

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.665 OF 2016

District : Jalna

Ghansham S/o. Rambhau Palwade,
Age : 55 years, Occ: Service
(as Police Inspector),
C/o. : Police Officers' Club,
Jalna.

...APPLICANT

V E R S U S

1) The State of Maharashtra,
Through its Secretary,
Home Department, M.S.,
Mantralaya, Mumbai-32.

2) The Director General of Police,
M.S., Mumbai.

...RESPONDENTS

APPEARANCE : Shri A.S.Deshmukh learned Advocate for
the applicant.

Shri M.P.Gude learned Presenting Officer for
respondents

CORAM: HON'BLE SHRI J.D.KULKARNI, MEMBER (J)

DATE: 2nd December, 2016.

J U D G M E N T

(Delivered on 2nd December, 2016)

Applicant has challenged the impugned order of his
suspension dated 09-08-2016 (A-9, page 63) issued by the

respondent no.2, and prayed for quashing and setting aside the said order. Vide impugned order dated 09-08-2016, Additional Director General of Police (Administration), M.S., Mumbai was pleased to keep the applicant under suspension with immediate effect. Only reason for suspension of the applicant is that he has not obeyed the order of his transfer dated 24-05-2016 whereby he has been transferred from the post of Police Inspector (PI), Jalna to the post of P.I., Gadchiroli. It is stated that he was relieved on 26-05-2016 so as to join at Gadchiroli but he did not join there.

2. According to the applicant, he entered service of the Government of Maharashtra as directly recruited Sub Inspector on 15-06-1989. He was promoted on the post of Assistant Police Inspector in 2001 and on the post of Police Inspector in 2008. He is due to retire on superannuation on 31-08-2019. On 24-05-2016, the applicant was transferred along with number of other P.Is. The applicant was earlier transferred to Yavatmal, which is naxalite affected area, where he had already served for about 8 years. The applicant has therefore filed representation dated 22-07-2016 and requested that his posting at Gadchiroli be cancelled and he be posted, considering the administrative convenience, at any place either at (1) Solapur

(Rural), (2) Jalgaon, (3) Ahmednagar, (4) Latur, or (5) Pune (Rural) etc. Number of Police Inspectors filed representations against the transfer order dated 24-05-2016. Accordingly, respondent no.2 was pleased to modify the posting of at least 3 P.Is. in the Gadchiroli District but did not accept the applicant's request. The applicant finally filed O.A.No.638/2016 for quashing and setting aside his transfer to Gadchiroli. Said O.A. is still pending. However, in the meantime, respondent no.2 issued the impugned order of suspension.

3. According to the applicant the impugned order of transfer is against the basic principles of natural justice, equity and good conscience. It is illegal, arbitrary, high handed, irrational and result of a total non-application of mind and it is nothing but colourable exercise of power vested with the respondents. Hence this O.A.

4. The respondent no.2 filed affidavit in reply and justified the suspension order. It is stated that the applicant has not obeyed the order of transfer, and therefore, has shown highest disregard towards the competent authority. Therefore, he was rightly kept under suspension. Applicant has also filed rejoinder to the reply affidavit of the respondents.

5. Heard Shri A.S.Deshmukh learned Advocate for the applicant and Shri M.P.Gude learned Presenting Officer for the respondents. Perused memo of O.A., affidavit in reply, affidavit in rejoinder as well as various documents placed on record by the parties.

6. Only material point to be considered is whether the impugned suspension order is legal and proper ?

7. As already stated, only allegation against the applicant is that inspite of transfer order dated 24-05-2016 and the fact that he was relieved on 26-05-2016, applicant did not join his posting at Gadchiroli, and therefore, has shown utter disregard to the order/s of his superiors. It is further submitted that an enquiry in this regard will be held by the competent authority and if it is found that the applicant has committed misconduct, necessary departmental action will be taken, and for that purpose, applicant has been kept under suspension.

8. Applicant has states that he has conveyed to the respondents that he was required to undergo treatment for ailment being suffered by him. He also informed the competent authority that he was undergoing medical treatment.

Admittedly, applicant's representation was pending before the competent authority for cancellation of his transfer, and he was waiting for some order to be passed on the same. It seems that respondent no.2 has reconsidered representations of number of officers and has cancelled order of at least 3 officers who were transferred to Gadchiroli naxalite area. It is also an admitted fact that the applicant has challenged the order of his transfer by filing O.A.No.638/2016 and the same is pending.

9. In reply to the applicant's contention that the applicant was undergoing medical treatment with Dr. Dande Hospital at Aurangabad, it is stated in the reply affidavit that suspension order was issued on 09-08-2016 and at that time letter dated 05-06-2016 and certificate of Dr. Dande Hospital, Aurangabad was not available with the office. It is stated that Dr. Dande has certified that the applicant is suffering from disease and was advised rest of approximately 3 weeks stating from 25-05-2016. Therefore, on the basis of said certificate, applicant was required to join duties on 09-06-2016. If the applicant was not in a position to join duty, he was required to submit proper medical certificate from the Government Hospital about his sickness, but the applicant has not done the same.

