

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 758 OF 2016

DISTRICT :PUNE

Smt. Renuka Santosh Indalkar,)
Aged 36 Yrs, Working as Clerk,)
Now posted on reinstatement but)
by way of attachment to Daulatrao)
Jadhav Jail Officers Training College,)
Yerawada, Pune- 6,)
R/O. Room No.4, Chalis Quarters,)
Jail Quarters, Yerawada, Pune -6.)
Address For Service of Notice:)
As above.)...**Applicant**

VERSUS

1. The Deputy Inspector General)
of Prisons, Western Region,)
Pune, [Smt. Swati Sathe],)
Having Office at Yerawada,)
Pune-6.)

2. The Additional Director General)
of Police & the Inspector General of)
Prisons, [M.S.], Pune,)
Having Office at Old Central Building,)
Second Floor, Pune -1.)...**Respondents**

Shri A.V. Bandiwadekar, the learned Advocate for the Applicant.

Smt. Archana B.K., the learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 19.01.2017

ORDER

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant, who has challenged the communication dated 30.8.2016 cancelling earlier order dated 28.6.2016/1.7.2016 attaching the Applicant to D.J. Prison Officers Training College, Yerawada, Pune.

3. Learned Counsel for the Applicant argued that the Applicant was suspended by order dated 4.4.2016 on the charge that she had handed over certain confidential documents to a third person and thus failed to maintain integrity. The suspension order of the Applicant was revoked by order dated 1.6.2016 issued by the Respondent No.1 pending the Departmental Enquiry against her. After reinstatement, the Applicant was posted to Solapur District

Prison. The Applicant gave a representation dated 6.6.2016 to the Respondent No.2 and requested that she may be posted to some post in Pune, due to her family difficulty. The Applicant was posted as Jr. Clerk in D.J. Jail Officers Training College, Yerawada, Pune-6 by order of the Respondent No.2 dated 1.7.2016 as a temporary arrangement. Learned Counsel for the Applicant argued that on revocation of her suspension the Applicant should have been posted in the same post from where she was suspended or in some of other office in Pune as there was no strong ground to place her under suspension. Apparently, the Respondent No.1 realized the mistake in suspending the Applicant and on her own, withdrew the suspension order. The Respondent No.1 should have posted the Applicant in the same post from where she was suspended. The action of the Respondent No.1 in suspending the Applicant was malafide, and arbitrary. The Applicant filed this O.A. on 25.7.2016 and during the pendency of the O.A. the Respondent No.1 passed the order dated 30.8.2016 cancelling the temporary attachment of the Applicant in the post at Pune. Learned Counsel for the Applicant argued that in the Departmental Enquiry, no charge sheet has yet been served upon the Applicant. The order dated 30.8.2016 violates provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delays in Discharge of Official Duties Act, 2005 (the Transfer Act) as temporary attachment amounts to transfer.

4. Learned Presenting Officer (P.O.) argued that the Applicant was suspended by order dated 4.4.2016, as she had handed over confidential document entrusted to her to a third person. A Departmental Enquiry was also contemplated against her. When the Applicant was placed under suspension, she was asked to hand over charge of confidential section to one Shri Chate. She did not hand over the charge to Shri Chate for one month on some pretext or other. The suspension of the Applicant was reviewed on 1.6.2016 and she was reinstated and posted to Solapur District Prison. However, she never joined that post. By order dated 1.7.2016, she was attached to Daulatrao Jadhav Jail Officers Training College, Yerawada, Pune by order of the Respondent No.2 dated 1.7.2016. Learned P.O. argued that as per Government Circular dated 20.4.2013, a suspended Government Servant on reinstatement is not to be posted in the same place. The attachment order of the Applicant dated 1.7.2016 was withdrawn by order dated 30.8.2016 and the Applicant was directed to join at Solapur District Prison. Learned P.O. argued that till the finalization of the D.E. the Applicant cannot be posted to Pune in the interest of fair conduct of the D.E.

5. It is seen that the Applicant was working as Jr. Clerk in Yerawada Central Prison, Pune and was entrusted with the work of Confidential Branch. She was placed under suspension by order dated 4.4.2016 issued by the Respondent No.1 on the ground that she passed confidential

records to a third party. It is also stated by the Respondents in the affidavit in reply that the Applicant did not handover charge of the Confidential Branch to Shri Chate, as ordered, for about a month. The Applicant has, however, given justification for delay in handing over charge to Shri Chate and blamed the Respondents for the delay. The fact remains that charge of the Confidential Branch was not handed over to another employee for a month. The Applicant claims that she was reinstated by order dated 1.6.2016 of the Respondent No.1, as there was no strong ground to place her under suspension. The Respondents have claimed that she was reinstated in a review of suspension of suspended employees. After revocation of suspension, the Applicant was posted at Solapur District Prison. The Applicant claims that she reported for duty at Solapur on 1.7.2016 but before that on 1.7.2016 the Respondent No.2 had ordered her attachment to D.J. Jail Officers Training College, Pune. The Respondents claim that the Applicant never joined at Solapur. The order of attachment was cancelled by the Respondent No.2 on 30.8.2016.

6. From the above sequence of the events, it appears that the Applicant was suspended on the charges of handing over confidential documents to a third person. The Respondents claim that this has serious implication for the security of the prison. This concern of the Respondents appears to be well founded and the claim of the Applicant that she was reinstated as there were no strong grounds to

suspend her has no basis. The Applicant was reinstated after her suspension was reviewed by the Review Committee. This is in accordance with G.R. on this issue. The Applicant was posted to Solapur Central Prison on reinstatement. Though she claims that she reported for duty there on 1.07.2016, the fact remains that she did not report for duty for a month. By order dated 1.7.2016 of the Respondent No.2, the Applicant was temporarily attached to D.J. Jail Officers Training College, Pune. This order obviously is not a transfer order under the Transfer Act. In fact, the whole matter is regarding suspension and posting on reinstatement. The relevant Circular is dated 20.4.2013 par 2(b) of the aforesaid Circular reads:-

“ ब) विभागीय संवर्गातील कर्मचा-यांना पुनःस्थापित करताना त्यांचा मूळ जिल्हा व ज्या जिल्हयात कार्यरत असताना निलंबित केले तो जिल्हा वगळून अन्य जिल्हयात अकार्यकारी पदावर नियुक्ती करण्यात यावी.”

Obviously, the Applicant cannot claim that she should be posted to Pune. Just because she was given some temporary accommodation by attaching her to a post in Pune, she doesnot acquire any right to remain in that post. The past conduct of the Applicant is such, that it does not inspire any confidence. She appears to be in the habit of defying orders of her superiors on some pretext or other. I am of the opinion that the conduct of the Respondents cannot be said to be malafide or arbitrary in this case. However, the Respondents would do well to issue charge-sheet in the Departmental Enquiry against the Applicant on an early date and complete the same expeditiously.

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

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 19.01.2017
Place : Mumbai
Dictation taken by : SBA

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