

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.34/2010. (D.B.)

Jitendra Raghurajsingh Thakur,
Aged about 52 years,
Occ-Service,
R/o Police Station, Katol,
Distt. Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Additional Chief Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,
Nagpur Range, Nagpur.
3. The Superintendent of Police (Rural),
Civil Lines, Nagpur.

Respondents

Shri N.D. Thombre, the Ld. Advocate for the applicant.

Shri M.I. Khan, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shri Shee Bhagwan, Member (A)

JUDGMENT

(Delivered on this 3rd day of September 2018.)

Per:Vice-Chairman (J)

Heard Shri N.D. Thombre, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. The applicant has claimed that the impugned punishment order dated 8.7.2009 (Annexure A-7) issued by respondent No.3 i.e. the Superintendent of Police (Rural), Nagpur and subsequent order passed by respondent No.2 i.e. the Special Inspector General of Police, Nagpur Range, Nagpur in the appeal against the said order, dismissing the appeal (Annexure A-9) also be quashed. It is further claimed that the leave period of the applicant from 19.8.2008 to 6.11.2008 be treated as leave and the order dated 1.10.2009 (Annexure A-10) passed by the respondent No.3 in this regard be quashed and set aside. The applicant is also claiming medical leave for this period i.e. from 19.8.2008 to 6.11.2008 and further that the period under which the applicant was under suspension i.e. from 7.11.2008 to 10.3.2009 be treated as duty period and salary be released for the said period. In the said O.A., the applicant earlier also claimed for promotion to the post of Assistant Sub Inspector. But the said promotion was subsequently denied.

3. Vide impugned order dated 17.6.2009 (Annexure A-7) (Pages 48 & 49), following operative order was passed in the

departmental enquiry by respondent No.3 i.e. Superintendent of Police, Nagpur (Rural), Nagpur:-

“मी छ. ही. वाकडे, पोलीस अधीक्षक, नागपूर जिल्हा (ग्रामीण) नागपूर या आदेशाद्वारे पो.हवा./१६८ जितेंद्रसिंग रघुराजसिंग ठाकूर, नेमणूक मुख्यालय, नागपूर ग्रामीण यांचा दि. ७.११.२००८ ते १०.३.२००९ पर्यंतचा निलंबनाचा काळ जसाचा तसा व पुढील वेतानवाढीवर परिणाम न होता देय होणारी वार्षिक वेतनवाढ एक वर्षाकरिता स्थगितीची शिक्षा देत आहे.

पो.हवा./१६८ जितेंद्रसिंग रघुराजसिंग ठाकूर, नेमणूक मुख्यालय, नागपूर ग्रामीण हे सदरहू शिक्षेने व्यथित होत असल्यास ते हा आदेश प्राप्त झाल्याच्या दिनांकापासून ४५ (पंचेचाळीस) दिवसाचे आत योग्य त्या मार्फतीने विशेष पोलीस महानिरीक्षक, नागपूर परिक्षेत्र, नागपूर याने अपील अर्ज सादर करू शकतात.”

4. Being aggrieved by the aforesaid order, the applicant filed an appeal before the respondent No.2 i.e. the Special Inspector General of Police, Nagpur Range, Nagpur and in the said appeal, the Special Inspector General of Police, Nagpur Range,

Nagpur was pleased to pass the order on 23.11.2009 as per Annexure A-9 and dismissed the appeal.

5. The learned counsel for the applicant submits that the order passed in the departmental enquiry was without application of mind and in fact, the applicant has been punished twice for one alleged misconduct. For his remaining period of absence, his increment has been stopped and his suspension period has been treated as suspension period. The competent authority did not consider the fact, even though the applicant was transferred from the post of Head Constable, Kanhan to Katol vide order dated 15.7.2006. He was relieved on 20.8.2008, i.e. after more than two years. The authority failed to consider that the applicant was on medical leave from 19.8.2008 to 6.11.2008 and was unnecessarily kept under suspension vide order dated 4.11.2008. The appellate authority also did not consider the defence taken by the applicant.

6. The respondent No.3 filed reply affidavit and justified the punishment inflicted on the applicant. It is stated that the applicant was relieved from Police Station, Kanhan so as to join at Police Station, Katol on 21.8.2008 at 20.45 hours. He did not comply with the order and went on leave without any reason. In the meantime, he attended the Police Station, Kanhan during the period

from 25.8.2008 to 28.8.2008 to handover the charge to A.S.I. Shri Kewalram Gajbhiye. But inspite joining at Police Station, Katol, he filed an application for cancellation of his transfer, the applicant was heard personally and his request for transfer was rejected. However, he did not joined at Police Station, Katol and, therefore, preliminary enquiry was conducted against him and he was kept under suspension vide order dated 4.10.2008. It is stated that the applicant proceeded on leave without intimation just to avoid joining at Police Station, Katol and, therefore, after calling due explanation from the applicant, necessary order was passed.

7. The learned counsel for the applicant submits that the applicant was relieved illegally so that he shall join at a new place and it was only within intention to harass the applicant. He made allegations against respondent No.3 as regards harassment. However, there is no substantive evidence to prove such harassment. From the record, it seems that even though, the applicant was transferred to Katol vide order dated 15.7.2006, he was, in fact, relieved on 20.8.2008 and on 19.8.2008, i.e. just prior to one day of relieving him, he filed an application stating about his inability to join. He was relieved on 20.8.2008. But instead of joining at Katol, he filed an application for cancellation of his transfer and admittedly same

was rejected. In such circumstances, it was obligatory on the part of the applicant to join at Katol.

