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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2877 OF 2017

Keshav Rambhau Mahajan
Age – 48 years, Occ – Agriculture
R/o Ashtavinayak Nagar, Savada Road,
Raver, Taluka – Raver
District – Jalgaon

PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary,
The Ministry of Home
State of Maharashtra, Mantralaya, Mumbai
2. The Commandant General Home Guards and
Director civil Defence,
Old Secretariat, Annex Building
1st Floor, M. G. Road, Near Elphinstone College,
Fort, Mumbai 400 032
3. The District Commandant Jalgaon
The District Home Guard Office Jalgaon
Visanji Nagar, Jilha Peth, Jalgaon
4. The Officer Commanding in Charge Raver
Taluka Home Guard Office Raver,
Near Old Chavadi Main Road,
Raver, Taluka – Raver, District – Jalgaon

RESPONDENTS

WITH

WRIT PETITION NO.2895 OF 2017

Ekhnath Jagannath Mahajan
Age – 51 years, Occ – Service

PETITIONER

R/o Swami Vivekanand Chauk, Raver,
Taluka – Raver, District – Jalgaon

VERSUS

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|----|---|-------------|
| 1. | The State of Maharashtra
Through Secretary,
The Ministry of Home
State of Maharashtra, Mantralaya, Mumbai | RESPONDENTS |
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Old Secretariat, Annex Building
1 st Floor, M. G. Road, Near Elphinston College,
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The District Home Guard Office Jalgaon
Visanji Nagar, Jilha Peth, Jalgaon | |
| 4. | The Officer Commanding in Charge Raver
Taluka Home Guard Office Raver,
Near Old Chavadi Main Road,
Raver, Taluka – Raver, District – Jalgaon | |

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Mr. Madhav M. Bhokariker, Advocate for the petitioner
Mr. S. S. Dande, AGP for respondent - State

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**[CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.]**

DATE : 24th SEPTEMBER, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Petitioners, who initially worked as Home Guards since 1990 and 1985, respectively, had been working as part time clerk and Taluka Commandant Home Guard. Certain discrepancies in maintaining record had been suspected and inquiry had been initiated and as a fallout of the same, their respective appointments had been put to end under orders dated 22nd December, 2016. Pursuant to section 6-B (3) of the Bombay Home Guards Act, 1947 it appears, appeals had been preferred by the petitioners before Commandant General, however, the same had been turned down under communication dated 22nd March, 2017. According to learned advocate for the petitioners said communication is without calling upon the petitioners' explanation and/or granting hearing and thus is in breach of principles of natural justice.

3. Learned AGP for the respondents purports to refer to certain factual aspects and purports to justify impugned order passed by the appellate authority. However, learned AGP is not in a position to show that before communication had been issued on 22nd March, 2017, the petitioners had been granted any opportunity of being heard and / or to tender their explanation in respect of the appeals filed.

4. Additionally, learned advocate for the petitioners contends that observations appearing under impugned communication dated 22nd March, 2017 about petitioners having accepted guilt are not proper and are not in consonance with the record. Learned advocate also refers to a decision of division bench of this court in the case of “*Prakash Balwantrao Dethe V/s State of Maharashtra and Others*” reported in 2007 LAB 1 C 1003, dealing with the Bombay Home Guards Act, quoting extract from decision of the Apex Court, in “*C. B. Gautam V/s Union of India*” reported in (1993) 1 SCC 78, reading, thus,

“ It must, however, be borne I mind that Courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have been adverse civil consequence for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity. ”

and had observed thus,

“ Following the aforesaid decision of the Apex Court, we read the requirement of giving a reasonable opportunity of being heard before an order is made into sub-section (2A) of Section 2 of the Act. Consequently, we hold that it was necessary to afford an opportunity of hearing to the petitioner before passing the impugned order. ”

5. Such an analogy would apply and would be expedient in present facts and circumstances.

6. Having regard to aforesaid, impugned order dated 22nd March, 2017 passed by respondent No. 2 is set aside, restoring the appeals filed by the petitioners before the appellate authority for decision afresh by following principles of natural justice.

7. Writ petitions accordingly are disposed of. Rule is made absolute in aforesaid terms. Petitioners may approach the appellate authority as early as possible.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE