

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH NAGPUR**


ORIGINAL APPLICATION NO 609 OF 2000

DISTRICT : YAVATMAL

IN THE MATTER OF
Shri. Motilal s/o Namdeo Nagdive,)
Occ ; Nil, R/o: Police Station,)
Yavatmal Gramin, Quarter no.110,)
Shivam Building, Yavatmal,)
Dist-Yavatmal.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Department of Home Affairs,)
Mantralaya, Mumbai.)
2. District Superintendent of)
Police, Yavatmal.)
3. Deputy Inspector General)
of Police, Amravati Region,)
Amravati.)
4. Inspector General of Police,)
Mumbai.)...**Respondents**



Shri A.S Mardikar, learned advocate for the Applicant.

Shri A.P Potnis, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)
Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 10.03.2017

PER : Shri Rajiv Agarwal (Vice-Chairman) (A)

ORDER

1. Heard Shri A.S Mardikar, learned advocate for the Applicant and Shri A.P Potnis, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 10.8.1999, compulsorily retiring the Applicant from service. This Original Application was earlier dismissed in default by order dated 1.8.2007. It was ordered to be restored on the file of this Tribunal on payment of cost of Rs. 500/- which was deposited in the office of High Court Legal Services Sub Committee, Nagpur. However, he did not pay the cost which was imposed. The Original Application was again dismissed in default by order dated 15.7.2013. The Applicant filed Writ Petition no 1930/2016 before the

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Hon'ble High Court, Nagpur bench and by order dated 28.4.2016 the Original Application was once again restored on the file of this Tribunal to be decided on merits.

3. Learned Counsel for the Applicant stated that the Applicant joined Police service as Constable in the year 1975. He was given Guard duty in Pusad Town Police Station in the Sub-Jail attached to the Police Station there. On 31.12.1995, the Applicant was working from 1500 hrs to 1800 hrs. The Applicant took permission from one Shri Raghunath Mundhe, Head Constable to leave the duties for 3 hours for taking dinner. The Applicant was therefore absent from duties from 2400 hrs to 0300 hrs on 1.1.1996. In the absence of the Applicant, there was some disturbance in the Sub-Jail and some of the inmates escaped. A charge sheet was issued to the Applicant and a Departmental Enquiry was held against him on 23.9.1996. Learned Counsel for the Applicant stated that the evidence was not properly considered by the Disciplinary Authority. The Applicant was not given any personal hearing by the Appellate Authority and the order of the Disciplinary Authority was confirmed by the Appellate Authority. The fact that the Applicant taken permission to take meals was totally ignored by the Disciplinary Authority. Learned Counsel for the Applicant, therefore, stated that the order dated 10.8.1999 passed by the Respondent no. 2 is perverse and

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it deserves to be quashed and set aside. Similarly, the order dated 9.12.1999 issued by the Respondent no. 4 in appeal confirming the order of the Respondent no. 2 is also required to be quashed and set aside.


4. Learned Presenting Officer (P.O) stated that no ground at all have been mentioned in the Original Application for challenging the punishment imposed on the Applicant. The Applicant was absent from duty unauthorisedly from midnight at 1800 hrs on 31.12.1995 to 0300 hrs on 1.1.1996. Though the Applicant claims that he was given permission by some Head Constable to remain absent from duty that could not mean long absence from duty. Learned Presenting Officer also stated that a detailed D.E was held against the Applicant and punishment of compulsory retirement was imposed upon him, as the charge against him was negligence in duty which resulted in escape of two under trial prisoners. When the two persons escaped from the custody, the Applicant was on duty and he unauthorisedly left his duty. Learned Presenting Officer stated that there is no allegation that there was any procedural flaw or irregularity in holding the D.E, nor is there any allegation that the Applicant was not given full opportunity to defend himself. In the appeal also, the Applicant was given permission by the Respondent no. 2 on 28.9.1999 to attend the proceedings in the appeal before the Respondent no. 4. The copy of the has been

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annexed by the Applicant himself as Document no. 8 on page 61 of the Original Application.

5. Learned Presenting Officer stated that there is no merit in this Original Application and it may be dismissed.

6. We find that the actual ground on which the Applicant is challenging the order of compulsory retirement dated 10.8.199 and the order in appeal dated 9.12.1999 is that the Applicant had oral permission from some Head Constable to leave the Guard duty for a few hours to enable him to take his dinner. The Applicant has not stated that there was any procedural flaw in the D.E or that he was not given full opportunity to defend himself. In the Appellate order, the Appellate Authority has considered the plea of the Applicant that he was given permission to remain absent from duty for a short period. However, the Applicant was absent from duty from 1800 hrs to 0300 hrs. The claim of the Applicant that the aforesaid plea was not considered is not correct. The Applicant was held responsible for dereliction of duty as he remained absent for a very long period during which two under trial inmates of the Police lock up escaped. As the Applicant was found negligent in duty and there was evidence against him to substantiate the charge, it is not for this Tribunal to sit as an Appellate Authority over the decision of the Disciplinary Authority.




7. We find no reason to interfere with the order passed by the Disciplinary Authority as well as Appellate Authority. As a result, this Original Application is dismissed with no order as to costs.

sd/-

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

sd/-


(Rajiv Agarwal)
Vice-Chairman(A)

Place : Nagpur

Date : 10.03.2017

Dictation taken by : A.K. Nair.

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