

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.117 OF 2016**

DISTRICT : PUNE

Shri Devendra Baburao Jadhav,)
Age 45 years, occ. Nil [with last posting as Jail Guard,)
Swantanterpur Open Jail, Tal. Atpadi, Dist. Sangli],)
R/o A/P Dhekalwadi, Tal. Baramati, District Pune)..Applicant

Versus

1. The Deputy Inspector General of Prisons,)
Western Division, Yerawada, Pune-6)
2. The Additional Director General of Police and)
Inspector General of Prisons, MS, Pune)
Old Central Building, 2nd Floor, Pune-1)
3. The State of Maharashtra,)
Through Principal Secretary [Prison],)
Home Department, Mantralaya, Mumbai400032)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 10th July, 2023
PRONOUNCED ON: 20th July, 2023
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

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

2. Ld. Advocate for the applicant submits that the applicant who was working as a Jail Guard at Visapur District Prison challenges the order dated 19.11.2014 passed by respondent no.1 by which punishment of removal from service was imposed on him and also the order dated 1.9.2015 passed by respondent no.2 under which he dismissed the appeal of the applicant.

3. A Departmental Enquiry (DE) was initiated against the applicant vide charge sheet dated 13.11.2006 and enquiry was conducted by the Enquiry Officer-cum-Superintendent, Sangli District Prison. In the enquiry report he held that only charge no.1 was proved against the applicant whereas he exonerated him with regard to charge no.2. On 26.2.2008 a show cause notice was issued to the applicant seeking explanation as to why applicant should not be removed from service by way of punishment. The applicant replied to the said show cause notice on 8.3.2008. However, respondent no.1 passed the order dated 25.4.2008 imposing the punishment of dismissal from service upon the applicant. The applicant went in appeal before the respondent no.2 who also dismissed the appeal on 10.9.2008.

4. The applicant challenged both the orders by filing OA No.280 of 2010 in this Tribunal which came to be dismissed on 11.11.2010.

However, RA No.58 of 2010 filed by the applicant in OA No.280/2010 came to be allowed by this Tribunal by order dated 26.11.2010 wherein in para 4 it is observed that:

“4. Hence, the matter is remanded back to the respondents with a direction that if they intend to disagree with the findings recorded by the Enquiry Officer on the issue with regard to Applicant remaining absent unauthorisedly for a continuous period of 467 days, then they should communicate the tentative reasons for the same to the applicant and give him an opportunity to put forward his say in the matter and then proceed according to law and take final decision in the matter within two months from today and communicate the said final decision to the applicant immediately.”

(Emphasis laid)

5. The applicant was reinstated on 18.6.2012 and again a show cause notice dated 7.6.2014 was issued to the applicant in accordance with the directions given in the order by this Tribunal in RA. The filed his reply dated 18.7.2014 to the 2nd show cause notice. On 19.11.2014 the respondent no.1 passed the impugned order imposing punishment of removal from service on the applicant. The applicant preferred an appeal dated 20.1.2015 before respondent no.2 and the same was dismissed by order dated 1.9.2015.

6. Ld. Advocate for the applicant challenges the second show cause notice dated 7.6.2014 on the ground that even this show cause notice is cryptic and does not mention reasons for their disagreement with the findings of the enquiry officer. He therefore prays that the impugned orders be quashed and set aside. Ld. Advocate for the applicant relies on the observations made in the judgment and order dated 6.2.2023 passed by this Tribunal in OA No.376 of 2021 (Shri Amrut Malakari Natekar Vs.

The State of Maharashtra & Anr.) on the ground that whether the matter can be remanded back or not.

