

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.563 OF 2020**

**DISTRICT : AURANGABAD**

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Rajendra s/o. Vasantrao Marale,  
Age : 49 years, Occu. : Service  
(as Jailor Grade-1 presently under suspension),  
R/o. Central Prison Premises,  
Harsul, Dist. Aurangabad.

**...APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,  
Through: Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
- 2) The Addl. Director General & Inspector General  
Of Prisons & Correctional Services,  
Old Central Building, 2<sup>nd</sup> floor,  
M.S., Pune-01.
- 3) The Deputy Inspector General of Prisons,  
Central Division, Aurangabad.
- 4) The Superintendent,  
Central Prison, Harsul,  
Aurangabad.

**...RESPONDENTS**

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**APPEARANCE** : Ku. Preeti Wankhade, Counsel for  
Applicant.

: Shri N.U.Yadav, Presenting Officer  
for the respondent authorities.

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**CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.**

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**DECIDED ON : 20.03.2023.**

**ORAL ORDER:**

1. Heard Ku. Preeti Wankhade, learned Counsel for the applicant and Shri N.U.Yadav, learned Presenting Officer representing respondent authorities.

2. Aggrieved by the order dated 28-07-2020 whereby the applicant was put under suspension by respondent no.2 is challenged in the present O.A. At the relevant time applicant was working as Jailor Grade-I at District Prison, Jalgaon. On 25-07-2020 three inmates in the said prison escaped in the morning hours. After happening of such incidence, applicant came to be suspended vide order impugned in the present O.A. along with certain other Jail Officials. Order of suspension was revoked on 17-02-2021 and the applicant was reinstated at Open Jail, Yerwada, Pune. Learned Counsel appearing for the applicant submitted that the order of suspension impugned in the present O.A. was apparently unwarranted and there was absolutely no need to put the applicant under suspension. Learned Counsel further argued that ultimately the suspension came to be revoked vide order dated 17-02-2021. Learned Counsel further contended that after having conducted the enquiry into the misconducts alleged

against the applicant, he has been awarded punishment of stoppage of one increment for two years without cumulative effect. Learned Counsel submitted that having regard to both the circumstances, first that, ultimately the misconduct alleged against the applicant resulted in imposing minor punishment on him and the other that the suspension order was required to be revoked the order of suspension has to be declared unsustainable and hence deserve to be quashed and set aside.

3. Learned Counsel has relied upon the judgment of the Hon'ble Supreme Court passed in **Civil Appeal No.9454/2013** in the case of **Union of India & Anr. V/s. Ashok Kumar Aggarwal** decided on 22-11-2013. Paragraphs 9 and 10 of the said judgment were read out by the learned Counsel to buttress her contentions. Learned Counsel submitted that as has been observed by the Hon'ble Supreme Court in the aforesaid judgment, the order of suspension is to be made only in a case where there is strong prima facie case against the delinquent and allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority and further that the misconduct alleged if

proved, would ordinarily result in reduction in rank, removal or dismissal from service. Learned Counsel submitted that none of the aforesaid ingredients were existing in the present matter. As such, according to the learned Counsel the order of suspension deserves to be quashed and set aside.

4. Learned Counsel has also relied upon the judgment and order passed by this Tribunal in O.A.No.209/2021 decided on 09-03-2022. Learned Counsel submitted that the facts which existed in the aforesaid O.A. were identical to the facts which are existing in the present matter and as such the view taken by this Tribunal in the aforesaid O.A. would squarely apply to the facts of the present case also. Learned Counsel, therefore, prayed for quashment of the impugned order.

5. Shri N.U.Yadav, learned P.O. has resisted the contentions raised in the O.A. and the prayers made therein. Learned P.O. submitted that escape of 3 prisoners in the day light from the Jalgaon Prison cannot be said to be a casual incident or the incident not having any seriousness in that. Learned P.O. submitted that at the relevant time being the supervisory authority in the

District Prison at Jalgaon, it was primary responsibility of the applicant to ensure that the duties are assigned appropriately so as to avoid such incidence. Learned P.O. submitted that by keeping only one person at the relevant spot, apparently, the applicant was found not attentive of the norms which are laid down for avoiding such incidence. Learned P.O. submitted that it was not the applicant alone who was suspended at the relevant time but all the concerned who were found negligent or having some nexus with the said occurrence were suspended and necessary actions were taken against all of them. Learned P.O. submitted that the facts which existed in the judgment relied upon by the learned Counsel for the applicant cannot be equated with the facts of the present case and as such the same ratio cannot be applied while dealing with the present matter. Learned P.O. submitted that the authorities have passed the order of suspension well within their rights. The learned P.O., therefore, prayed for dismissal of the O.A.

