

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 312 OF 2023

(Subject:- Minor Punishment)

DISTRICT:-NANDURBAR

Shri. Bapu S/o Shivaji Pathade,)
Age: 48 years, Occu: Service as Jail Guard,)
District Prison, Class-1, Nandurbar,)
R/o. Room No. 3, A-Wing, Prison Employee)
Vasahat, Sakri Road, Nandurbar.)
Mob. No. 7058588630.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Secretary,)
Home Department,)
Mantralaya, Madam Kama Road,)
Mumbai -32.)
2. **The Additional Director General**)
of Police & Inspector General of)
Prison & Sudhar Seva,)
Maharashtra State, Old Central)
Building, 2nd Floor, Pune-411001.)
3. **The Dy. Inspector General of Prison,**)
Central Division, Aurangabad-431008.)
4. **The Superintendent,**)
District Prison, Dhule.) **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, learned Counsel
for the applicant.
: Shri N.U. Yadav, learned Presenting
Officer for the respondent authority.

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

DATED : **19.01.2024.**

ORAL - ORDER

Heard Shri K.B. Jadhav, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondent authorities.

2. By this Original Application the applicant is seeking quashing and setting aside the punishment order dated 11.03.2022 passed by the respondent No.3, thereby imposing the punishment of stopping/withholding of one yearly increment of the applicant without cumulative effect and also seeking quashing and setting aside order dated 03.11.2022 passed by the respondent No.2, thereby dismissing the departmental appeal filed by the applicant. The applicant is also seeking direction to the respondents to treat the suspension period from 14.07.2020 to 23.12.2020 as duty period and grant him all the consequential benefits.

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

(i) The applicant was initially appointed on the post of Jail Guard (Constable Prison) with the respondents by order dated 18.06.2000 and posted him at Central Prison, Mumbai. The applicant thereafter came to be transferred at various places. In the month of July 2019, the applicant was transferred in the office of District Prison, Dhule.

(ii) It is the case of the applicant that due to outbreak of pandemic Covid -19, the respondent No.2 has issued letter dated 17.04.2020 to Subordinate authorities and directed to stop admissions of new prisoner in the prison and announced temporary prisons for their immediate stay till quarantine period is over and further directed to act as per the guidelines issued by the District Collector in this regard.

(iii) According to the applicant on 13.05.2020 the District Collector, Dhule has issued letter to respondent No.4 i.e. Superintendent of Prison, Dhule and directed to supply 24 hours police protection to temporary prisons. The respondent No.1 has issued G.R. dated 15.05.2020 for creation of temporary prisons and for that purpose the private buildings

are directed to be acquired for establishment of temporary prisons. In view of same, the respondent No.2 has issued letter dated 16.05.2020 to all the District Collector and Superintendent of Central/ District Woman Prisons including the respondent No.4 and informed for creation of temporary prisons and also making arrangement of internal security. In view of same, the temporary prison was created in Dhule district. The applicant was working with the respondent No.4 and the respondent No.4 assigned the duty to the applicant to guard the temporary prison on 21.06.2020 from afternoon 2.30 p.m. to 9 p.m. and thereafter, from 12.00 a.m. to 3:00 a.m. on 22.06.2020.

(iv) It is the further case of the applicant that on 22.06.2020 at about 4 a.m. in the morning one prisoner namely Suresh Gumansing Pawra ran away from the temporary prison from barrack No.2 by cutting the iron rod of the window. Therefore, the Crime No. 119/2020 came to be registered against the said prisoner. Thereafter, he was traced and taken in the custody of the respondent No.4. On 22.06.2020 at about 2:00 a.m. to 2:30 a.m. said prisoner ran away from the temporary jail and at that time the applicant was on duty and in view of same, the respondent No.3 has

issued suspension order of the applicant dated 14.07.2020 with immediate effect.

(v) It is further case of the applicant that the applicant has submitted an application to respondent No.2 stating therein that the said prisoner ran away from temporary jail on 22.06.2020 at about 4:00 a.m. and at that time his duty was over though he was taking the rest in the said premises only. It is also the case of the applicant that he had given the charge of total 37 prisoners and 4 keys to one Jail Guard Shri Nikumbe at about 3:00 a.m. on 22.06.2020 and the said prisoner did not run away during his duty time and the applicant accordingly requested to revoke the suspension.