7. In this case the main issue revolves around whether the second show cause notice is cryptic or has given reasons for their disagreement with the findings recorded by the enquiry officer. It will be relevant to quote para 11 of the judgment and order dated 11.11.2010 passed by this Tribunal in OA No.280 of 2010, which reads as under:

“11. Bearing in mind, the above mentioned observations of the Hon’ble Supreme Court, if we see the facts of the present case, it is quite evident that in the instant case, the Applicant was granted Extra-Ordinary Leave without pay for his period of absence, but at that very time, it was made clear that action has to be taken against the applicant for the said misconduct of remaining unauthorisedly absent. This is clear from the following wording in the letter dated 30.6.2005:

“श्री. देवेन्द्र बाबुराव जाधव, रक्षक यांचा दि. २५/१०/२००३ ते २/२/२००५ या कालावधीत एकूण ४६७ दिवसांना अनुपस्थित कालावधी महाराष्ट्र नागरी सेवा (रजा) नियम १९८१ मधील नियम क्र.६ (६३) अन्वये, विनावेतन, सेवेत खंड न धरता असाधारण रजा करण्यात येत आहे.

वेतनवाढ बंदी किंवा इतर शिक्षा देणे बाबत श्री. देवेन्द्र बाबुराव जाधव यांचे विरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ अन्वये विभागीय चौकशी आदेशीत करून तसा प्रस्ताव त्वरीत या कार्यालयास सादर करावा.”.”

8. The Tribunal had clearly stated that under no circumstances they were inclined to hold that in the instant case the applicant’s misconduct of remaining absent unauthorisedly for a continuous period of 467 days

was condoned by the respondents. It was further observed in para 11 that:

“11. Naturally, the punishment of removal from service imposed by the respondents no.1 & 2 cannot be said to be harsh or disproportionate in the circumstances of the case. On the contrary, in State of Rajasthan & Anr. Va. Mohammed Ayub Naz (supra), when a Government employee was dismissed from service, as he had remained absent from service for about 3 years, his dismissal was held to be valid.”

9. As regards the question whether respondent no.2 has mentioned reasons for his disagreement with the findings of the enquiry officer, we quote following portions from the show cause notice dated 7.6.2014 issued by respondent no.1:

“सर्व कागदपत्रांचा विचार केला असता अपचारी श्री. देवेंद्र बाबूराव जाधव, रक्षक यांचे वर्तन हे बेजबाबदारपणाचे असून कारागृह रक्षक या जबाबदार पदावर कार्यरत असताना विनापरवानगी अनधिकृतपणे स्वतःचे अधिकारात गैरहजर राहणे ही बाब अत्यंत गंभीर स्वरूपाची आहे हे स्पष्टपणे दिसून येते अपचारी श्री. देवेंद्र बाबूराव जाधव, रक्षक यांना अशाप्रकारे गैरहजर राहण्याची सवयी आढळून येतात.”

“..... चौकशी अधिकारी यांचे चौकशीचा उक्त अहवालाची छायांकित प्रती सोबत जोडली आहे. चौकशी अधिकारी यांनी दिलेल्या चौकशी अहवालाचे निष्कर्षास आम्ही सहमती दर्शवितो व श्री जाधव यांनी गैरवर्तन व विनापरवानगी गैरहजर राहून बेजबाबदारपणाचे वर्तन केले असून ते शासकीय गणवेशधारी कर्मचाऱ्यास अशोभनीय असे वर्तन केल्याचे सिद्ध होते. ”

10. The authority has given his reason in short but specific for disagreement with the findings of the enquiry officer on absenteeism in disciplined force like that of Prison which is a very serious matter. Thus, the authority has considered the nature and responsibility of the duty of Police personnel working in the Prison and thus no lenient view can be taken for such long absenteeism. It is to be noted that the disciplinary authority in the Prison is not a legal person and therefore as rightly held by the earlier Division Bench of the Tribunal while remanding the matter that only tentative reason is required to be mentioned. Considering the nature of the charge this can be the only tentative reason. It may be stated either elaborately or to the point. We are satisfied that the disciplinary authority has given a tentative reason for disagreement with the findings of the enquiry officer.

11. In view of the above, we hold that respondent no.2 has given tentative reason for disagreement with the findings of the enquiry officer and we do not find any ground to set aside the impugned orders. We find that for the aforesaid reasons the OA deserves to be dismissed.

12. Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
20.7.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
20.7.2023

Dictation taken by: S.G. Jawalkar.