

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.**

ORIGINAL APPLICATION NO. 821 OF 2023

DIST. : AURANGABAD

Rajendra Vasantrao Marale,
Age. 52 years, occu. Service as
Jailor Grade-I,
R/o. Verwada Open District Prison
Class-I, Yerwada Pune,
Tal. & Dist. Pune.

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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 Prison &
Correctional Services,**
Old Central Building, 2nd Floor,
Pune.
- 3) **The Deputy Inspector General of
Police,** Central Division, Aurangabad
- 4) **The Superintendent Central Prisons**
Harsul, Aurangabad.

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RESPONDENTS

APPEARANCE :- Shri Avinash N. Barhate Patil, Advocate
for the applicant.
: Smt. Resha Deshmukh, learned
Presenting Officer for the respondent
authorities.

CORAM : Shri Vinay Kargaonkar, Member (A)

RESERVED ON : 23.10.2024

PRONOUNCED ON : 25.10.2024

ORDER

1. Heard Shri Avinash N. Barhate Patil, learned counsel for the applicant and Smt. Resha Deshmukh, learned Presenting Officer for respondent authorities.

2. Brief facts:-

By this Original Application the applicant is challenging the order of punishment dated 20.12.2022 passed by the Additional Chief Secretary (Appeal & Security) Home department, Mantralaya, Mumbai.

3. **Pleadings and Arguments by the applicant :-**

(i) The applicant joined the service as a Jail Guard on 23.06.1993 and was promoted to Jailor Grade-II on 19.06.2006. Subsequently, he was selected as Jailor Grade-I on 09.12.2015 through a departmental examination conducted by the Maharashtra Public Service Commission. The applicant has been serving as Jailor Grade-I at Aurangabad District Central Prison since 20.12.2019.

(ii) The applicant states that on 26.05.2020, while he was posted at Aurangabad Central Prison, respondent No. 3 issued an order assigning him the additional charge of Jalgaon District Prison. The applicant assumed this additional responsibility and performed his duties sincerely. However, due to personal difficulties, including the fact that his wife is employed as a conductor with the MSRTC in Osmanabad, he made multiple representations to respondent No. 3 on 03.07.2020, 14.07.2020, 20.07.2020, and 13.07.2020, requesting the cancellation of his additional charge at Jalgaon District Prison.

(iii) On 17.07.2020, respondent No. 3 sent a letter to respondent No. 2, specifically highlighting the need for a regular superintendent at Jalgaon District Prison due to the increasing number of prisoners. On 20.07.2020, respondent No. 2 issued a

circular inviting online applications for request transfers for the year 2020. In response, the applicant submitted his representation on 21.07.2020 under the couple arrangement scheme, seeking a transfer.

(iv) On 25.07.2020, the applicant's additional charge as Jailor of Jalgaon District Prison was withdrawn, and he was relieved of his duties on 26.07.2020. On 29.07.2020, respondent No. 2 issued a suspension order against the applicant in contemplation of disciplinary action. A departmental inquiry was initiated based on a report dated 26.07.2020 concerning an incident on 25.07.2020, wherein three undertrial prisoners escaped from Jalgaon District Prison. On the same day, the applicant's additional charge as Superintendent of Jail was revoked and given to another officer.

(v) The applicant states that he was not provided a copy of the inquiry report dated 26.07.2020. Respondent No. 4 directed the applicant to submit a reply regarding the inquiry report, and on 18.09.2020, the applicant filed a representation with the respondents, requesting the revocation of his suspension. On 09.11.2020, respondent No. 2 issued an order continuing the applicant's suspension on administrative grounds.

(vi) The applicant filed O.A. No. 563/2020 before the Maharashtra Administrative Tribunal, Mumbai Bench at Aurangabad, challenging the suspension order dated 29.07.2020 issued by respondent No. 2. While the O.A. was pending, respondent No. 2 issued a show-cause notice on 17.02.2021, requiring the applicant to submit a detailed reply within 10 days. The applicant submitted his reply on 25.02.2021, asserting that he was not responsible for the escape of the prisoners and had taken all necessary steps to prevent such incidents. He highlighted that he had made efforts to install CCTV cameras in the prison, but the higher authorities had not passed the requisite orders for their installation. Furthermore, during the Covid-19 pandemic, the respondent authorities had directed the applicant not to conduct routine prisoner counts due to covid pandemic. On 20.07.2021, respondent No. 2 imposed the punishment of stoppage of increment for two years, and the applicant's suspension period (from 29.07.2020 to 24.02.2021) was treated as suspension period.