(vi) On 24.12.2020 the respondent No.3 has issued order of revocation of the suspension of the applicant and transferred him from Dhule to Beed District Prison subject to departmental enquiry. It is the case of the applicant that on 16.11.2021 the respondent No.3 has issued charge sheet to the applicant under Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred as "Rules, 1979") and two charges are levelled against the applicant. The applicant has also submitted his explanation/say to the charge sheet on 22.12.2021 and

denied the charges mentioned in the charge sheet. The applicant has taken the same grounds as taken by him in the application filed for revocation of suspension.

(vii) By order dated 11.03.2022 the respondent No. 3 has issued the punishment order and punished the applicant as per Rule 5 (i) (iv) of the said Rules 1979, thereby stopping increment for one year without effecting the future increment. Being aggrieved by the same, the applicant has filed the departmental appeal on 21.04.2022 before the respondent No.2 and also requested in the said departmental appeal to treat the suspension period as duty period.

(viii) By letter dated 03.11.2022 the respondent No.2 has dismissed the appeal and further directed that the suspension period of the applicant to be treated as suspension period. Hence, this Original Application.

4. Learned counsel for the applicant submits that the punishment order is bad, illegal and required to be set aside. Learned counsel for the applicant submits that the respondent Nos. 2 & 3 have failed to consider that the said prisoner did not run away during the duty hours of the applicant and he ran away from temporary prison when one

Shri Nikumbe, Jail Guard was on duty and as such, the applicant is not responsible for the same. Learned counsel for the applicant submits that the applicant has given charge of his duty at about 3:00 a.m. on 22.06.2020 and the said Chandrakant Nikumbe after counting 37 prisoners kept in the temporary prison, taken the charge form the applicant by accepting 4 keys of the said temporary prison. Learned counsel for the applicant submits that no action has been taken against the said Nikumbe though in the default report there are some adverse observations passed against him.

5. Learned counsel for the applicant submits that the respondent No.3 has issued punishment order on 20.03.2021 in the identical situation in which another prisoner ran away from the temporary prison and punished the Jail Guard of Nashik Central Prison by imposing fine of Rs. 1,500/-. This is a clear case of discrimination on the part of the respondent No.3. Learned counsel for the applicant submits that during his service tenure the applicant has got several awards and his entire service period is almost unblemished. Learned counsel for the applicant submits that the application thus deserves to be allowed by setting aside the impugned orders.

6. The respondent Nos. 1 to 4 have filed their affidavit in reply and based upon the reply, learned P.O. submits that the applicant was given duty on 21.06.2022 from 2:00 a.m. to 9:00 p.m. & 12:00 a.m. to 3:00 a.m. on 22.06.2020. On 22.06.2020 during his duty period one prisoner namely Suresh Gumansingh Pavra ran away from the temporary prison by cutting iron rod of window. The said prisoner Suresh Gumansingh Pavra was kept in the Barrack No.2 and as such, it is clear case of negligence on the part of the applicant.

7. Learned P.O. submits that the submission of the applicant that he was not on duty at the time of said incident is not correct. In respect of the said incident FIR No. 0368/2020 came to be registered at Dhule City Police Station. After following due procedure as contemplated under Rules of 1979 the applicant was rightly suspended from the duty and thereafter inflicted punishment of stoppage of one increment for one year without effecting future increment.

8. Learned P.O. submits that appellate authority has taken the decision that the suspension period of the applicant shall not be treated as duty period. Learned P.O. submits

that there is no discrimination at all. The case quoted by the learned counsel for the applicant is on the different facts.

9. The learned P.O. submits that in the said incident one prisoner kept in temporary prison jumped from the 2nd floor and ran away whereas in the instant case, prisoner kept and locked in the barrack No. 2 has cut the iron rod of the window. It is difficult to believe that the said prisoner ran away by cutting the iron rod of window when the applicant was on duty. Learned P.O. submits that there is no substance in the Original Application and the same is liable to be dismissed.

