Reserved On : 09/03/2026
Pronounced On : 20/03/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7162 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT Sd/-

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Approved for Reporting	Yes	No
	✓	

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PIYUSHBHAI BHAGVATBHAI GAMIT
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR P P MAJMUDAR(5284) for the Petitioner(s) No. 1
MR. SIDDHARTH RAMI, AGP for the Respondent(s) No. 1,2,3,4

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

[1] **Rule** returnable forthwith. Learned AGP Mr. Siddharth Rami waives service of notice of Rule for and on behalf of the respondents.

[2] Heard Mr. P.P.Majmudar, learned advocate for the petitioner as also Mr. Siddharth Rami, learned AGP for the respondents, at length.

[2.1] With the consent of the learned advocates for the respective parties, the present matter is taken up for hearing.

[3] The present writ petition is filed under Articles 14, 16, 21 and 226 of the Constitution of India, seeking the following reliefs:-

> *"(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directions directing the quash and set aside the impugned order dated 19.07.2019 passed by the respondent no.4 (At ANNEXURE-A hereto) as well as order dated 20.11.2019 passed by the respondent no.3 (At ANNEXURE-B hereto) and order dated 26.03.2020 passed by the respondent No.2 (At ANNEXURE-C hereto), and further be pleased to direct the respondent authority to reinstate the present petitioner in the services with all consequential benefits and back-wages and continuity of service along with interst;*
>
> *(B) Pending admission, hearing and final disposal of this petition, YOUR LORDSHIPS may be pleased to stay the order dated 19.07.2019 passed by the respondent no.4 (At ANNEXURE-A hereto) as well as order dated 20.11.2019 passed by the respondent no.3 (At ANNEXURE-B hereto) and order dated 26.03.2020 passed by the respondent no.2 (At ANNEXURE-C hereto);*
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> *(C) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case."*

SHORT FACTS

[4] The petitioner was appointed as a Police Constable on 30.04.2001. The FIR came to be registered against the petitioner on

12.08.2010 being C.R.No.I-4 of 2010 with Tapi ACB Police Station, Tapi for the offence punishable under Sections 7, 12 and 13(1)(b)(2) of the Prevention of Corruption Act, 1988 (for short ***'the Act, 1988'***). The petitioner was suspended by respondent vide order dated 27.09.2010 and upon his request made after three years of suspension, he was reinstated vide order dated 07.02.2013.

[4.1] Upon conclusion of the Trial, vide judgment and order dated 30.04.2019, the Addl. (Ad-hoc) Sessions Judge, Tapi at Vyara has convicted the petitioner for the said offences. The petitioner appears to have challenged the said conviction before this Court by way of Criminal Appeal No.1080 of 2019, which was admitted but this Court has not stayed the conviction, as only suspended the sentence awarded to petitioner.

[4.2] Since the petitioner is found convicted, respondent No.4 herein vide its order dated 19.07.2019, dismissed the petitioner from service. The petitioner has unsuccessfully challenged the aforesaid impugned order before respondent Nos.3 & 2 by way of appeal and revision respectively, who have not interfered with the

impugned order passed by respondent No.4. Hence, the present petition.

SUBMISSIONS OF THE PETITIONER

[5] Mr. P.P.Majmudar, learned advocate would submit that the impugned order came to be passed by respondent No.4, is in violation of principles of natural justice, as prior to passing of order of dismissal, no show cause notice came to be served upon the petitioner. It is submitted that irrespective of conviction of petitioner, respondent No.4 could not have dismissed the service of the petitioner without affording an opportunity of hearing.

[5.1] Mr. Majmudar, would further submit that neither the Appellate Court nor the Revisional authority of the respondent – State have taken the aforesaid ground into account whereby, committed serious error in law while rejecting the appeal / revision.

[5.2] Mr. Majmudar, would further submit that as per the settled legal position of law, even though petitioner is found to be convicted in ACB case, then also, it was incumbent upon

respondent No.4 to serve him show cause notice. It is submitted that since the impugned order is passed in violation of principles of natural justice, it requires to be quashed and set aside and consequently, the petitioner requires to be reinstated with back-wages.

[5.3] To buttress his arguments, he has heavily relied upon the following decision: -

> ***Ramsingbhai Saburbhai Patel Vs. State of Gujarat & Anr.*** rendered in ***Special Civil Application No.22629 of 2019, dated 23.03.2022;***

[5.4] Making the above submissions, Mr. Majmudar, learned advocate for the petitioner would request this Court to allow the present petition.