8. It is material to note that, though the applicant was relieved on 20.8.2008, and states that he was medical on leave from 19.8.2008 to 6.11.2008, he joined the duty in between 25.8.2008 to 28.8.2008 and also handed over the charge of muddemal property to his successor. Thus, he has performed the duty very much for the said period, though he was alleged to be on medical leave.

9. Before imposing punishment, a show cause notice was issued to the applicant, calling upon him to explain as to why action should not be taken against him for not joining at transferred place and why his annual increments for two years shall not be withheld ? The said show cause notice is at Annexure A-5. The applicant has given explanation to the said show cause notice vide reply Exh.A-6 at page Nos. 44 to 47. In his explanation, he admitted that he went to the office of the Superintendent of Police (Rural), Nagpur on 21.10.2008 and filed an application for cancellation of his transfer and that his request was rejected, after giving him hearing. Since he did not join the duty, he was kept under suspension.

10. The learned P.O. has invited our attention to the report of preliminary enquiry carried out against the applicant. Report

of the Police Inspector is dated 3.6.2009 (Annexure R-3 and 5 , P.75 to 84) (both inclusive). The officer who made enquiry against the applicant has clearly mentioned that the applicant had received the order whereby he was directed to join the duty on 21.8.2008 and he was relieved from duty for joining at Katol on 21.8.2008. Instead of joining at transferred place, the applicant proceeded on leave. The competent authority has considered the defence taken by the applicant that he was on medical leave and observed as under:-

“कसुरदार पो.हवा. जितेंद्रसिंग रघुराजसिंग ठाकूर याचे म्हणण्यानुसार त्याची प्रकृती खराब होती व ते त्यांचे बदलीचे ठिकाणी पोलीस स्टेशन, काटोल येथे रुजू होण्यास असमर्थ होते. त्यामुळे ते काटोल येथे रुजू झाले नाही. परंतु कसुरदार हे याच कालावधीत मा. पोलीस अधीक्षक, नागपूर जिल्हा (ग्रामीण) नागपूर यांचे आज्ञांकित कक्षात येऊन बदली रद्द करण्याची विनंती करू शकत होते तर ते मा. पोलीस अधीक्षक, नागपूर जिल्हा (ग्रामीण) नागपूर यांचे आदेशाप्रमाणे त्यांचे बदलीचे ठिकाणी पो. स्टे. काटोल येथे रुजू होऊन तेथून सिक पास घेऊन प्रकृतीचा औषधोपचार करू शकत होते. परंतु त्यांनी असे न करता वरिष्ठांचे आदेशाची अवहेलना

केली व प्रकृती खराब आहे म्हणून बदलीचे ठिकाणी रुजू झाले नाही व प्रकृती खराब असल्याचे अर्ज व दस्तऐवज मा. पोलीस अधीक्षक, नागपूर जिल्हा (ग्रामीण) नागपूर तसेच पोलीस निरीक्षक, पोलीस स्टेशन, काटोल यांना सादर केले.

यावरूनच त्यांना बदलीचे ठिकाणी रुजू व्हावयाचे नव्हते त्यामुळे त्यांनी पोलीस अधीक्षक, नागपूर जिल्हा (ग्रामीण) नागपूर यांचे आज्ञांकित कक्ष घेतले व ते सिकमध्ये राहिले असल्याचे प्राथमिक चौकशीत दिसून आले आहे."

11. The competent authority has also considered the explanation of the applicant and found it unsatisfied and, therefore, proceeded to pass the impugned order. The learned counsel for the applicant submits that the respondent authorities ought to have conducted regular enquiry. It is material to note that, the applicant is in Police Department and the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (in short D & A Rules) are not applicable to the employees of the Police Department. For inflicting minor punishment, it is not necessary to initiate regular departmental enquiry. We have also perused the enquiry report.

Though, it was a preliminary enquiry, report is exhaustive and from the circumstances on the record, it seems that the applicant wanted not to join at Katol and, therefore, he proceeded on leave. The competent authority, therefore, thought it proper to take action against the applicant and he was found guilty. The learned P.O. pointed out the documents filed by the applicant himself i.e. discharge card dated 4.8.2008 from which, it seems that the applicant was discharged from private hospital on 4.8.2007. The said document is from private hospital. Since the charges against the applicant have been proved, suspension period was treated as suspension. Admittedly, the applicant has not worked during the period of suspension i.e. from 7.11.2008 to 10.3.2009 and was found guilty in the departmental enquiry and, therefore, the same has been rightly treated as suspension period.

12. No special grounds have been made out in the appeal memo (Annexure A-8). It seems that in the appeal memo, it is mentioned that the applicant was suffering from malaria and jaundice from 20.8.2008 to 7.11.2008, whereas he filed some documents and claims different reasons for not joining the duty. There was absolutely no reason as to why the applicant did not join at Katol, when he admittedly was present for handing over the charge of

muddemal property in between 25.8.2008 to 28.8.2008. All these aspects have been considered by the competent authority as well as by the appellate authority and we do not find any reason to interfere in the conclusion drawn by them. Hence, we proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice-Chairman (J)

Dated:- 3.9.2018.