(2010) 03 BOM CK 0172

Bombay High Court

Case No: Writ Petition No. 1753 of 2009

Shri Shantilal Dnyanu Jadhav		APPELLANT
	Vs	
The Commissioner of Police		RESPONDENT

Date of Decision: March 10, 2010

Acts Referred:

- Constitution of India, 1950 - Article 311, 311(1), 311(2)

Citation: (2010) 3 MhLj 362

Hon'ble Judges: D.K. Deshmukh, J; A.R. Joshi, J

Bench: Division Bench

Advocate: C.T. Chandratre, for the Appellant; C.R. Sonawane, AGP, for the Respondent

Judgement

D.K. Deshmukh, J.

By this Petition, the petitioner challenges the order passed by the Maharashtra Administrative Tribunal, Mumbai in Original Application No. 917 of 2005 dated 28.2.2007 and the order passed by the said Tribunal in Misc. Petition No. 73 of 2008 in Review Application No. 6 of 2008 dated 3.7.2008. Original Application No. 917 of 2005 was filed by the petitioner challenging the order dated 3.9.2005 passed by the Commissioner of Police, Mumbai, dismissing the petitioner from service. The petitioner was in service of the Government of Maharashtra as Assistant Police Inspector. The Commissioner of Police by order dated 3.9.2005 dismissed the petitioner from service for misconduct. The order was made under Article 311(2)(b) by dispensing with the departmental enquiry. That order was challenged before the MAT. Apart from the grounds raised on merits in relation to the misconduct and the competence of the Commissioner to make the order of dismissal, it was contended that in the order dated 3.9.2005, the Commissioner has not recorded and disclosed reasons why it is not practicable to hold departmental enquiry against the petitioner. The MAT dismissed the Original Application filed by the petitioner. Against that order, Review Application was filed. Because there was delay in filing that review application, a Miscellaneous Application for condonation of delay was

taken out. The application for condonation of delay and the review application was disposed of by the MAT by order dated 3.7.2008. The MAT found that the petitioner has not disclosed sufficient cause for condonation of delay. It also held that even on merits, there is no case made out for review of the order. Therefore, in this situation, the petitioner is before this Court.

2. The learned Counsel appearing for the petitioner submits that the petitioner has been dismissed from service on the ground that he is guilty of misconduct and the order of the dismissal has been made by dispensing with holding of the departmental enquiry. The learned Counsel submits that as required by the provisions of Article 311 of the Constitution, the Commissioner who has made the order has not recorded any reason why it is reasonably not practicable to hold departmental enquiry against the petitioner.

3. The learned Counsel submits, relying on the following judgments of the Supreme Court:

i) Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, ;

ii) Prithipal Singh v. State of Punjab (2008) 2 Scc (L&S) 135;

iii) Chief Security Officer and Others Vs. Singasan Rabi Das, .

that existence of reasons and recording of reasons for dispensing with departmental enquiry is mandatory. The learned Counsel submits that in the order, the Commissioner has not recorded any reason. The order of the MAT shows that the MAT went through the file that was maintained by the Commissioner and has referred to the notings in the file, but, even those notings do not show that any reasons have been recorded for dispensing with the departmental enquiry. The learned Counsel submits that therefore the order made by the Commissioner clearly violets the mandate of Article 311(2) of Constitution of India and, therefore, it is liable to be set aside.

4. The learned Counsel appearing for the respondent on the other hand submits that in the order dated 3.9.2005 reasons have been recorded for dispensing with the departmental enquiry and reasons have also been recorded on the file that has been maintained and which has been perused by the MAT. According to the learned Counsel whether that reason is adequate or not is not justificable and cannot be judged by this Court. The learned Counsel submits that the reasons exist and the dismissing authority was aware of those reasons is enough for complying with the requirement of Article 311(2) of Constitution of India.

5. Article 311(1) of the Constitution lays down that no person who is 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. It is Sub-article (2) of Article 311,

which is relevant for our consideration, which reads as under:

Article 311(1)....

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. 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.

6. Perusal of the above quoted Article 311(2) shows that the first rule is that no person shall be dismissed, removed or reduced in rank except after holding departmental enquiry against him. However, by the second proviso exceptions to that rule are incorporated. It is provided that where the disciplinary authority is satisfied that for some reasons, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry then holding of departmental enquiry can be dispensed with. Insofar as the present case is concerned, it is paragraph Nos. 3 & 4 of the order dated 3.9.2005 which are relevant, which read as under:

03. And Whereas, I am further satisfied that it is not reasonably practicable to hold a departmental enquiry against the above named Assistant Police Inspector Shantilal Dnyanu Jadhav, posted at Main control room on, Mumbai Police Commissionerate for the reasons separately recorded by me;

04. And Whereas, I am also satisfied that it is not reasonably practicable to give an opportunity to him to show cause as to why he should not be dismissed from service (as the witness/accused in the said offence will not depose before the Court against the Assistant Police Inspector Shantilal Dnyanu Jadhav.)