SUBMISSIONS OF THE RESPONDENTS

[6] *Per contra,* Mr. Siddharth Rami, learned AGP has vehemently opposed this petition, *inter alia*, contenting that there is no merit in the submission of Mr. Majmudar, learned advocate for the petitioner as regards to violation of principles of natural justice by the respondent. It is submitted that the petitioner is found to be

convicted by the competent Court in a case of corruption and as per Rule 14 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 (for short ***'the Rules, 1971'***), it is not required to serve a prior show cause notice to the petitioner before effecting the order of dismissal.

[6.1] Mr. Rami, learned AGP would further submit that in a case like present one, when conviction of petitioner is neither stayed by this Court nor set aside, such convicted person cannot be permitted to serve the police department. It is further submitted that as per the settled legal position of law, in a case of corruption, no lenient view can be taken by the employer, more particularly petitioner was serving in a Police Department.

[6.2] Mr. Rami, learned AGP would further submit that it is not *sine qua non* in all cases to observe the principles of natural justice, if it would be an empty formality. It is submitted that as per Rule 14(1)(i) of the Rules, 1971, in a case where the conduct of the petitioner which has led to his conviction on a criminal charge, it would be an empty formality to serve him any show cause notice prior to his dismissal order. It is further submitted that in a case of

convicted employee, there is no second view to be considered by the employer – State but to dismiss his service.

[6.3] Mr. Rami, learned AGP would submit that the decision relied upon by Mr. Majmudar, learned advocate for the petitioner would not be applicable to the facts of the present case, as there is no expressed provision under Rule 14(1)(i) of the Rules, 1971, to give an opportunity of hearing to Government Servant – petitioner.

[6.4] To buttress his arguments, he has relied upon the following decisions: -

i. ***Aligarh Muslim University And Ors vs Mansoor Ali Khan reported in 2000 (7) SCC 529;***

ii. ***K.C. Sareen Vs. CBI, Chandigarh reported in (2001) 6 SCC 584.***

[6.5] Making the above submissions, Mr. Rami, learned AGP would request this Court to dismiss the present writ petition.

POINT FOR DETERMINATION

[7] Upon hearing the learned advocates for the respective parties and after perusal of the pleadings and documents on

record, following legal issue germane for my consideration: -

> ***"Whether, in law, Respondent No. 4 was required to issue a show-cause notice before passing the impugned order of dismissal following the petitioner's conviction under the Act, 1988 in the ACB Case?"***

ANALYSIS

[8] The facts observed hereinabove are not in dispute. The services of the petitioner came to be terminated by respondent No.4 vide its impugned dismissal order dated 19.07.2019, having found the petitioner convicted in ACB case. The impugned order of dismissal came to be passed in view of the second proviso to Article 311 (2) of the Constitution read with exercising its powers under Rule 3 of the Bombay Police (Punishment & Appeal) Rules, 1956 (hereinafter referred to as '***the Rules, 1956'***). The petitioner challenged the impugned order of dismissal before the Appellate and Revisional Authorities, who dismissed the appeal and the revision filed by the petitioner vide orders dated 20.11.2019 and 26.03.2020, respectively. All these orders are under challenge in this petition.

[8.1] The sole and principal submission made on behalf of the petitioner that prior to passing of impugned order of dismissal by respondent No.4, no show cause notice served upon him. According to petitioner, it is sine qua non to issue show cause notice before passing order of dismissal. Since the impugned order was passed without issuing a show cause notice, thereby, claimed that dismissal of the petitioner is in violation of principles of natural justice and heavy reliance is placed upon the decision of a coordinate Bench of this Court in the case of ***Ramsingbhai Saburbhai Patel (supra).***

[8.2] Whereas, respondent – State has opposed this petition mainly on the ground that once the petitioner is found to be convicted under the provisions of the Act, 1988, then pursuant to the second proviso to Article 311 (2) (a) of the Constitution, no prior show cause notice was required to be served upon the petitioner. Thus, there is no violation of principles of natural justice, as alleged.

[9] Before adverting to the issue germane in the matter, first I

would like to refer to the relevant provisions of law which have a direct bearing to resolve the controversy.

: <u>ARTICLE 311 IN CONSTITUTION OF INDIA</u> :

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 Slate shall be dismissed or removed by a 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 hi m 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.

(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.

: ***THE GUJARAT CIVIL SERVICES (DISCIPLINE AND APPEAL) RULES, 1971*** :

1. Short title, Commencement and Application :-

(a) These rules may be called the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

(b) They shall come into force with effect from 15th August, 1971.

