

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 20 OF 2021  
(Subject – Suspension)**

**DISTRICT : NANDED**

**Ramraje s/o Sidhaling Chandane,** )  
Age : 40 Yrs., Occu. : Service )  
(as Jailor Grade-1, presently under suspension))  
R/o : Quarter No. 1, District Prison Premises,) )  
Nanded. )

.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through Secretary, Home Department, )  
M.S. Mantralaya, Mumbai-32. )
2. **The Addl. Director General & Inspector)**  
**General of Prisons & Correctional Services,)**  
Old Central Building, 2<sup>nd</sup> Floor, M.S. )  
Pune-01. )
3. **The Deputy Inspector General of Prisons,)**  
Central Division, Aurangabad.
4. **The Superintendent of Police,** )  
Central Jail, Harsul, Aurangabad. )

... **RESPONDENTS**

**APPEARANCE** : Ms. Preeti Wankhade, Counsel for Applicant.

: Shri D.R. Patil, Presenting Officer for  
respondent authorities.

**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**DATE** : **03.01.2024.**

**ORAL - ORDER**

1. Heard Ms. Preeti Wankhade, learned counsel appearing for the applicant and Shri D.R. Patil, learned Presenting Officer appearing for respondent authorities.

2. By this Original Application, the applicant is challenging his order of suspension dated 31.12.2020 passed by respondent No. 2 and further seeking direction to the respondents to extend the applicant all consequential benefits including reinstatement on the post of Jailor Grade-1, out of Nanded and anywhere in the State of Maharashtra.

3. Brief facts as stated by the applicant giving rise to the Original Application are as follows:-

(i) The applicant entered the service of Government of Maharashtra as Jailor Grade-II on 15.02.2005 and was promoted as Jailor Grade-I on 20.12.2012 and since then, he is working as Jailor Grade-I. In the General Transfers of the year 2018, he was transferred from Washim to Nanded District Prison on 09.05.2018. He was posted as in-charge Superintendent of Nanded District Prison on 14.06.2018.

(ii) It is further case of the applicant that within few months of his joining at Nanded, one lady Jail Guard

Kavita Kishan Dhotre has made allegations against him for outraging her modesty and crime also came to be registered on 25.09.2018. Though during the course of investigation, B summary report was filed by the Police authorities in the Court on 16.04.2020, the applicant has made representations to the respondent No. 2 for his transfer / deputation out of Nanded anywhere in the State of Maharashtra on 02.12.2018 and 24.01.2019 respectively. However, the respondent No. 2 directed him to wait till the General Transfers of the year 2019.

(iii) It is further case of the applicant that in the month of April-May 2020 during the outbreak of Covid-19 pandemic, the Director General of Prisons, Mumbai had sought more staff in the Quarantine Centers, which were opened for admission of new prisoners. In compliance with the certain directions given by the Director General of Prisons, Mumbai, a quarantine Centre in Barrak Nos. 3 & 4 at Nanded Prison was established and the applicant, who was in-charge Superintendent of District Prison had given the charge of the said Barrak Nos. 3 & 4 to one Mr. B.T. Mali, Jailor and one Mr. Arjun Zarkande, Jail Guard was

appointed as Assist to the Jailor Mr. B.T. Mali on 07.05.2020.

(iv) It is further case of the applicant that his fear had become true when 3 employees of Nanded District Jail in an intoxicated state had abused the applicant and his wife and daughter thereby outraging modesty of his wife and daughter. As a result thereof, crime came to be registered against those employees on 06.12.2020. The applicant was constrained to request again on 23.12.2020 and also made representation to respondent No. 2 to that effect seeking transfer/deputation out of Nanded.

