

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 669/2022(D.B.)**

Vijay s/o Narayanrao Gabhane,
Aged about; 41, Occu; Nil, R/; Plot no. 10,
New Panjara, Opp Koradi Police Station,
Koradi, Nagpur.

Applicant.

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai-400 032.
2. The Commissioner of Police,
Nagpur, Having it's office at Chawani Chowk,
Opp Patel Bengala, Sadar.
3. The Deputy Commissioner of Police,
Zone - IV, having it's office at Kambde Chowk,
Ajani, Nagpur.

Respondents.

Shri S.S.Mohod, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

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

Dated: - 24th September, 2024.

JUDGMENT

Heard Shri S.S.Mohod, 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 appointed on the post of Police Constable in year of 2005. While he was working as Naik Police Constable, he was falsely involved by respondent no.3 in the offence of cheating and fraud. The respondent no.2 i.e. Commissioner of Police, Nagpur has passed the impugned order dated 11.03.2022 by which the applicant is dismissed from service as per the provisions of Article 311(2)(b) of Constitution of India. Hence, the applicant has approached to this Tribunal for the following reliefs-

- i) It is therefore prayed that this Hon'ble Tribunal may kindly be pleased to quash and set impugned order of suspension dt.; 18/2/2022 and order of dismissal from service dt; 11/03/2022 whereby service of applicant has been terminated.*
- ii) By appropriate order be pleased to direct respondents to reinstate service of applicant with full back wages.*
- iii) By appropriate order be pleased to allow present original application.*
- iv) Grant any other relief as this Hon'ble Tribunal deems fit and proper in facts and circumstances of present matter.*

3. The O.A. is strongly opposed by the respondents 2 and 3. It is submitted that the applicant has committed offence. No any witness will come forward in the departmental enquiry. Therefore,

the applicant is dismissed as per the provisions of Article 311(2)(b) of the Constitution of India.

4. The learned counsel for the applicant has pointed out the Judgment of this Tribunal in O.A.No.441/2015 decided on 08.02.2016 and the Judgment in O.A.No.959/2020 decided by this Tribunal on 10.08.2024. The applicant was involved in the crime as per report dated 26.01.2022 by one Jayprakash Patani. As per this report, the applicant was not only person other 2-3 persons were also involved. Some allegations are made against the applicant and others. The applicant was suspended as per order dated 18.02.2023. The respondents were at liberty to initiate departmental enquiry. Without giving any opportunity of defence the respondent no.2 has dismissed the applicant from service. The dismissal is nothing, but death of the employee from employment. Therefore, opportunity should have been given to the employee/ applicant to defend himself. Article 311 is in fact in favour of the employee. As per Article 311 of Constitution of India, no any employee shall be removed from service without holding departmental enquiry. Only exception is Article 311 (2)(b) of Article 311 of Constitution of India. The Hon'ble Supreme Court in the case of **Prithipal Singh Vs. State of Punjab [(2007) (1) SLR-1]** has held that without conducting departmental enquiry dismissal under Article 311(2)(b) is not legal and proper. The

Hon'ble Bombay High Court in the case of **State of Maharashtra Vs. S.P.Kalamkar[2008 (4) Mh.L.J. 553]** has recorded its findings in para 25 as under-

25: This Court held that "an exception which is provided under Sec. 26 is two fold. Departmental inquiry need not be held in cases covered by Article 311 (2). It is, however, provided that even if holding of inquiry may be dispensed with, if recourse is taken to Article 311 (2), opportunity to show cause against the proposed punishment will have to be given according to provisions of section 26 of the Bombay Police Act. The proviso very clearly states that no order for reducing, removing or dismissing a Police Officer, shall be passed without giving him a reasonable opportunity of showing cause, against the action proposed to be taken against him. A plain reading of the provisions of section 26 therefore, shows that holding of departmental inquiry may be dispensed with in cases covered by Article 311 (2). But even if such inquiry is dispensed with, an opportunity as contemplated by proviso to section 26 of the Bombay Police Act will have to be given. Admittedly, no such opportunity is given in the present case. Therefore, the order impugned is liable to be set aside as no show cause notice asking the petitioner to show cause as to why he should not be discharged from service was issued. The statutory right of showing such cause which vested in the petitioner by reason of section 26 was therefore, imposed by the State. On this ground alone, the impugned order is liable to be set aside."

5. This Tribunal in O.A.No.959/2020 decided on 12.08.2020 has recorded its findings in para 6 as under-

6. Recourse to Article 311(2)(b) is to be taken very rarely and not generally. We observed that in Police department they are issuing dismissal / termination order frequently by taking help of

Article 311(2)(b) of Constitution of India. In the present O.A. no any show cause notice and explanation was called from the applicant. Now in the various Judgments of the Hon'ble Supreme Court the respondents / Government are directed to promote the applicant even during the pendency of Criminal case. Though, this is not a case of promotion, but the respondents have without taking any course of departmental enquiry dismissed the applicant from service. Dismissal from service is a death of the employee in the employment and therefore, the opportunity should have been given to the employee while dismissing / terminating the applicant from the service. Therefore, Article 311 (2)(b) is very clear. As per Article 311(2)(b) of Constitution of India, the employee shall not be dismissed or terminated without holding any departmental enquiry only exception is Article 311(2)(b). The Hon'ble High Court in Writ Petition No.531 & 201/2009 in para 19 and 20 has held that "there is no evidence to show that there was any complaint by the witnesses. Therefore, the satisfaction cannot be arrived that witnesses will not come forward to deposed against the delinquent employee." Therefore, the Hon'ble High Court has quashed and set aside the impugned order which was passed under the provisions of Article 311(2)(b) of Constitution of India.

6. Article 311(2)(b) of the Constitution of India is to be exercised by the Appointing Authority in a very rarest of rare case. In the present O.A., it cannot be said that it is a very rarest of rare case in which the employee/applicant can be dismissed from service without holding departmental enquiry. Nothing is on record to show that any of the witnesses shall not come forward in the departmental enquiry. Only reason is recorded in the order that nobody will come

forward in the departmental enquiry. Without holding departmental enquiry, the dismissal of the applicant from service is nothing but illegal. Hence, we proceed to pass the following order-

ORDER

1. The O.A. is allowed.
2. The impugned order dated 11.03.2022 is hereby quashed and set aside.
3. The respondents are directed to reinstate the applicant in service.
4. The respondents are at liberty to conduct the departmental enquiry, if they wish to do so within a shortest period.
5. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 24/09/2024.
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 : 24/09/2024.
and pronounced on