(c) They shall apply to all persons appointed to civil services and posts in connection with the affairs of the State of Gujarat whose conditions of service are regulated in accordance with the rules made under article 309 of the Constitution.

Provided that nothing in these rules shall apply to any Government servants who are members of the All India Services or who are Inspectors of Police or Members of the Subordinate ranks of the Police Force.

14. Special procedure in certain cases :

(1) Nothing contained in rules 8 or 9 shall apply-

(i) ***where a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charg****e,*

or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules, or

(iii) where the Government is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure.

(2) In cases to which the provision of sub-rule (1) shall apply, the Disciplinary Authority may consider the circumstances of the case concerned and pass such order thereon as it deems fit :

Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary.

: ***THE BOMBAY POLICE ACT, 1951*** :

*"**26. Procedure to be observed in awarding punishment**.*

When any officer passes an order for fining, suspending, reducing, removing or dismissing a Police officer, be shall record such order or cause the same to be recorded, together with the reasons therefore and a note of the inquiry made, in writing, under his signature.

***Provided 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 except in cases referred to in the proviso (a) to CI. (2) of Art. 311 of the Constitution.**"*

: *THE CENTRAL CIVIL SERVICES (CLASSIFICATION, CONTROL & APPEAL) RULES, 1965* :

*"**Rule - 19. Special procedure in certain cases***

Notwithstanding anything contained in rule 14 to rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii)where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority

may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided that the Commission shall be consulted, where such consultation is necessary, and the Government servant has been given an opportunity of representing against the advice of the Commission, within the time limit specified in clause (b) of sub-rule (3) of rule 15, before any orders are made In any case under this rule."

[10] At the outset, it requires to be observed that the petitioner was serving in State Police Force, then as per proviso to Section 1 of the Rules, 1971, the Rules 1971 are not applicable to the present case. Nonetheless, the case of the petitioner may not be improved for the said reason, as his services condition being Police Personnel were governed by the provisions of the Bombay Police Act, 1951 (for short '***the Act, 1951').*** As per proviso to Section 26 of the Act, 1951, in a case referred to in the second proviso to Article 311 (2) (a) of the Constitution, there is no requirement to issue a show cause notice to the Police Personnel before imposing punishment.

Whereas, first proviso to Rule 19 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for short '***the Rules, 1965'),*** the reasonable opportunity in a case like the present one, requires to be given to the Central Government Servant.

[11] The emphasis of Mr. Majmudar, learned advocate for the petitioner that, in view of the decision of the coordinate Bench of this Court in the case of ***Ramsingbhai Saburbhai Patel (supra)***, the respondent must issue a show cause notice prior to passing an order of dismissal.

[11.1] I have minutely gone through the aforesaid decision pressed into service by Mr. Majmudar, learned advocate. Upon its perusal, it appears that a coordinate Bench in that case, relied upon the decision rendered in SCA No.9743 of 2020. I have also gone through the aforementioned decision, wherein I found that it has relied upon the judgment dated 31.07.2018 passed by a coordinate Bench in the case of ***Budhsinh Jaisinh Patel Vs. State of Gujarat*** rendered in SCA No.9967 of 2018. Upon perusal of the aforementioned judgment, it can be seen that facts are so similar to the case on hand and in the aforesaid judgment, a coordinate

Bench has held that it is a condition precedent that authority must issue notice before the passing an order of dismissal, so as to observe the principles of natural justice, which according to the Court, is pre-requisite in law.

[11.2] In the case of ***Budhsinh Jaisinh Patel (supra),*** following has been observed and accordingly, held thus: -

> *"5. The proposition of law in **Ahmadkhan Inayatkhan (supra)** relied on behalf of the petitioner and what is held in H.N. Rao (supra) stand in opposite.*
>
> *5.1 However, the law has developed and travelled farther, which is to be learnt and gathered from decision of the Apex Court in **Union of India v. Sunil Kumar Sarkar [(2001) 3 SCC 414]**. It would be worthwhile to advert to analyse.*
>
> *5.2 In **Kiritkumar D. Vyas v. State of Gujarat [1982 (2) GLR 79]** this Court held, "mere conviction, therefore cannot be utilised for passing an order of dismissal blindfoldedly without hearing the delinquent on the question of sentence. Needless to add that this would be so even in case where the disciplinary authority exercises powers under Rule 14 of the Gujarat Civil Services (Discipline and Appeal) Rules.". **Kiritkumar D. Vyas (supra)** was a Division Bench judgment. Relying on the same in a similar set of facts, learned Single Judge of this Court in **Shankabhai Naginbhai Patel** being **Special Civil Application No.2349 of 1998** set aside the order removing the petitioner of that petition keeping it open for the respondent to pass fresh order after giving opportunity.*
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> *5.2.1 The Division Bench in **Ahmadkhan Inayatkhan (supra)** relied on the decision in **Kiritkumar D. Vyas (supra)** as well as another decision also of this Court in **Laxman Waghgimal v. K.N. Sharma, D.S.P., Kutch [1985 GLH (UJ-28) 20]**. On the basis of the said decisions, in Ahmadkhan Inayatkhan (supra) it was ruled in paragraph 3 that, "In this decision, this Court held that even though this rule does not contemplate giving of the notice, it must be read into this rule that*

