

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 18th OF MARCH, 2024

WRIT PETITION No.19545 of 2022

BETWEEN:-

1. SUMIT BAGHEL S/O SHRI ANANT SINGH BAGHEL, AGED ABOUT 29 YEARS, OCCUPATION POLICE CONSTABLE, R/O KAGPUR, VIDISHA (MP)
2. VINOD SINGH RAWAT S/O SHRI BRAJMOHAN SINGH RAWAT, AGED ABOUT 32 YEARS, OCCUPATION POLICE CONSTABLE, R/O VILLAGE NIKODI, TAHSIL AMROUL, DISTRICT GWALIOR (MP)

.....PETITIONERS

(BY SHRI K.C. GHILDIYAL – SENIOR ADVOCATE WITH SHRI KAPIL SHARMA – ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY, DEPARTMENT OF HOME (POLICE), MANTRALAYA VALLABH BHAWAN, BHOPAL (MP)
2. DIRECTOR GENERAL OF POLICE, POLICE HEAD QUARTER, BHOPAL (MP)
3. INSPECTOR GENERAL OF POLICE, BHOPAL RANGE, BHOPAL (MP)
4. DEPUTY INSPECTOR GENERAL OF POLICE (BHOPAL RANGE), BHOPAL (MP)
5. SUPERINTENDENT OF POLICE (SOUTH ZONE), BHOPAL (MP)

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI GIRISH KEKRE – GOVERNMENT ADVOCATE)

Reserved on : 23.02.2024

Pronounced on : 18.03.2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

Since pleadings are complete and learned counsel for the parties are ready to argue the matter finally, therefore, at their joint request, it is heard finally.

2. By means of this petition filed under Article 226 of the Constitution of India, the petitioners are calling in question the legality, validity and propriety of order dated 02.08.2021 (Annexure-P/1) passed by respondent No.5 whereby the authority invoking the power provided under Article 311(2)(b) of the Constitution of India had dismissed the petitioners from service; order dated 24.09.2021 (Annexure-P/7) passed in the appeal preferred by the petitioners against the order dated 02.08.2021 whereunder the Appellate Authority affirming the order of petitioners' dismissal had rejected the appeal and also the order dated 10.05.2021 (Annexure-P/9) whereby the mercy appeal preferred by the petitioners got rejected.

3. The brief facts as to comprehend the disputes are that at the relevant point of time, the petitioners being the constables were posted at Police Station Ayodhya Nagar, Bhopal. On 10.07.2021 at about 09:00 pm, while the petitioners were on patrolling, they found two suspicious boys near gate Nos.4 and 5 of Minal Residency and on enquiring about them, it was informed to the petitioners by those boys that they are working in GK company situated in Gujarat. Not only this, but the petitioners had also made a search of their vehicle i.e. Scooty bearing registration No.MP-04-

SY-4029, in which, those boys were found in illegal possession of Rs.26 lacs. However, it is alleged against the petitioners that they taking Rs.5 lacs out of said amount had permitted those boys to go.

(3.1) On 11.07.2021, one Praveen s/o Dheeru Ji Gujrati, who was also working in the GK company made a formal complaint to the in-charge of Police Station Ayodhya Nagar, Bhopal informing him about the conduct of the petitioners. Thereafter, the Additional Superintendent of Police, Zone-2, Bhopal, namely Rajesh Bhadoriya had made an enquiry in the matter and submitted the report on 13.07.2021 revealing the fact that on 10.07.2021, the petitioners namely Sumit Baghel, Constable No.3568 and Vinod Rawat, Constable No.2533 while on duty at Police Station Ayodhya Nagar, Bhopal had searched two boys namely Rounak Dewra and Kishan Jala and made an illegal demanded Rs.10,000/- from them. In addition to that, in the report it was also stated that the petitioners had also made a demand of Rs.5 lacs out of Rs.26 lacs which they found in the two wheeler of those boys. In the report, it was mentioned that those boys after making a discussion with Ashwini Bhai Maharaj had handed over Rs.5 lacs to the petitioners. The authority in its report had also stated the fact that the petitioners after keeping Rs.2 lacs out of Rs.5 lacs had handed over Rs.3 lacs to the in-charge of the Police Station namely Pawan Jain saying that two boys leaving the said amount in the side bag of their motorcycle had ran away from spot. It was observed by the authority in its report that the act of the petitioners came under the purview of misconduct and indeed, permitting those boys to go even without conducting proper enquiry or registering an offence against them, was a crime on the part of the petitioner and as such, it was found by the authority that the conduct of the delinquent was contrary to the paragraphs 64(2), 64(3) and 636(d) of the

Police Regulations and also under Section 100(7) of the Indian Penal Code.

