreme Court in the case of **Sudesh Kumar Vs. the State of Hariyana & Ors. (2005) II SCC 525** has held that conducting the departmental enquiry is a Rule and dispensing with the enquiry is an exception. The material portion of the Judgment in the case of **Sudesh Kumar Vs. the State of Hariyana & Ors. (2005) II SCC 525** is reproduced below –

*“(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.”*

9. In the present case, it cannot be said that witnesses could not remain present in the departmental enquiry. One of lady Constable lodged complaint against the applicant. She dared to file report against the applicant, he should have come in the departmental enquiry before the respondents. Respondents have not initiated departmental enquiry intentionally. No any preliminary enquiry report is filed along with the reply. In the impugned order, it is stated that preliminary enquiry was conducted, but nothing is on record to show what type of Preliminary enquiry was conducted by the respondents. Article 311(2) is very clear. As per this Article, whenever any employee is to be dismissed from service, then departmental enquiry is to be conducted. Only exception is given in the Article 311(2)(b). The respondents have not pointed out any exception to pass the impugned order. The respondents could have conducted departmental enquiry. Without conducting departmental

enquiry, the respondents have dismissed the service of the applicant. It is not legal and proper. Hence, in view of the Judgment of the Hon'ble Supreme Court cited (Supra), we passed the following order-

**ORDER**

1. The O.A. is allowed.
2. The impugned order dated 27.07.2022 is hereby quashed and set aside.
3. The respondents are directed to reinstate the applicant within a period of 30 days from the date of receipt of this order.
5. The respondent no.2 as Disciplinary Authority will be at liberty to initiate the departmental enquiry against the applicant, if so desire, but it must be initiated as expeditiously as possible from the date of communication of this order and in any case within two months.
6. The amount of pay and allowances to which the 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 the provisions of Rule

71 (2) (a) of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981

3. No order as to costs.

**(Nitin Gadre)**  
**Member(A)**

**(Justice M.G.Giratkar)**  
**Vice Chairman**

Dated – 08/08/2024  
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.  
Court Name : Court of Hon'ble Vice Chairman  
& Hon'ble Member (A).  
Judgment signed on : 08/08/2024.  
and pronounced on