notice should be given to satisfy the principles of natural justice.".

*5.2.2 Since in **H.N. Rao (supra)**, a view was taken that show-cause notice was not necessary, in paragraphs 6 adn 7 of the judgment, the Court referred to the decisions taking contrary view including **Shankabhai Naginbhai Ptael (supra)** and **Kiritkumar D. Vyas (supra)** to hold that they did not take the correct view.*

*5.3 Now proceeding to look at The Supreme Court decision in **Sunil Kumar Sarkar (supra)**, it dealt with the case of a delinquent undergoing sentence of imprisonment. The respondent was found guilty and sentenced under the General Court Martial to rigorous imprisonment for six years under the Army Act. The High Court found fault with the order of dismissal passed by the disciplinary authority on the ground that the same was solely based on conviction suffered by the respondent in the Court Martial proceedings. It was held by the High Court that the disciplinary authority had a predetermined mind when it passed the order of dismissal.*

*5.3.1 **In the context of the aforesaid facts the Supreme Court held**,*

> *"This is a summary procedure provided to take disciplinary action against a government servant who is already convicted in a criminal proceeding. The very foundation of imposing punishment under Rule 19 is that there should be a prior conviction on a criminal charge. Therefore, the question of having a predetermined mind does not arise in such cases. **All that a disciplinary authority is expected to do under Rule 19 is to be satisfied that the officer concerned has been convicted of a criminal charge and has been given a show-cause notice and reply to such show-cause notice, if any, should be properly considered before making any order under this Rule**. Of course, it will have to bear in mind the gravity of the conviction suffered by the government servant in the criminal proceedings before passing any order under Rule 19 to maintain the proportionality of punishment. In the instant case, the disciplinary authority has followed the procedure laid down in Rule 19, hence, it cannot be said that the disciplinary authority had any predetermined mind when it passed the order of dismissal." (Para 8)*

5.4 It is thus considered an essential requirement that before disciplinary authority passed the order of dismissal against the

> *respondent who was convicted of criminal charge to give show-cause notice and to consider the reply given to the show- cause notice. The Supreme Court held that at that stage the question of having predetermined mind did not arise in such cases. In other words, the Court considered the procedure of giving notice and consider defence of the convict at that stage to be the meaningful exercise. Dispensation of notice before taking action of dismissal against the convicted person which is based on the theory of empty formality was found not tenable in law.*
>
> *5.5 The authority could not have judged at the stage of taking the action of dismissal that the person to be dismissed was not prejudiced since there was already a conviction recorded against him. The stage to apply the test of prejudice would arrive at a subsequent point of time. The requirement of giving notice and appreciating the reply of the person concerned was not viewed as an empty formality but a condition precedent before passing the order of dismissal under the Rule. The observance of natural justice to this extent was treated as pre-requisite in law.*
>
> *6. In view of the aforesaid decision in **Sunil Kumar Sarkar (supra)** and the ratio thereof, the decisions of this Court in **H.N. Rao (supra)** and those judgments taking the view that prior notice is not necessary, no more stand to be the good law. The ratio in **Sunil Kumar Sarka (supra)** would prevail and the proposition of law laid down by this Court in **Kiritkumar D. Vyas (supra), Shankabhai Naginbhai Patel (supra)** as well as in **Ahmadkhan Inayatkhan (supra)** stand revived to be the law holding the field to be applied."*
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> *(Emphasis supplied)*

[12] Once a coordinate Bench has taken the aforesaid view, ordinarily it is binding on me; in the event of a disagreement, I would be required to refer the matter to a Division Bench. As such, the view taken by a coordinate Bench is contrary to the binding precedent of the Constitution Bench decision of the Hon'ble Apex Court in the case of ***Union of India & Anr. Vs. Tulsiram Patel***

reported in ***AIR 1985 SC 1416.*** It is trite law that any decision of a High Court which runs contrary to a Constitution Bench decision of the Hon'ble Apex Court, such decision can never be treated as binding precedent. ***[See - Collector of Central Excise Vs. Orient Fabrics Pvt. Ltd. Reported in (2004) 1 SCC 597]***. In such eventuality, I find it necessary to depart from that view without referring this matter to Division Bench, albeit for following reasons.