(3.2) Subsequently, a show-cause notice dated 14.07.2021 (Annexure-P/3) was issued to the petitioners asking their explanation as to why invoking power provided under Article 311(2)(b) of the Constitution of India, they should not be dismissed from service. In pursuant to the said show-cause notice, the petitioners had submitted their reply on 21.07.2021 (Annexure-P/5) wherein narrating the incident in detail, they have denied the allegations levelled against them.

(3.3) Since the reply submitted by the petitioners was not found satisfactory, therefore, the Superintendent of Police, Bhopal (South), invoking the power provided under Article 311(2)(b) of the Constitution of India had passed the impugned order dated 02.08.2021 (Annexure-P/1) imposing the penalty of dismissal from service upon the petitioners.

(3.4) Being aggrieved with the order dated 02.08.2021 (Annexure-P/1), though the petitioners preferred an appeal, but the Appellate Authority by its order dated 24.09.2021 (Annexure-P/7) had dismissed their appeal. Thereafter, the petitioners preferred a mercy appeal before the authority, but their mercy appeal also got dismissed. Hence, this petition.

4. Learned Senior Counsel for the petitioners has submitted that the challenge is founded mainly on the ground that the order of dismissal from service was passed in violation of principles of natural justice and contrary to the law for the reason that the petitioners being civil servant and regular employees of the Police Department, cannot be dismissed without conducting a regular departmental enquiry. More so, the provisions of Article 311(2)(b) of the Constitution of India are not applicable in the petitioners' case and further the reasons assigned in the order for not

conducting the regular departmental enquiry are not only unreasonable but also unacceptable which make the order vitiated and as such, it is claimed that the impugned order dismissing the petitioners from service deserves to be quashed.

5. *Per contra*, learned Government Advocate has supported the order of dismissal and stated that the provisions of Article 311(2)(b) of the Constitution of India have rightly been applied while removing the petitioners from service.

6. Considering the rival submissions made by learned counsel for the parties and on perusal of record, the core question which crops up for adjudication is as to whether under the existing circumstances, the power exercised by respondent No.5 and reasons assigned in the impugned order for not conducting the regular departmental enquiry are valid, acceptable and approve the decision for dispensing with the regular departmental enquiry or not?

7. The hub of the argument on behalf of the petitioners is that the petitioners who were the regular employees of the Police Department, could not be removed from service that too without conducting any regular departmental enquiry. Further, the reasons assigned for dispensing with the departmental enquiry and for not following the principles of natural justice are not justified. The relevant portion of the impugned order which contains the reasons for not conducting the regular departmental enquiry reads thus:-

“10. अतः मुझ साई कृष्णा को यह समाधान हो गया कि आरक्षक 2533 विनोद सिंह रावत एवं निलंबित आरक्षक 3568 सुमित बघेल द्वारा प्रदर्शित स्वेच्छाचारिता के आलोक में उनके वर्दीधारी सेवा में रहते हुए प्रकरण के साक्षियों को प्रभावित करने की पूर्ण संभावना है एवं कोई जॉच करना युक्तियुक्त रूप से साध्य नहीं है। निलंबित आरक्षक 2533 विनोद सिंह रावत एवं निलंबित आरक्षक 3568 सुमित

बघेल द्वारा किये गये भ्रष्टाचार एवं गंभीर कदाचरण के लिए भारतीय संविधान के अनुच्छेद 311(2)(ख) के प्रावधान में दी गई शक्ति का प्रयोग करते हुए मैं, साई कृष्णा, पुलिस अधीक्षक, भोपाल, आरक्षक 2533 विनोद सिंह रावत एवं निलंबित आरक्षक 3568 सुमित बघेल तत्कालीन थाना अयोध्यानगर, हाल रक्षित केन्द्र भोपाल को ‘सेवा से पदच्युत’ (Dismissal from service) किये जाने का दंड देता हूँ तथा दिनांक 14.07.2021 से आदेश दिनांक तक की निलंबन अवधि का निराकरण निलंबन में किया जाता है।”

It is worthwhile to go through the relevant provisions of Article 311(2)(b) of the Constitution of India, which read as under:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

[(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 ²[*]:**

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(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; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.]

[(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]”

8. Admittedly, the services of the petitioners are governed with provisions of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (in short the 'Rules, 1966'). The punishment of dismissal from service is prescribed under the Rules, 1966 as a major penalty and that can be imposed after conducting a regular departmental enquiry. Rule 10 of the Rules, 1966 deals with the penalties relate to civil servants. Rule 10 (ix) of the Rules, 1966 speaks about major penalties which reads as under:-

“10 (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;

Explanation. - The following shall not amount to a penalty within the meaning of this rule, namely :-

- (i) withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;
- (ii) stoppage of a Government servant at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar;
- (iii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible;
- (iv) reversion of a Government servant officiating in a higher service, grade or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher service, grade or post or on any administrative ground unconnected with his conduct;
- (v) reversion of a Government servant, appointed on probation to any other service, grade or post, to his permanent service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;
- (vi) replacement of the services of a Government servant, whose services had been borrowed from the Union Government or any other State Government, or an authority under the control of any Government, at the disposal of the authority from which the service of such Government servant had been borrowed;
- (vii) compulsory retirement of a Government servant in accordance

- with the provisions relating to his superannuation or retirement;
- (viii) termination of the services;
 - (a) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or
 - (b) of a temporary Government servant appointed until further orders on the ground that his services are no longer required; or
 - (c) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.”

Rule 14 of the Rules, 1966 which is a mandatory requirement provides the procedure for imposing the penalty and if any punishment as specified in sub clauses (v) to (ix) of Rule 10 has to be made, the same can only be made after conducting an enquiry as per the procedure provided in Rule 15 of the Rules, 1966 and perusal of the aforesaid rules, makes it clear that for conducting a regular departmental enquiry, charge-sheet has to be issued and the Disciplinary Authority after reaching the conclusion that the charges levelled against the delinquent are found proved, can inflict the punishment of dismissal, but not otherwise.

9. Although, Article 311(2)(b) of the Constitution of the India provides the requirement of principles of natural justice in respect of the civil servant if punishment of dismissal, removal or reduction in rank is to be imposed. The said Article prescribes some eventualities, in which, the major penalty like dismissal can be inflicted without following the requirement of principles of natural justice or without conducting a regular departmental enquiry. If the said exception is applied and challenged before the Court of law, then the Court has to see whether the reasons assigned for adopting such exception are proper or not. Here in this case, the reasons had been assigned by respondent No.5 that being the police constables, it is every possibility that the petitioners may temper with the

evidence and witnesses and as such, looking to the nature of misconduct and crime committed by the petitioners, there is no justification for conducting a regular departmental enquiry against them.

10. In my considered opinion, the reasons assigned by the Authority for not conducting a regular departmental enquiry are not only unreasonable but unjustified too. The Supreme Court in several occasions considering the scope of application of Article 311(2)(b) of the Constitution of India has clarified as to under what circumstances, regular departmental enquiry can be dispensed with and order of dismissal from service can be issued. The Supreme Court in many occasions, has also observed that in every case, the application of Article 311(2)(b) of the Constitution of India does not apply and the Authority has to proceed in accordance with the respective rules under which the procedure prescribed for conducting the enquiry and also for inflicting the punishment. As has already been discussed hereinabove, it is clear that the major punishment like dismissal from service can be inflicted after conducting a regular departmental enquiry as per the provisions of Rule 14 of the Rules, 1966. In this context, the Supreme Court in a case reported in **(1985) 4 SCC 252 [Satyavir Singh Vs. Union of India]** has observed as under:-

“16.....sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable, and may at times be also construed by the trouble-makers and agitators as a sign of weakness on the part of the authorities and encourage them to step up the tempo of their activities or agitation. The affidavits filed in the High Court clearly show that this is exactly what happened when the suspension orders were issued and what was required was prompt and urgent action against those who were considered to be the ringleaders and that once such action was taken the situation improved and started becoming normal.”

Similarly, in the case reported in **(1987) Supp SCC 164 [S.J. Meshram Vs. Union of India]**, the Supreme Court has observed as under:-

“Art. 311(2) second proviso (b)- Whether “not reasonably practicable” to hold inquiry-Factors-Likelihood of destruction of evidence and of non-appearance of members of Mahila Samiti to adduce evidence for fear and loss of vital document (bill register) showing actual amount of misappropriation caused wil-fully by the delinquent employee-Held irrelevant and ex facie inadequate reasons for dispensing with the inquiry-Removal order set aside permitting the employee continuity in service and due salary and allowance-Authority entitled to commence normal departmental proceedings.”