(v) It is thus specific case of the applicant that in the backdrop of these requests, the search was carried out in the Jail premises on 26.12.2020 and one Mobile was seized from Barrak No. 3 from one prisoner and FIR was lodged on 29.12.2020 against the prisoners, in whose possession the mobile was found. The said employee Shri B.T. Mali was in-charge of the Barrak No. 3 and the applicant has no concerned with it. The applicant is discharging duties as Superintendent, Nanded District Prison, however, by impugned order dated 31.12.2020; the respondent No. 2 has suspended the applicant in contemplation of the

Departmental Enquiry in terms of Rule 4(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Copy of the said order is marked as Annexure A-13. The applicant has reasons to believe that the said order of suspension is in relation to the seizure of mobile in the quarantine Centre established in Barrak Nos. 3 & 4 of District Jail Nanded. Hence, the present Original application.

4. It is not out of place to mention here that during pendency of the present Original Application, by order dated 28.04.2021 the suspension of the applicant was revoked by the respondent No. 2 and reinstated him in service as Superintendent of Special District Prison, Ratnagiri. Meanwhile, the preliminary enquiry was directed against the applicant with regard to the alleged incident of recovery of 02 mobile handsets from Barrak No. 3 along with one charger and enquiry report officer has submitted enquiry report on 26.01.2021. Consequently, the respondent No. 2 has given show cause notice to the applicant on 16.04.2021 calling upon him to submit his explanation with regard to the findings recorded in the said preliminary enquiry and further about proposed of minor punishment. After considering the entire aspect, the respondent

No. 2 by order dated 28.04.2021 inflicted punishment on the applicant of stoppage of increment for one year without affecting the next year increment and further directed his suspension period be treated as suspension period. The applicant has, however, not challenged the said order dated 28.04.2021 in the present Original Application by carrying out amendment. In view of the same, the present O.A. remained only for consideration of the legality and validity of the suspension order dated 31.12.2020 passed against the applicant.

5. Respondent Nos. 1 to 3 have filed their affidavit in reply jointly. Learned Presenting Officer based upon the said affidavit in reply submits that the applicant was given charge of Superintendent of Nanded District Prison and during his charge, as per letter dated 26.12.2020 received from the office of the Deputy Inspector General of Prisons, Central Region, Aurangabad, a quick search was taken at Nanded District Prison and the report of search was submitted to the office of the Additional Director General of Police and Inspector General of Prisons and Correctional Service, State of Maharashtra, Pune by letter dated 28.12.2020. Learned P.O. submits that during the said search two mobiles along with one charger was found and the same was seized in presence of the applicant and other staff

members. Learned P.O. submits that in terms of the said report, it prima-facie appears that the applicant was negligent and due to his negligent approach, the prison's security was found in danger.

6. Learned Presenting Officer submits that in view of the search report dated 28.12.2020 and considering the gravity of the incident and negligence on part of the applicant being an in-charge Superintendent, Nanded District Prison, the respondent No. 2 has immediately suspended the applicant from service. Further preliminary enquiry in this regard was also ordered by letter dated 31.12.2020 by the respondent No. 2 and accordingly the preliminary enquiry was completed by Shri A.R. Gosavi, Deputy Superintendent, Jalna District Prison, Class-I.

7. Learned Presenting Officer submits that Preliminary Enquiry Officer and Deputy Superintendent, Jalna District Prison, Class-I have submitted their enquiry report on 26.01.2021 to the office of the Deputy Inspector General of Prisons, Central Region, Aurangabad and the same was submitted to the office of the Additional Director General of Police and Inspector General of Prisons and Correctional Service, State of Maharashtra, Pune vide letter dated 24.03.2021. In

consequence of the same, show cause notice dated 16.04.2021 came to be issued to the applicant from the office of respondent No. 2. By request application dated 19.04.2021 submitted in the office of respondent No. 2, the applicant had requested to provide him requisite documents concerned with the incident and he was accordingly provided documents on 26.04.2021. The applicant has thus submitted his explanation on 26.04.2021 to the show cause notice served on him. Learned P.O. submits that thereafter the applicant was reinstated in service and posted at Ratnagiri Special Prison by order dated 28.04.2021 by respondent No. 2.