[12.1] It can be seen from the aforesaid reading of decision of a coordinate bench in a case of ***Budhsinh Jaisinh Patel (supra),*** that while taking the aforesaid view, the reliance was placed upon decision of the Hon'ble Apex Court in the case of ***Union of India v. Sunil Kumar Sarkar reported*** in ***(2001) 3 SCC 414.*** The facts of that case before the Hon'ble Apex Court are not so similar like the present case or a case before a coordinate bench, inasmuch as the Rule 19 of the Rules, 1965 is not applicable to the present case. The said rule is applicable in the case of Central Government Servant. It was considered by the Hon'ble Apex Court, and in light of such rule, it has been observed that under Rule 19 of the Rules, 1965, a

disciplinary authority is required to be satisfied that the officer concerned has been convicted of a criminal charge, and before passing any order under the said Rule, a show-cause notice to be served upon the officer concerned. As observed and reproduced said Rule 19 of the Rules, 1965, hereinabove, the rule itself provides an opportunity of hearing to be given to officer concerned on eventuality of his conviction due to his conduct. Whereas, no similar provision like Rule 19 of the Rules, 1965, is available, either in the Act, 1951 or under Rules, 1956, and /or in the Rules, 1971, as the case may be. In such circumstances, and as the impugned order in the present case was passed considering the second proviso to Article 311 (2) (a) of the Constitution, it was not incumbent upon respondent No.4 (the Disciplinary Authority) to examine whether before passing the impugned order, a show-cause notice was required to be issued to petitioner for observing the principles of natural justice or not.

[12.2] As such, the aforesaid issue germane to the matter is no longer *res integra,* in the case of ***Tulsiram Patel (supra)***, the Constitution Bench of the Hon'ble Apex Court has observed and

held thus:

> *"61. The language of the second proviso is plan and unambiguous. The key-words in the second proviso are "this clause shall not apply". By "this clause" is meant clause(2). As clause(2) requires an inquiry to be held against a government servant, the only meaning attributable to these words is that this inquiry shall not be held. There is no scope for any ambiguity in these words and there is no reason to given them any meaning different from the plain and ordinary meaning which they bear. The resultant effect of these words is that when a situation envisaged in any of the three clauses of the proviso arises and that clause becomes applicable, the safeguard provided to a government servant by clause (2) is taken away. As pointed out earlier, this provision is as much in public interest and for public good and a matter of public policy as the pleasure doctrine and the safeguards with respect to security of tenure contained in clauses (1) and (2) of Article 311.*
>
> *62. Before, however, any clause of the second proviso can come into play the condition laid down in it must be satisfied. The condition for the application of each of these clauses is different. In the case of clause (a) a government servant must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led to him being convicted on a criminal charge. In the case of clause (b) the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. In the case of clause (c) the President or the Governor of a State, as the case may be, must be satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry. When these conditions can be said to be fulfilled will be discussed later while dealing separately with each of the three clauses. The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311 (2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is*

satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry. The extent to which a government servant can be denied his right to an inquiry formed the subject-matter of considerable debate at the Bar and we, therefore, ***now turn to the question whether under the second proviso to Article 311(2) even though the inquiry is dispensed with, some opportunity at least should not be afforded to the government servant to that he is not left wholly without protection****. As most of the arguments on this Part of the case were common to all the three clauses of the second proviso, it will be convenient at this stage to deal at one place with all the arguments on this part of the case, leaving aside to be separately dealt with the other arguments pertaining only to a particular clause of the second proviso.*

70. ***The position which emerges from the above discussion is that the key-words of the second proviso govern each and every clause of that proviso and leave no scope for any kind of opportunity to be given to a government servant****.* ***The phrase "this clause shall not apply" is mandatory and not directory****. It is in the nature of a Constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Article 311(2) or from giving any kind of opportunity to the concerned government servant.* ***There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity by a process of inference or implication****. The maxim "expressum facit cessare tacitum" ("when there is express mention of certain things, then anything not mentioned is excluded") applies to the case. As pointed out by this Court in B. Shankara Rao Badam & Ors. v. State of Mysore & Anr., [1969] 3 S.C.R. 1, 12, this well-known maxim is a principle of logic and common sense and not merely a technical rule of construction. The second proviso expressly mentions that clause (2) shall not apply where one of the clauses of that proviso becomes applicable. This express mention excludes everything that clause (2) contains and there can be no scope for once again introducing the opportunities provided by clause (2) or any one of them into the second proviso. In Atkinson v. United States of America Government, L.R. [1971] A.C. 197, Lord Reid said (at page 232) :*

"It is now well recognised that the court has power to expand procedure laid down by statute if that is necessary to prevent infringement of

natural justice and is not plainly contrary to the intention of Parliament."