Likewise, the Supreme Court in the case reported in **(2000) 10 SCC 196 [Ex Constable Chhote Lal Vs. Union of India]** has observed as under:-

“Arts.311(2) second proviso, cl.(b) and 311(3)- “not reasonably practicable to hold inquiry”-Such an opinion of departmental authority when not justified-Argument advanced that the appellant being a police constable could have influenced witnesses and therefore dispensing of inquiry was justified-Rejected-Held, the order dispensing with the inquiry was not according to law-Consequently, the order dismissing the appellant also not sustainable-Liberty however given to respondents to proceed against appellant by holding inquiry-Further held, setting aside the dismissal would normally entitle an employee to back wages but in the present case and more so in view of the nature of the charges against the appellant, back wages not deserved.”

More so, the Supreme Court in the case reported in **(1996) 3 SCC 753 [Chandigarh Administration, Union Territory, Chandigarh Vs. Ajay Manchanda]** has observed as under:-

“Art.311(2)(b)-Departmental enquiry-Generally-Reasonably practicable or not-Order of dismissal, dispensing with departmental enquiry on the ground of not being reasonably practicable, passed by SSP against Sub-Inspector of Police pursuant to a complaint of extortion-Complainant’s reluctance to pursue the complaint whether by itself sufficient to conclude that he had been won over, making a departmental enquiry impracticable-Complainant, an advocate, initially not appearing when called by the SSP in connection with the complaint, on the ground of his alleged engagements in the Sessions Court but subsequently expressing his unwillingness to pursue the complaint on the ground of having reached a compromise with the Sub-Inspector-In absence of any statement by the complainant or any other witness to that effect, merely from the unwillingness of the complainant to pursue the complaint, held, it could not be inferred that

the complainant had been terrorised and intimidated by the Sub-Inspector-Hence, there being no material before the SSP to conclude that holding of a departmental enquiry was not reasonably practicable, CAT's order quashing the said order of dismissal, upheld."

In the case reported in **(2005) 11 SCC 525 [Sudesh Kumar Vs. State of Haryana]** the Supreme Court has observed as under:-

"Art.311(2) proviso (b)- "Not reasonably practicable to hold such inquiry"-Reasons for satisfaction regarding-Complaint filed by a foreign national that he had to pay bribe money in the office of Superintendent of Police for securing extension of his visa for one year-Complainant not disclosing name of the official who took the bribe due to fear of harassment-Pursuant to a preliminary inquiry, appellant dealing clerk dismissed from service without holding regular departmental inquiry on being satisfied that it was not reasonably practicable to hold the inquiry-Reasons for such satisfaction stated to be that the complainant being a foreigner may leave the country in the midst of the inquiry and that he was not likely to name the delinquent official during the departmental proceedings-Held, reasons not sufficient for dispensing with the regular departmental inquiry-Hence Art.311(2) violated as holding the inquiry by informing of the charges and giving reasonable opportunity of being heard is the rule and dispensing therewith is an exception-Dismissal order liable to be set aside."

11. The Supreme Court in the cases reported in **(1993) 4 SCC 269 [Union of India and others Vs. R. Reddappa and others]**, **(1991) 1 SCC 362 [Jaswant Singh Vs. State of Punjab and others]** and **(2003) 9 SCC 75 [Sahadeo Singh and others Vs. Union of India and others]**, has categorically observed that the dismissal without conducting a departmental enquiry on the ground of being not reasonably practicable, is open for judicial review, therefore, the objection raised by the respondents that the impugned order is appealable, is not sustainable in the eyes of law.

12. This Court has no hesitation to say that it is not a case in which the Disciplinary Authority can inflict the punishment of dismissal from service upon the petitioners that too without conducting a regular departmental enquiry. The reasons assigned in the impugned order for not conducting a

regular departmental enquiry and for applying the provisions of Article 311(2)(b) of the Constitution of India are not found satisfactory and cannot be considered to be the proper reasons for not conducting the regular departmental enquiry and as such, the impugned order of the petitioners' dismissal dated 02.08.2021 (Annexure-P/1) is not sustainable in the eyes of law and is hereby set aside. Consequently, the orders dated 24.09.2021 (Annexure-P/7) and 10.05.2021 (Annexure-P/9) passed in the appeals preferred by the petitioners are also set aside. However, a liberty is granted to the respondents that if they so desire, may conduct a regular departmental enquiry as has been provided under the provisions of the Rules, 1966 for imposing the penalty after giving an opportunity of hearing to the petitioners.

13. With the aforesaid, the petition filed by the petitioners stands **allowed**.

(SANJAY DWIVEDI)
JUDGE