8. Learned Presenting Officer submits that by order dated 28.04.2021 with O.W. No. 340/2021, the applicant was punished with stoppage of increment for one year without affecting the next increment and his suspension period has to be considered as a suspension period. Copy of the order dated 28.04.2021 O.W. No. 340/2021 is marked as ExhibitR-7. Learned P.O. submits that the O.A. filed by the applicant has become infructuous and the same is required to be disposed of.

9. Learned counsel for the applicant on the basis of rejoinder affidavit of the applicant submits that no disciplinary proceedings were conducted against the applicant and only



preliminary enquiry was held and the punishment was inflicted on the basis of preliminary enquiry report. Learned counsel submits that while imposing minor punishment of stoppage of one increment without further effect by the order dated 28.04.2021, the respondent No. 2 has passed an order treating the applicant's suspension period as suspension period only. The said order is contrary to the provisions of Rule 72 (1)(3) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, there ought to have been a specific order pursuant to sub-rule (1) of Rule 72 in this regard. In consequence of which, it is not open for the applicant to make a separate representation for the same. Learned counsel submits that in the minor penalty imposed upon the applicant, the respondent No. 2 ought to have treated the suspension period as duty period in view of the judgment of the Hon'ble Apex Court in the case of ***Union of India Vs. Ashok Kumar Aggarwal, report in 2014(1) SC 115.***

10. Learned Presenting Officer submits that by order dated 28.04.2021, the applicant was punished with stoppage of increment for one year without affecting the next increment and his suspension period has to be considered as a suspension period. The applicant was reinstated from his service by order

dated 28.04.2021 by respondent No. 2 and posted as Superintendent at Ratnagiri Special District Prison. Learned P.O. submits that the respondent No. 2 has passed the order in terms of Rule 72 (7) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.

11. It is already mentioned in foregoing paragraphs that during pendency of the present Original Application, by order dated 28.04.2021 minor punishment was inflicted on the applicant with stoppage of increment for one year without affecting the next increment and his suspension period has to be considered as a suspension period by giving him show cause notice and after giving an opportunity of being heard. By separate order dated 28.04.2021, the applicant was reinstated in service and posted at Ratnagiri Special Prison by respondent No. 2. The applicant has not challenged the said order dated 28.04.2021 and by filing the present Original Application, challenging only suspension order dated 31.12.2020.

12. Learned counsel for the applicant has placed reliance in a case of **Union of India and Anr. Vs. Ashok Kumar Aggarwal**,

wherein in para Nos. 9 & 10, the Hon'ble Apex Court has made the following observations :-

*“9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the F delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.*

*10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public Interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.”*

13. In view of above observations, it is clear that the power of suspension should not be exercised by the authority in an arbitrary manner and without any reasonable ground or as vindictive misuse of power and suspension should be made only in a case where there is a strong prima-facie case against the delinquent employee and the allegations involving moral

turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima-facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service.

14. In the instant case, as per the search report submitted to respondent No. 2 by respondent No. 4 on 26.12.2020 at about 12.46 p.m. one call was received on the land line phone of office of respondent No. 4, which was attended by one employee Shri Shankar Tilakchand Choudhari, who happened to be a Prison Constable / Guard. One person disclosed his name Sarvansingh Sandhu and further said that he is calling from Barrak No. 3 of Nanded District Prison. He has further disclosed that the said mobile was provided to him by the applicant by obtaining Rs. 20,000/- and though it was seized during search on 25.12.2020, it was returned to him after obtaining money from him. In view of the aforesaid call making allegations against the applicant, the matter was immediately reported to the superiors and accordingly under the orders of the superiors, search was carried out in the Barrak No. 3. During the search of Barrak No. 3, one mobile along with charger was found and when the search team searching Barrak No. 2 one prisoner viz. Paramjitsingh Sarvansingh has disclosed that he would help

them. He accordingly took search team to Barrak No. 3 and produced one mobile of Samsung company without battery with Aritel sim card hidden beneath the toilet sanitary net. Accordingly, both the mobiles were seized by the search committee and matter was reported to the superiors. On the basis of the said report, the respondent No. 2 has directed preliminary enquiry into the matter and vide order dated 30/31.12.2020, suspended the applicant.