Here, however, the attempt is not merely to do something contrary to the intention of "Parliament", that is, in our case, the Constituent Assembly, but to do something contrary to an express prohibition contained in the Constitution. ***The conclusion which flows from the express language of the second proviso is inevitable and there is no escape from it. It may appear harsh but, as mentioned earlier, the second proviso has been inserted in the Constitution as a matter of public policy and in public interest and for public good just as the pleasure doctrine and the safeguards for a government servant provided in clause (1) and (2) of Article 311 have been****. It is in public interest and for public good that government servant who has been convicted of a grave and serious offence or one rendering him unfit to continue in office should be summarily dismissed or removed from service instead of being allowed to continue in it at public expense and to public detriment. It is equally in public interest and for public good that where his offence is such that he should not be permitted to continue to hold the same rank, that he should be reduced in rank. Equally, where a public servant by himself or in concert with others has brought about a situation in which it is not reasonably practicable to hold an inquiry and his conduct is such as to justify his dismissal, removal or reduction in rank, both public interest and public good demand that such penalty should forthwith and summarily be imposed upon him; and similarly, where in the interest of the security of the State it is not expedient to hold an inquiry, it is in the public interest and for public good that where one of the three punishments of dismissal, removal or reduction in rank is called for, it should be summarily imposed upon the concerned government servant. It was argued that in a case falling under clause (b) or (c), a government servant ought to be place under suspension until the situation improves or the danger to the security of the State has passed, as the case may be, and it becomes possible to hold an inquiry. This argument overlooks the fact that suspension involves the payment at least of subsistence allowance and such allowance is paid at public expense, and that neither public interest would be benefited nor public good served by placing such government servant under suspension because it may take a considerable time for the situation to improve or the danger to be over.* ***Much as this may seem harsh and oppressive to a government servant, this Court must***

not forget that the object underlying the second proviso is public policy, public interest and public good and the Court must, therefore, repel the temptation to be carried away by feelings of commiseration and sympathy for those government servants who have been dismissed, removed or reduced in rank by applying the second proviso. *Sympathy and commiseration cannot be allowed to out weigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a Constitutional prohibition. The Court must bear in mind that the second proviso has been in the Constitution since it was originally enacted. It was not blindly or slavishly copied from section 240(3) of the Government of India Act, 1935. Article 311 was article 282-B of the draft Constitution of India and the draft Article 282-B was discussed and a considerable debate took place on it in the Constituent Assembly (see the Official Report of the Constituent Assembly Debates, vol.IX, page 1099 to 1116). The greater part of this debate centred upon the proviso to clause (2) of the draft article 282-B, which is now the second proviso to Article 311. Further, the Court should also bear in mind that clause (c) of the second proviso and clause (3) of Article 311 did not feature in section 240 of the Government of India Act, 1935, but were new provisions consciously introduced by the Constituent Assembly in Article 311. Those who formed the Constituent Assembly were not the advocates of a despotic or dictatorial form of government. They were the persons who enacted into our Constitution the Chapter on Fundamental Rights. The majority of them had fought for freedom and had suffered imprisonment in the cause of liberty and they, therefore, were not likely to introduce into our Constitution any provision from the earlier Government of India Acts which had been intended purely for the benefit of a foreign imperialistic power. After all, it is not as if a government applied to him. There are two remedies open to him, servant is without any remedy when the second proviso has been applied to him. There are two remedies open to him, namely, departmental appeal and judicial review. The scope and extent of these remedies will be considered later in the course of this judgment.*

101. ***Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule***. *The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out*

by this Court in J.Mohapatra & Co. and another v. State of Orissa and another [1985] 1 S.C.R. 322,334-5. So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi's case at page 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiorari so can a provision or the Constitution, for a Constitutional provision has a far greater and all-pervading sanctity than a statutory provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its key-words this clause shall not apply. As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem rule. ***This principle of natural justice having been expressly excluded by a Constitutional provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the Constitutional provision has expressly prohibited****. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to Article 14. This is, however, the only scope which Article 14 can have in relation to the second proviso. but to hold that once the second proviso is properly applied and clause (2) of Article 311 excluded, Article 14 will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution - makers who inserted it in Article 311(2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.*