6. I have duly considered the submissions advanced on behalf of the applicant as well as the respondent authorities. I have gone through the pleadings of the

parties and the documents filed on record. In so far as the factual matrix is concerned, there appears no much dispute. The applicant was admittedly suspended on 29-07-2020. It is further not in dispute that the alleged incident of escape of three prisoners happened in the morning of 25-07-2020. On the said date, the applicant was very well in charge of the District Prison, Jalgaon in capacity of Jailor Grade-I. It is also not in dispute that on 17-02-2021, the order of suspension was revoked. It is also not in dispute that on 26-07-2020, after office hours, the applicant was relieved from the District Prison, Jalgaon and he was to report at Central Prison, Aurangabad. From the documents, it is further revealed that the preliminary enquiry was conducted wherein the applicant was held guilty for the alleged misconduct and the punishment of stoppage of one increment for two years without cumulative effect was imposed on the applicant.

7. The issue which falls for my consideration in the present O.A. is whether on the grounds which are raised in the present application, the order of suspension deserves to be quashed and set aside. As noted hereinabove, the foremost reason as has been mentioned is that having

regard to the misconduct alleged against the applicant, suspension was not warranted. Second reason is that ultimately the misconduct alleged has been proved to be a minor misconduct since the punishment of stoppage of one increment for two years without cumulative effect has been passed. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Ashok Kumar Aggarwal**, cited supra. Reliance is also placed on the judgment of the Tribunal in O.A.No.209/2021 passed on 09-03-2022. I have gone through the judgments relied upon by the learned Counsel. There cannot be a dispute about the ratio laid down by the Hon'ble Supreme Court in the cited judgment. The law is well settled that in each and every matter suspension is not warranted and the order of suspension is to be passed in only grave matters or if the misconduct alleged against the applicant appears to be of that serious nature.

8. In the present matter, it appears to me that the misconduct which is alleged against the applicant that he failed in discharging his duties efficiently or in the manner he was expected to discharge the same, which has resulted in escape of three prisoners from District Prison, Jalgaon

in the morning hours cannot be said to be a misconduct not falling under the category of serious misconduct. According to the authorities, if such incident was having serious repercussions and in the circumstances if it was decided to suspend the applicant who was in charge of the said prison at the relevant time, it does not appear to me that the respondents have committed any error.

9. As has been observed by the Hon'ble Apex Court in catena of judgments the ratio has to be applied in the facts of a particular case and facts defer from case to case. Escaping of prisoners from any prison has to be held a serious matter and cannot be dealt with as a casual event. Merely because, ultimately the punishment has been imposed of stoppage of one increment for two years without cumulative effect cannot take away seriousness of the incidence. Why the punishment is restricted only to stoppage of one increment for two years without cumulative effect is altogether a different matter and can be dealt with separately. However, on that ground, it is difficult to accept that the order of suspension was not tenable or was not sustainable. Order of suspension was passed on 29-07-2020. At the relevant time, it could not



have been anticipated in what punishment it would result. In the circumstances on the grounds as raised by the applicant the order of suspension cannot be set aside. Decision passed in O.A.No.209/2021, which has been relied upon by the learned Counsel for the applicant is having altogether different facts. In the circumstances, the view taken in the said matter will not be of any help in the present matter.

10. After having considered the facts which are revealed from the pleadings of the parties, it is difficult to accept the contentions of the applicant that the suspension of the applicant was unwarranted for the reasons as are stated in the O.A. When the order of suspension is revoked, nothing has been stated about the period of suspension, more particularly, as to whether it will be treated as period of suspension or duty period etc. It is, however, a different issue and in the order of punishment, orders are passed in that regard subsequently after filing of the present O.A. I have been informed that the applicant has preferred departmental appeal against the said order. It is, thus, evident that the said grievance is pending with some different authority for consideration. It, therefore, cannot

be considered in the present O.A. After having considered all the facts and circumstances in the matter, it does not appear to me that any case is made out by the applicant for quashment of the impugned order. Hence, the following order:

ORDER

Original Application is dismissed, however, without any order as to costs.

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 20.03.2023.**