15. It appears from the said report (Exhibit R-1) as referred above, the allegations as are made against the applicant are serious in nature and further recovery of two mobiles from Barrak No. 3 substantiated those allegations. The applicant when working as In-charge Superintendent of District Prison Nanded and in that capacity, it was his duty to maintain law and order and discipline in the Jail premises. It cannot be ignored that at the relevant time there was outbreak of Covid-19 pandemic and if the mobile is being operated from the Jail, it would have certainly caused danger to the law and order situation in the area, so also in the Prison. The applicant prima-facie appears to be negligent in maintaining the discipline in the Nanded District Prison/Jail. In the backdrop of the allegations particularly about when the phone call received from the jail inmate would have

also resulted into the reduction in rank or removal or dismissal from service. However, the respondent No. 2 considering the position held by the applicant has rightly directed the preliminary enquiry on 26.12.2020 and subsequently, suspended the applicant on 30/31.12.2020. In view of the same, in my considered opinion, there is no fault at all in passing the impugned order of suspension.

16. Even though, the applicant has not challenged the said order dated 28.04.2021 of minor punishment of stoppage of one increment without further effect treating the applicant's suspension period as suspension period only. Still then, I deem it appropriate to discuss the legal position in this regard.

17. Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, speaks about re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty. Rule 72 of the said Rule is reproduced herein below :-

***“72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc. and treatment of***

**period as spent on duty-** 1. When a Government servant who has been suspended is reinstated or would have so reinstated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make a specific order:-

- a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and
- b) whether or not the said period shall be treated as a period spent on duty

2. Notwithstanding anything contained in rule 68, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not suspended, subject to adjustment in respect of subsistence allowance already paid.

3. Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid of such delay only such amount (not being the whole ) of such pay and allowances as it may determine.

4. In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

5. In cases other than those falling under sub-rules(2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been

*entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any submitted by him in that connection within such period which in no case shall exceed, as may be specified in the notice.*

6. *Where suspension is revoked pending finalisation of the of the disciplinary or court proceedings, any order passed under sun-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case be.*

7. *In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose.*

*Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.*

*Note.- The order of the competent authority under preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-*

- (a) extraordinary leave in excess of three months in the case of temporary Government servant: and*
- (b) leave of any kind in excess of five years in the case of permanent Government servant.*

8. *The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.*

9. *The amount determined under the proviso to sub-rule (3) or under sun-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 68.”*

In terms of sub-rule (3) of Rule 72 of the said rules, where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid



the full pay and allowances to which he would have been entitled, had he not been suspended and in terms of sub-rule (4) of said Rule, in a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

18. In the instant case, in the given set of facts and allegations as against the applicant and the conclusion drawn in the preliminary enquiry, I do not think that the suspension of the applicant was wholly unjustified. In view of the same, the respondent No. 2 has rightly passed the order in terms of sub-rule (7) of Rule 72 of the Rules, 1981. It appears that the respondent No. 2 has not given weightage to the allegations made by the said Jail inmate against the applicant. However considering the overall negligence of the applicant in maintaining the discipline in the Nanded District Prison, inflicted minor punishment of stoppage of one increment without further effect. However in view of sub-rule (7) of Rule 72 of the Rules, 1981 and considering the gravity of situation and consequence thereof during the period of outbreak of Covid-19 pandemic, the respondent No. 2 has not treated the suspension period of the applicant as period spent on duty.

19. In view of above discussion, I do not find fault on part of respondent No. 2 to pass the impugned order of suspension. There is no substance in the present Original Application and the same is liable to be dismissed. Hence, the following order :-

**ORDER**

- (a) The Original Application No. 20/2021 stands dismissed.
- (b) In the circumstances, there shall be no order as to costs.
- (c) Original Application is accordingly disposed of.

**PLACE : Aurangabad.**  
**DATE : 03.01.2023**

**(Justice V.K. Jadhav)**  
**Member (J)**