102. In this connection, it must be remembered that a government

servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that Article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the President or the Governor of a State because they being the highest Constitutional functionaries, there can be no higher authority to which an appeal can lie from an order passed by one of them. ***Thus, where the second proviso applies, though there is no prior opportunity to a government servant to defend himself against the charges made against him he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice****. In Maneka Gandhi's case and in Liberty Oil Mills and others v. Union of India and others [1984] 3 S.C.C. 465 the right to make a representation after an action was taken was held to be a sufficient remedy, and an appeal is a much wider and more effective remedy than a right of making a representation.*

The Second Proviso - Clause (a)

127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan's case. ***This, however, has to be done by it ex parte and by itself.*** *Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him.* ***This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso.*** *The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the*

penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in Shankar Dass v. Union of India and another, [1985] 2 S.C.C. 358, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."

(Emphasis supplied)

[12.3] It is deduced from the aforementioned dictum that in a case where Government Servant has been convicted on a criminal charge, the Disciplinary Authority only requires to consider whether the conduct of delinquent leading to the conviction warrants the imposition of a penalty. For that purpose, it will have to pursue the judgment of the criminal Court concerned and consider the all facts and circumstances of the case. As held, this has to be done by the Disciplinary Authority *ex parte* and by itself.

Once the Disciplinary Authority reaches to the conclusion that government servant's conduct was such as it requires his dismissal etc., same should be decided by him. It is clearly held that the aforesaid has to be done by the Disciplinary Authority without hearing the concerned government servant, due to reason of exclusionary effect of the second proviso to Article 311(2)(a) of the Constitution. Thus, in view of the aforesaid dictum, there cannot be any second view which can be taken at least by this Court, rather it requires to follow and apply the ratio laid down by the Hon'ble Apex Court in the case of ***Tulsiram Patel (supra)*** in appropriate case, such as present one.

[12.4] At this stage, it would also be apposite to refer the decision of this Court in the case of ***H.N.Rao Vs. State of Gujarat & Ors. reported in 2000 (3) G.L.H. 358***, wherein, in para 6 & 7, held as under: -

> *"6. It is not disputed that the petitioner was not afforded an opportunity of hearing before making the impugned order. The question is whether the petitioner was required to be given such an opportunity. This Court [i.e., myself] in the matter of Rambadan R. Shukla & Anr., [Supra], having considered the judgment of the Hon'ble Supreme Court in the matter of Union of India v. Tulsi Ram Patel [AIR (1985) SC 1416] and Rule 10 (4) of the Gujarat Civil Service [Discipline & Appeal] Rules, 1971 [as amended on 16th April, 1986] has taken the view that the*

deliquent has no right to an opportunity of making representation or of hearing on the penalty proposed to be imposed. ***Hence, the order of penalty made without affording an opportunity to the deliquent to show cause against the proposed penalty or of hearing would not be vitiated on that count. The said decision has been confirmed by the Division Bench of this Court [Coram K. Shreedharan, CJ & A.R Dave, J.] on 4th May, 1998 in Letters Patent Appeal No. 5 of 1997.*** *Mr. Supehia has also relied upon the judgment of the learned Single Judge [Coram : Mr. Justice NN Mathur] in the matter of Shankabhai Naginbhai Patel v. State of Gujarat [Special Civil Application No. 2349 of 1998 decided on 23rd July, 1998] [Annexure-G to the petition].*

7. In the said judgment, in a similar set of facts, the learned Judge, relying upon the judgment of this Court in the matter of Kiritkumar D. Vyas v. State & Anr.*, [23 (2) GLR 79] quashed and set-aside the order of removal from service of the deliquent petitioner and directed that, `it will be open for the respondents to pass a fresh order after giving opportunity of hearing to the petitioner.' As discussed by me in the matter of Rambadan [Supra], since the amendment of 16th April, 1986 in Rule 10 (4) of the Gujarat Civil Service [Disicipline & Appeal] Rules, 1971, no hearing is required to be afforded to the deliqent government servant who is punished pursuant to his conviction by a criminal court on a criminal charge. Neither the aforesaid judgment in the matter of Rambadan [Supra] nor the amended rule 10 (4) was brought to the notice of the learned Judge in the matter of Sankabhai [Supra]. The Court had no occasion either to consider the judgment in the matter of Rambadan [Supra] nor the order made in appeal by the Division Bench, nor the amended Rule 10 (4) of the Discipline & Appeal Rules. The said judgment, therefore, is per incuriam and shall not be applicable."*