10. From the aforesaid reply, respondent no.2 has tried to justify the suspension order but it is a fact that the medical certificate was submitted to the competent authority showing that the applicant was undergoing medical treatment and that he was advised to take 3 weeks' bed rest. Admittedly, this certificate was not before the respondent no.2 when the suspension order was issued. Therefore, merely under presumption that the applicant has not complied with the transfer order, suspension order has been issued. It is also an admitted fact that suspension order is passed on 09-08-2016 and the application for leave along with medical certificate was given on 05-06-2016. This fact was not taken into consideration while placing the applicant under suspension.

11. Learned Advocate for the applicant has invited my attention to paragraph 3 of the rejoinder affidavit in which it is stated that the respondent no.2 had taken action of suspension against the applicant only on the ground of his failure to join on the transferred post pursuant to order dated 24-05-2016. On the other hand, no action was taken against other Police Inspectors who were transferred along with the applicant, who were relieved but did not join at their respective places of transfer and have remained unauthorizedly absent. Applicant

has referred to cases of Shri Ravindra Pandurang Chaudhar, Shri Ashok Namdeo Thorat and Shri R.S.Yadav. It seems that Shri Yadav and Thorat were transferred from Pune City to Gondia which is also a naxalite affected area and were relieved but did not join at Gondia. No action has been taken against them. On the contrary, their transfer orders have been modified. Applicant has also placed on record modified transfer order/s of those persons. It, therefore, seems that different scales have been applied for case of the applicant and other officers who did not join their respective posts.

12. Along with rejoinder affidavit, applicant has also placed reliance on the regulations issued by the Government from time to time, as to under what circumstances, extreme steps of suspension shall be taken. These G.Rs. are dated 24-04-1996 and 20-06-2009. It is true that the suspension shall be a rare incidence in the service and such action shall be taken only in extreme cases where it is necessary and if there is no other way.

13. Considering the facts and circumstances as already discussed, I am of the opinion that the respondent authorities have not considered the fact that the applicant was on medical

leave and he has already filed such leave application in the month of June, 2016 along with medical certificate. Even for argument's sake if it is accepted that the certificate was not received by the respondent no.2 while passing suspension order, respondent no.2 should have enquired into details as to whether the applicant was deliberately absent or was on leave. In the similar cases, no action has been taken against other officers. Above all, it was necessary to consider whether the suspension was the only action required to be taken.

14. In my opinion, the respondent no.2 ought to have considered the fact that the applicant has filed representation for cancellation of his transfer on the ground that he has already served for 8 years in naxalite affected areas from 01-01-1991 to 30-05-1998 and was awarded for his work. The respondent no.2 ought to have considered that the applicant had already filed O.A. before the Tribunal for cancellation/modification of his transfer order. Above all, he was sick and applied for leave along with medical certificate. In such circumstances, merely on the ground that he did not join at transfer place, respondent no.2 ought not to have taken extreme action of suspension, and no purpose would be served keeping the applicant under suspension.

15. One more legal factor to be considered in this case is that the applicant is a Police Inspector and the Government of Maharashtra is his appointing authority. The impugned order of suspension dated 09-08-2016 has been passed by the Additional Director General of Police (Administration), Maharashtra State, Mumbai who has admittedly not by the Appointing Authority and in other words it is the subordinate authority to the appointing authority. As per Bombay Police (Punishment and Appeals) Act, 1956 Police officials can be dealt with for suspension in 2 manners; (1) suspension as punishment, and (2) suspension when the enquiry is contemplated or pending or complaint against the officer of any criminal offence is under investigation or trial. In the present case, impugned punishment order is not by way of punishment but it seems to be in view of the contemplated departmental enquiry. Rule 3(1-A)(i) of the Bombay Police (Punishment and Appeal) Rules, 1956 reads as under:

“3.(1)

(1-A) (i) The appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place, a Police Officer under suspension where-

(a) an enquiry into his conduct is contemplated or is pending, or

(b) a complaint against him of any criminal offence is under investigation or trial:

Provided that, where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made.

Explanation,- The suspension of a Police Officer under this sub-rule shall not be deemed to be a punishment specified in clause (a-2) of sub-rule (1).”

16. From the plain reading of the aforesaid provisions, it will be clear that whether the order of suspension is passed by authority lower in rank than the appointing authority, such authority, shall forthwith report to the appointing authority circumstances in which the order of suspension was passed. In the present case, as already stated, the order of suspension has been passed by Additional Director General of Police (Administration). He has forwarded copy of the said order to Special Inspector General of Police (Administration). Though it is stated that the copy was forwarded to Desk Officer, circumstances under which the applicant was kept under suspension or was required to be kept under suspension have not been brought to the notice of the appointing authority i.e. Government or even to the Special Inspector General

(Administration). On this count also the impugned order seems to be illegal.

17. In view of the circumstances referred above, I pass following order:

ORDER

- (i) O.A. is allowed.
- (ii) Impugned order of suspension of the applicant is quashed and set aside.
- (iii) Respondent no.2 is directed to reinstate the applicant in service.
- (iv) In the circumstances, there shall be no order as to costs.

MEMBER (J)