10. On careful perusal of the entire pleadings and annexures, I am of the opinion that at the time of alleged incident the applicant was on duty to guard the said temporary jail. However, during his duty hours the said prisoner ran away from the barrack by cutting the iron rod of the window. I find no substance in the submissions made on behalf of the applicant that the incident had taken place during duty hours of another Jail Guard Shri Nikumbe. It appears from the annexures submitted along with the application that one another inmate has informed to the

guard on duty that when he happened to wake up for nature's call and at that time he noticed that the said prisoner was missing from the said barrack and that the iron rod of the window seen in the damaged condition. The said information was given by the said inmate to Jail Guard at about 4:00 a.m. However, it does not mean that the said incident has taken place at 4:00 a.m. In the F.I.R. it is specifically mentioned that the prisoner ran away from the temporary jail by cutting iron rod of the window in between 2:00 to 2:30 a.m. The copy of F.I.R. is at Annexure 'A-5'.

11. It further appears that the procedure as contemplated under Rules, 1979 has been duly followed by the respondents for imposing minor punishment on the applicant. I do not find any substance in the submissions made on behalf of the applicant that discriminatory treatment was given to the applicant when another prisoner ran away from the temporary jail by jumping from the second floor and the guard was inflicted with the punishment of imposition of fine only. So far as jumping from the second floor by the prisoner from the temporary jail is concerned, it is difficult for the guard on duty to notice the same and immediately take the appropriate steps to prevent the incident. However, in the

instant case when the applicant was on duty, the said prisoner cut the iron rod of the window and ran away from the said temporary prison. It is not possible to believe that the applicant, who was on duty as a Guard, did not listen the noise of the cutting of the said iron rod of the window nor noticed any suspicious activity during his duty hours. It is the case of gross negligence for which the applicant has been rightly punished. I do not find any substance in the Original Application so far as the punishment as imposed on the applicant is concerned.

12. Rule 72 of Maharashtra Civil Service (Joining Time, Foreign Services and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred as "Rules,1981") prescribes the provisions about the reinstatement 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. In the instant case the respondent No.3 is competent authority to order suspension and so also reinstatement. In terms of Rule 72 of the Said Rules, 1981 it is for the competent authority to form an opinion as to whether the suspension is

wholly unjustified or not and subject to the provisions of sub-rule (8) be paid the fully pay and allowances to which the Government servant would have been entitled, had he not been suspended and in terms of Sub Rule 4 of Rule 72, in a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes or otherwise in terms of sub-rules (5) and (7) of Rule 72 of the said Rules, 1981.

13. In the instant case the respondent No.2 who is appellate authority has passed the said order dated 03.11.2022 while dismissing of the departmental appeal which is not proper, correct and legal. In view of the same, the said order is liable to be set aside to that extent also. Otherwise the respondent No.2 has rightly dismissed the appeal filed by the applicant to the extent of punishment inflicted on him under the orders of the respondent No.3. Hence, the following order:-

ORDER

The Original Application No. 312 of 2023 is hereby partly allowed with the following terms:-

- (A) The impugned punishment order date 11.03.2022 passed by the respondent No.3, thereby imposing

the punishment of stopping/withholding one increment of the applicant without cumulative effect and further, the order dated 03.11.2022 passed by respondent No.2, thereby dismissing the departmental appeal filed by the applicant to the extent of the said punishment of stopping/withholding of one increment without cumulative effect are hereby confirmed.

- (B) The order dated 03.11.2022 passed by the respondent No.2 to the extent of refusing to treat the suspension period of the applicant as a duty period is hereby quashed and set aside.
- (C) The applicant shall file an application within two weeks from the date of receipt of certified copy of this order to respondent No.3 and upon filing of such an application, the respondent No.3 shall take appropriate decision in terms of Rule 72 of Maharashtra Civil Service (Joining Time, Foreign Services and Payments during Suspension, Dismissal and Removal) Rules, 1981 within four weeks thereafter.

- (D) In the circumstances there shall be no order as to costs.
- (E) The Original Application stands disposed of in aforesaid terms.

MEMBER (J)

Place:-Aurangabad

Date : 19.01.2024

SAS O.A. 312/2023 (S.B.) VKJ Minor Punishment.