(Emphasis supplied)

[12.5] The aforesaid decision of a coordinate bench of this Court in the case of ***H.N.Rao (supra)*** has been confirmed by the Division Bench and it was passed following the judgment in the case of ***Tulsiram Patel (supra).*** It has been clearly held in aforementioned decision that the delinquent has no right of

hearing on the penalty proposed to be imposed and so, any such order passed without hearing would not be vitiated on that count. It appears that in the case of ***Budhsinh Jaisinh Patel (supra),*** the above referred provisions of the Act and Rules discussed above either not brought to the notice or in *absentia*, only placing reliance upon decision of the Hon'ble Apex Court in the case of ***Sunil Kumar Sarkar (supra)*** and unnoticing the ratio of Constitution Bench decision in the case of ***Tulsiram Patel (supra),*** held that ratio of decision of this Court in the case of ***H.N.Rao (supra),*** no more stand to be good law. With profound respect, and in view of the aforesaid, I am unable to subscribe to the view taken in case of ***Budhsinh Jaisinh Patel (supra***). In my view, the decision of this Court in the case of ***H.N. Rao (supra)*** continues to hold the field and is, in fact, good law; rather, decision of a coordinate bench in the case of ***Budhsinh Jaisinh Patel (supra),*** and other decisions followed such decision, run contrary to decision of the Constitution Bench in the case of ***Tulsiram Patel (supra),*** are no longer remain good law.

[13] In light of the foregoing discussions and the ratio laid down

by the Hon'ble Apex Court in ***Tulsiram Patel (supra)***, and in absence of any specific statutory provision such as the Rule 19 of the Rules, 1957, granting any opportunity of making representation or otherwise, there is no legal requirement to issue a show cause notice to State Government servant such as petitioner prior to passing an order of punishment, provided the case is governed by second proviso to Article 311 (2) (a) of the Constitution. Nonetheless, before passing such order, in view of the said provisions and as discussed above, the Disciplinary Authority must reach to the conclusion that conduct of government servant – delinquent has led to his conviction on a criminal charge. Thus, the authority concerned, while passing the order of punishment, must observe that satisfaction in the order and it cannot pass a mechanical order merely because government servant is found convicted.

[14] Although in the case on hand, no argument was canvassed by Mr. Majmudar learned advocate for the petitioner, that impugned order was passed in a mechanical manner unnoticing the requirement of law. Nevertheless, I have minutely gone

through the impugned order to verify as to whether respondent No.4 undertook the exercise as directed in ***Tulsiram Patel (supra)***. The petitioner was a police personnel found convicted as per the provisions of the Act, 1988 and upon going through the order impugned in this petition, I am of the view that respondent No.4 - Disciplinary Authority has taken into account the relevant aspect which requires to be verified. It has been clearly recorded in the impugned order that petitioner was tried for ACB case under the Act, 1988 and having found convicted by the Special (ACB) Court and considering such serious conduct of the petitioner for which he is convicted, then observed that it would not be desirable to continue him in service, thus, it has passed impugned order of dismissal. According to my view, no error can be found in the order impugned in any respect.

[15] Before parting with the judgement, it would be apposite to refer to the pertinent observations of the Hon'ble Apex Court in the case of ***K.C. Sareen (supra)*** wherein observed and held thus: -

> *"12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those*

tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. ***When a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person****. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself.* ***Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level****. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.*

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision."

(Emphasis supplied)

CONCLUSION

[16] In view of the foregoing observations and reasons, and having analyzed the applicable statutory provisions in the present case alongside the ratio laid down by the Constitution Bench of the Hon'ble Apex Court in ***Tulsiram Patel (supra),*** I am of the view that there is no legal requirement to issue a show cause notice to the petitioner prior to passing of the impugned order of punishment by respondent No.4.

[16.1] Since the conduct of the petitioner lead to his conviction under the Act, 1988, in the aforesaid ACB case, the impugned order dismissing him from service suffers from no error of law.

[17] In view of the foregoing conclusions, I do not find any merit in the petition, which is liable to be dismissed. Accordingly, it is hereby dismissed. Rule is discharged. No order as to costs.

Sd/-
(MAULIK J.SHELAT,J.)

Lalji Desai

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: LALJI DESAI(HC01558), PRIVATE SECRETARY, at High Court of Gujarat on 20/03/2026 14:51:27