

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 952 OF 2015

DISTRICT : PUNE

Shri Sameer Himmat Shaikh)
[Police Constable], R/o: Sawant Vihar,)
Phase-II, E-37, Katraj, Near Katraj Dairy)
Pune-46.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Superintendent of Police,)
Railways, Sangam Bridge,)
Opp. Maharashtra, State CID office,)
Pune.)
3. Shri Arun More,)
Police Inspector, LCB, Tadiwala Rd,)
Kumar Garima Bldg, Opp Tata)
Consultancy Bldg, Behind Pune)
Railway Station, Pune.)...**Respondents**

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Shri R.M Kolge, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 12.08.2016

ORDER

1. Heard Shri R.M Kolge, learned advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant challenging order dated 22.6.2015 posting the Applicant to Kurdwadi, dist-Solapur after transferring him from L.C.B, Pune (Railways).
3. Learned Counsel for the Applicant argued that the Applicant was working at Local Crime Branch (L.C.B) Pune under the Respondent no. 2 (Superintendent of Police, [Railways], Pune). By order dated 8.5.2015, the Applicant was placed under suspension as he was alleged to have been negligent in discharging his duties. A preliminary enquiry was held and the Applicant denied the charge that accused under arrest, who was being guarded by him escaped. The person who allegedly

SH escaped, was under illegal detention. As the charges ~~sheet~~ ^{against} the Applicant did not warrant suspension, the suspension was revoked by order dated 22.6.2015. However, the Applicant was not placed back to his earlier posting at L.C.B, Pune and instead was posted at Kurduwadi Railway Station in Solapur district. Learned Counsel for the Applicant argued that the suspension of the Applicant was unjustified and therefore, he should have been posted to his original post, after reinstatement. Learned Counsel for the Applicant argued that by posting the Applicant 260 kms away, he has been punished twice, once by suspending him and next by posting him 260 kms away. This amounts to double jeopardy under Article 20(2) of the Constitution of India. Learned Counsel for the Applicant argued that the transfer was the motive for suspending the Applicant and it is punitive in nature. Learned Counsel for the Applicant contended that the Applicant may be posted back to L.C.B, Pune.

4. Learned Chief Presenting Officer (C.P.O), argued on behalf of the Respondents that the Applicant was assigned the job of keeping watch over and interrogation of a suspect, who was brought to L.C.B, Railways, Pune on 2.5.2015. However, that suspect managed to escape from L.C.B Railways, Pune due to negligence of the Applicant. Learned C.P.O argued that a suspect named Chandrakant Tadkal, was brought to L.C.B, Railways, Pune for interrogation on 2.5.2015. The

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Applicant and another Constable were assigned the job to guard the suspect. The suspect escaped on 3.5.2015 from L.C.B. The Applicant was, therefore, placed under suspension. His suspension was revoked pending Departmental Enquiry against him. It is not the case that his suspension was found to be wrong. Learned C.P.O argued that after suspension of a delinquent Government employee is revoked, he is posted to another district, so that he is not able to interfere with the D.E or influence the witnesses. The order posting the Applicant to Kurduwadi is not a transfer order and cannot be challenged. There was no motive or foundation to transfer the Applicant. He was placed under suspension on valid grounds which are clearly mentioned in the order of suspension itself. Learned C.P.O argued that neither the suspension in this case, nor the transfer are punishments. There is no question of double jeopardy in the present case.

5. The Applicant claims that he was not negligent in discharging his duties and suspension order dated 8.5.2015 was not justified. This claim is difficult to accept as the order of suspension clearly mentions that the Applicant was assigned job to guard a suspect, who was detained at L.C.B, Railways, Pune. The Applicant has not denied that he was guard duty on 2.5.2015 at L.C.B, Railways, Pune. He claims that the person who escaped was not arrested and the Applicant was not




specifically told to guard him. Those are the issues which will be decided in the Departmental Enquiry pending against the Applicant. However, there was prima facie case of negligence on the part of the Applicant, as disclosed from the order of suspension dated 8.5.2015. The Applicant was reinstated by order dated 22.6.2015. However, the order makes it clear that the suspension is revoked subject to the outcome of the Departmental Enquiry pending against the Applicant. In the circumstances, the decision to post him to Kurduwadi is difficult to fault. If a delinquent Government servant is reinstated in service after revoking his suspension, it is not necessary to post him back in the same post. The post cannot be kept vacant, waiting for the outcome of the Departmental Enquiry in such cases. Also, circumstance may justify posting away from earlier place of posting like possibility of influencing witnesses etc. The Applicant's claim that his suspension was unjustified and therefore, he should have been posted back to the post from which he was suspended cannot be accepted.

6. The Applicant was not placed under suspension as a punishment. Similarly, he has been posted to Kurduwad, which is within the jurisdiction of Superintendent of Police, Railways, Pune. The fact that it is 260 kms from Pune is not relevant. The Applicant is liable to be posted anywhere within the jurisdiction of the Respondent no. 2. Such a posting cannot be called a

punishment. The question of double jeopardy does not arise. Similarly, there is no material on record to suggest that the suspension was a motive or foundation for transfer of the Applicant. In fact, the Applicant has not been transferred at all.

7. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/- 
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 12.08.2016
Dictation taken by : A.K. Nair.