THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

Writ Petition No.3658/2021

Amit Chaurasia

Vs.

The State of M.P. & another

Date of Order	**24.08.2021**
Bench Constituted	Single Bench
Order delivered by	Hon'ble Mr. Justice Sanjay Dwivedi
Whether approved for reporting	**Yes**
Name of counsels for parties	For Petitioner: Mr. Sanjeev Chansoriya. Advocate For Respondents/State: Mr. Ankit Agrawal, Government Advocate
Law laid down	Applying an exception for not conducting a regular departmental enquiry to dismiss or remove a person or to reduce him in rank. For major penalties there must be some strong and cogent reason with the Authority competent to impose such punishment and should be assigned in writing as to why enquiry is not reasonable and practicable to be held. Imposing major penalties applying the exception of Article 311(2)(b) of the Constitution of India is always a ground of judicial review and it can be set aside, if the Court comes to the conclusion that the reasons are not sufficient for dispensing with the regular departmental enquiry. A police constable lodged an FIR against her colleague for committing rape with her, pursuant thereto an offence under Sections 452, 354, 354-Gh, 376 and 506 of the IPC has been registered against him and applying the exception of Article 311(2)(b) of the Constitution of

	India, the punishment of dismissal from service is inflicted dispensing with the regular departmental enquiry on the ground that if that lady constable is called in the departmental enquiry to get her statement recorded then that would adversely affect her dignity and image, is not a sufficient ground for dispensing with the regular departmental enquiry. The order of dismissal, therefore, is not sustainable in the eyes of law.
Significant Para Nos.	9, 10, 11 and 13.

Reserved on: 12.08.2021

Delivered on: 24.08.2021

(O R D E R)

(24.08.2021)

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

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner is questioning the legality, validity and propriety of the order dated 02.02.2021 (Annexure-P/2) whereby as per the provisions of Article 311(2)(b) of the Constitution of India, he has been dismissed from service and also challenging the order 06.02.2021 (Annexure-P/3) whereby he has been directed to vacate the Government Quarter as allotment made in his favour was cancelled in pursuance to his dismissal from service.

3. The facts of the case in nutshell are that the petitioner was initially appointed on the post of Constable and was posted at Police Station Kotwali, District Sagar. Thereafter, on a complaint made by a lady constable namely Sonali Nayak, an FIR vide Crime No.07/2021 was registered against the petitioner in Mahila Police Station, District Sagar on 21.01.2021 (Annexure-P/4) for the offence punishable under

Sections 452, 354, 354-Gh, 376 and 506 of the Indian Penal Code and pursuant thereto, the petitioner was arrested and sent to jail. In view of the said complaint, the petitioner was placed under suspension and thereafter, respondent No.2/ Superintendent of Police exercising the powers provided under Article 311(2)(b) of the Constitution of India, dismissed the petitioner from service vide order dated 02.02.2021 (Annexure-P/2) observing therein that the conduct of the petitioner has stigmatized the image of the Police Department. It is also observed by respondent No.2 that the manner in which the petitioner committed the crime, there was no reason for conducting any departmental enquiry and call the prosecutrix as a witness in the enquiry as that would adversely affect her dignity and image in the society. Consequently, vide order dated 06.02.2021 (Annexure-P/3), the allotment of Government Quarter No.C-05 made in the petitioner's favour was cancelled and directing him to vacate the said premise.

4. Learned counsel for the petitioner submits that the challenge is founded mainly on the ground that the order of dismissal from service has been passed in violation of principle of natural justice and contrary to the law for the reason that the petitioner being a civil servant and a regular employee 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 petitioner's case and the reason assigned in the order for not conducting the regular departmental enquiry is not only unreasonable but also unacceptable which makes the order vitiate and as such, it is claimed that the impugned order dismissing the petitioner 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 petitioner from service.

6. Considering the rival submissions made by learned counsel for the parties and on perusal of the record, the core question which crops up for consideration is as to whether under the existing circumstances, the power exercised by respondent No.2 and the reason assigned in the impugned order for not conducting the regular departmental enquiry is valid, acceptable and approves the decision for dispensing with the regular departmental enquiry or not?

7. The hub of the argument on behalf of the petitioner is that merely on the ground of registration of an offence, the petitioner who was a regular employee of the Police Department, could not be removed from service that too without conducting any departmental enquiry. Further, the reason assigned for dispensing with the departmental enquiry and for not following the principle of natural justice is not justified. The relevant portion of the impugned order which contains the reasons for not conducting the regular departmental euqiry reads thus:-

> "निलंबित आरक्षक के विरूद्ध थाना महिला अंतर्गत पंजीबद्ध अपराध में विवेचना पूर्ण की जाकर चालान कमांक 05/21 दिनांक 28.01.21 को पेश किया जा चुका है। उपरोक्त अपराध की परिस्थितियां अपचारी आर.1029 अमित चौरसिया की आपराधिक मानसिकता, दुस्साहस एवं नैतिक मूल्यों के अधोपतन को प्रदर्शित करती है। अपचारी आरक्षक पुलिस विभाग की अनुशासित सेवा का सदस्य है जिसका दायित्व समाज के कमजोर वर्गों एवं महिलाओं की सुरक्षा व उनके सम्मान की प्रतिष्ठा बनाये रखने से संबंधित है। अपचारी आरक्षक द्वारा पुलिस लाइन जैसे सुरक्षित स्थान पर दुस्साहसपूर्वक पीडिता के निवास के अंदर उक्त अपराध घटित करना, उसकी अनुशासनहीन आपराधिक मानसिकता को प्रकट करता है। इस प्रकरण में अपचारी आरक्षक के विरूद्ध अपराध में संलिप्त होने के साक्ष्य विवेचना में तथा धारा 164 जाफौ. अंतर्गत न्यायालय के समक्ष प्रदर्शित होने के उपरांत अभियोग पत्र प्रस्तुत किया गया है। अपचारी आरक्षक को न्यायालय के समक्ष रिमांड हेतु प्रस्तुत करने में उसे अपने पक्ष रखने का अवसर प्राप्त हुआ है। इस प्रकरण में अपचारी आरक्षक के सेवा शर्तों के प्रतिकूल आचरण के