7. Perusal of the above paragraphs show that according to that paragraphs, the Commissioner has separately recorded reasons why it is not reasonably practicable to hold departmental enquiry against the petitioner. Perusal of paragraph No. 4 shows that according to the Commissioner it is not reasonably practicable to issue show cause notice of punishment to the petitioner because "(as the witness/accused

in the said offence will not depose before the Court against the Assistant Police Inspector Shantilal Dnyanu Jadhav.)". Now it is clear from above quoted portion from the order that the order suffers from non-application of mind because if the show cause notice of punishment is given, there is no question of any of the witness or accused in the criminal offence deposing before any authority. The word used "Court", there obviously appears to be mistake. Therefore, even if it is taken that the show cause notice is not issued because the witness and accused in the criminal offence will not depose before the departmental authority, then also it is hard to understand where is the question of accused and witness deposing when merely a show cause notice of punishment is given. So far as the reasons separately recorded (which is referred to in para-03 of the order) are concerned, perusal of the order of the MAT shows that in paragraph No. 11 of its order it has quoted the note made on the file by the Commissioner which is dated 3.9.2005, that note reads as under:

I have gone through the proposal submitted before me. The criminal conduct of API Sanjay S. Shinde, Airport Police Station and API Shantilal Dyanu Jadhav of Main Control Room deliberately trying to shield a drug and psychotropic substances racket by replacing Cocaine with boric powder is a very serious matter. Their conduct is highly perverse, and criminal in nature and is fraught with very serious implications for society in general and for police force in particular.

Police force, which is entrusted with the responsibility of controlling illegal trade of Narcotics drugs and psychotropic substances and is charged with the responsibility of enforcing NDPS Act is expected to take firm legal action against all those indulging in such trafficking. Here, API Sanjay S. Shinde, Airport Police Station and API Shantilal Dyanu Jadhav of Main Control Room have not only not taken the required legal action to curb this activity but have themselves participated in the crime and have tried to suppress the evidence. Their conduct is highly unbecoming of a member of the police force. They have made themselves totally unsuitable to be members of police force. Such conduct of these officers needs to be dealt with exemplary firmness otherwise, it will seriously jeopardize discipline and morale of the force. This may encourage many others in the force to take similar path of misconduct, indiscipline and crime.

I am also satisfied, taking into consideration the gravity of their perverse and misconduct and the totality of the circumstances into consideration, that holding of an enquiry against them is neither practical nor in public interest. I am satisfied that they should be dismissed from service forthwith. Hence, I dismiss from service A.P.I. Sanjay S. Shinde, Airport Police Station and API Shantilal Dyanu Jadhav of Main Control Room vide powers conferred on me under Article 311(2) of the Constitution of India.

8. Perusal of the above quoted note shows that the only reason given for recording satisfaction that holding of departmental enquiry is not practical and in public interest is "the gravity of their perverse and misconduct and the totality of the

circumstances". Now even assuming that the misconduct alleged against the petitioner is grave, then in our opinion, it by itself is not enough for not holding departmental enquiry. In our opinion, it was for the Commissioner to give reasons why he considers that holding of a departmental enquiry is not practicable. The gravity of misconduct may be one of the reasons why it is not practicable to hold departmental enquiry but it cannot be the sole reason for not holding the departmental enquiry. The following observations from the judgment of the Supreme Court in the case of Tarsem Singh v. State of Punjab and Ors. (2008) 2 Scc (L & S) 140, shows that merely because offences are grave cannot be a reason for dispensing with the departmental enquiry. Para-12 of the said judgment reads as under:

12. Even the Inspector General of Police in passing his order dated 26-11-1999, despite having been asked by the High Court to pass a speaking order, did not assign sufficient or cogent reason. He, like the appellate authority, also proceeded on the basis that the appellant was guilty of commission of offences which are grave and heinous in nature and bring a bad name to the police force of the State on the whole. None of the authorities mentioned hereinbefore proceeded on the relevant material for the purpose of arriving at the conclusion that in the facts and circumstances of the case sufficient cause existed for dispensing with the formal enquiry....

9. In our opinion, though misconduct alleged may be grave, that cannot be the sole reason for dispensing with holding of departmental enquiry. The reason that is required to be given for dispensing with holding of departmental enquiry must have some nexus with holding of enquiry. We find from the record that no where even an attempt has been made to give reason as to what were the difficulties which were faced in holding of the departmental enquiry. Even in the affidavits that were filed before the MAT and also the affidavit that has been filed in this Court even an attempt has been made to show as to what were difficulties in holding departmental enquiry. It is now well settled principle of law that the constitutional right conferred upon the delinquent cannot be dispensed with lightly or arbitrarily or merely to avoid holding of the departmental enquiry. The requirement of recording reasons in writing by the disciplinary authority for dispensing with the departmental enquiry is a requirement incorporated in Article 311 of the Constitution. This is a constitutional obligation and, therefore, if no reason is recorded in writing or the reason in writing is irrelevant, then the order imposing penalty would be void and unconstitutional. In the present case, we find that though reason is recorded that reason is totally irrelevant from the point of view of holding of departmental enquiry and dispensing with holding of enquiry. In these situation, therefore, in our opinion, the following order would meet the ends of justice. It may be pointed out here that it is an admitted position before us that from the date on which the order dated 3.9.2005 is passed the petitioner was under suspension.

ORDER

[i] The order dated 3.9.2005 passed by the Commissioner of Police, Mumbai is set aside;

[ii] The order passed by the Maharashtra Administrative Tribunal at Mumbai in Original Application No. 917 of 2005 is also set aside. So also the order dated 3.7.2008 passed by the MAT in Misc. Application No. 73 of 2008 in Review Application No. 6 of 2008 are also set aside;

[iii] The petitioner is reinstated in service but he shall be deemed to be under suspension from today. He shall be entitled to receive subsistence allowance as per law. However, how the period from the date of the order 3.9.2005 till today is to be treated shall be decided by the Commissioner while making fresh order. The Commissioner shall make fresh order in relation to the service of the petitioner in accordance with law and in the light of the observations made above, as also in relation to as to how the period from 3.9.2005 till today is to be treated as expeditiously and in any case within three months from today;

[iv] Rule made absolute accordingly. No order as to costs. All contentions of the petitioner shall be open to be raised before the appropriate authority.