संबंध में प्रदर्शित होने वाली समस्त साक्ष्य आपराधिक विचारण में संयुक्त होकर सम्मिलित है। इस प्रकरण में आपराधिक विचारण के समानांतर किसी विभागीय जांच का वैधानिक आधार एवं व्यवहारिक औचित्य नहीं है एवं पीडित महिला को विभागीय जांच में साक्ष्य प्रस्तुति हेतु तलब करने से प्रार्थिया के सम्मान एवं प्रतिष्ठा पर प्रतिकूल प्रभाव पडने की पूरी संभावना है। अतः इस प्रकरण में आपराधिक विवेचना से प्राप्त साक्ष्य व प्राथमिक जांच से निलंबित अपचारी आर. 1029 अमित चौरसिया द्वारा प्रदर्शित कदाचरण पूर्णतः स्पष्ट हुआ है। अपचारी निलं.आर.1029 अमित चौरसिया के, बलात्कार जैसे शर्मनाक अपराध में संलिप्त होकर जेल निरूद्ध रहने से, उसकी पुलिस अधिकारी के रूप में पहचान, पद की गरिमा व विभागीय प्रतिष्ठा को कलंकित करेगी। इसके अतिरिक्त सेवा में रहने तक पुलिस अधिकारी के रूप में उसके द्वारा प्रार्थिया को भविष्य में उसके पक्ष में साक्ष्य देने हेतु दबाव बनाने अथवा मनोवैज्ञानिक रूप से प्रार्थिया को विचारण में स्वतंत्र व भयमुक्त होकर कथन देने में भी बाधा बनेगा। पुलिस अधिकारी के रूप में निलंबित आरक्षक द्वारा नियमित रूप से उपरोक्त घृणित अपराध की न्यायालयीन पेशी में जाने से सार्वजनिक रूप से पदीय तथा विभागीय प्रतिष्ठा व मर्यादा पर प्रतिकूल प्रभाव पडने की पूरी संभावना है। बलात्कार जैसे गंभीर अपराध में अभियोजित होने की शोहरत के साथ अपचारी की भविष्य में सार्वजनिक स्थलों में पुलिस सेवा हेतु उपस्थिति से, आम महिला वर्ग के मन में असुरक्षा का भाव तथा पुलिस बल हेतु प्रतिकूल धारणा का अवसर उत्पन्न होगा।

अतः निलंबित आरक्षक 1029 अमित चौरसिया के पद के नियुक्तिकर्ता अधिकारी के रूप में पुलिस अधीक्षक को प्राप्त, भारतीय संविधान के अनुच्छेद 311 (2) के **परन्तुक** उल्लेखित पैरा (ख) में प्राप्त शक्ति एवं वर्णित प्रक्रिया के पालन में, **इस आदेश जारी होने के दिनांक से, आरक्षक 1029 अमित चौरसिया को, "पुलिस सेवा से बर्खास्त" (Dismiss From Service)** 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 petitioner 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 without that.

9. Although, Article 311(2)(b) of the Constitution of the India provides the requirement of principle 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 principle 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 reason has been assigned by respondent No.2 that challan has been filed and criminal case is being tried by the competent Court, therefore, there is no justification for conducting the regular departmental enquiry and calling the prosecutrix for recording her statement in the said enquiry because that would tarnish her image, dignity and respect in the department.

10. In my considered opinion, the reason assigned by the Authority for not conducting a regular departmental enquiry is not only unreasonable but also unjustified for the reason that the prosecutrix in the criminal case will be a material witness and would appear before the Court for getting her statement recorded then there should be no hitch while appearing in the

departmental proceeding that too before the officers of the Police Department as the prosecutrix is also a police constable and when she made a complaint to the police about the alleged crime, then she must not have any hesitation to get recorded her statement as a witness in the departmental enquiry and she cannot be allowed to have her cake and eat it too.

11. The Supreme Court in several occasions has considered the scope of application of Article 311(2)(b) of the Constitution of India and 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 the case reported in **(1985) 4 SCC 252 [Satyavir Singh v. 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."

Further, in the case reported in **(1987) Supp SCC 164 [S.J. Meshram v. 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."

Thereafter, 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."

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

> "**Art.311(2)(b)-Departmental enqiry-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 v. 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."

12. The Supreme Court in the cases reported in **(1993) 4 SCC 269 [Union of India and others v. R. Reddappa and others], (1991) 1 SCC 362 [Jaswant Singh v. State of Punjab and others]** and **(2003) 9 SCC 75 [Sahadeo Singh and others v. 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.

13. This Court has no hesitation to say that it is not a case in which the Disciplinary Authority can inflict the punishment of dismissal that too without conducting a regular departmental enquiry. The reason 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 is not found satisfactory for the reason that if at all that lady police constable can lodge the FIR and in relation to that would appear before the Court for getting her statement recorded, then that would not cause any harm to her dignity and respect but if she could have appeared before the Enquiry Officer for recording her statement, then that could damage her dignity and respect, cannot be considered to be a proper reason for not conducting the regular departmental enquiry and as such, the impugned order of dismissal dated 02.02.2021 (Annexure-P/2) is not sustainable in the eyes of law and is hereby 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 petitioner.

14. With the aforesaid, the petition filed by the petitioner stands **allowed**.

(SANJAY DWIVEDI)
J U D G E

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