(vii) Aggrieved by the suspension order dated 20.07.2021 issued by respondent No. 2, the applicant filed an appeal before respondent No. 1. After hearing the parties, respondent No. 1 dismissed the appeal on 20.12.2022, confirming the order dated 20.07.2021. The respondents noted that the failure to conduct prisoner counts during the night session, particularly during the Covid period, constituted serious misconduct on the applicant's part.

(viii) The applicant relies on the judgment of the Hon'ble Supreme Court in Union of India & Anr. vs. Ashok Kumar Aggarwal (C.A. No. 9454/2010, decided on 22.11.2013), wherein the Apex Court observed that an order of suspension should only be passed when there is a prima facie case involving moral turpitude, grave misconduct, indiscipline, or refusal to follow the orders of a superior authority. Additionally, it was held that the alleged misconduct, if proven, should typically result in penalties such as reduction in rank, removal, or dismissal from service. In the present case, no prima facie case has been established against the applicant.

(ix) The applicant submits that there was no misconduct on his part, and he did not assist or facilitate the escape of prisoners. Therefore, the respondents' conclusion that the applicant is liable for punishment is erroneous. The applicant prays for the quashing and setting aside of the impugned order dated 20.12.2022 passed by respondent No. 1.

4. Pleadings and Arguments by the respondents :-

(i) The respondents submit that it is the responsibility of the prison authorities to appoint a regular Superintendent at Jalgaon District Prison. In the absence of a regular appointee, respondent No. 3 assigned the applicant with additional charge of Jalgaon District Prison. The respondents contend that a temporary Superintendent, such as the applicant, carries the same responsibilities and duties as a regular Superintendent, particularly with respect to prison security, and no exceptions can be made for such responsibilities.

(ii) On 25.07.2020, three undertrial prisoners escaped from Jalgaon District Prison. On the same day, the applicant's additional charge as Superintendent was withdrawn and assigned to another officer. The applicant was held accountable for the escape, as it was found that, despite being in charge, he

failed to perform his duties adequately. He did not exercise proper supervision or control over the staff, and critical areas of the prison were not staffed appropriately. These deficiencies in duty management were directly linked to the escape incident.

(iii) The Deputy Inspector General of Prisons (Central Region) visited Jalgaon District Prison to investigate the incident. Based on the inquiry, the D.I.G. submitted a report dated 26.07.2020 to respondent No. 2. After reviewing the report, respondent No. 2 suspended the applicant and five other prison staff on 29.07.2020. A preliminary inquiry was conducted by the Superintendent of Kalyan District Prison, who submitted a report on 13.08.2020, concluding that the applicant, along with others, was responsible for the escape. The inquiry report highlighted lethargy and negligence on the part of the applicant and other staff, which amounted to grave misconduct.

(iv) The respondents submit that the escape was the result of administrative shortcomings and security lapses within the prison. It is not just the officials on duty at the time who bear responsibility, but also senior officers, such as the applicant, who are in charge of staff management and security. The incident demonstrates serious negligence on the part of the applicant, which constitutes grave misconduct and reflects a failure in his duties as Superintendent of Jalgaon District Prison.

(v) On 17.02.2021, the applicant's suspension was revoked, pending the final outcome of the departmental inquiry. Respondent No. 2 issued a show-cause notice on 17.02.2021, proposing a punishment of stoppage of increments for three years without affecting future increments, and sought an explanation from the applicant. After reviewing the applicant's response, respondent No. 2 imposed a reduced punishment of stoppage of increments for two years, without affecting future increments, by order dated 24.02.2021. The applicant's suspension period was treated as a period of suspension.

(vi) Aggrieved by the order dated 24.02.2021, the applicant filed an appeal with the Government. The appeal was rejected, and the Government confirmed the previous punishment order on 22.12.2022. The respondents maintain that the orders issued are just, legal, and in accordance with the law. After considering all the points raised by the applicant and examining the evidence, the punishment was imposed appropriately. The

grounds raised by the applicant are misconceived and without merit. Therefore, the O.A. filed by the applicant lacks foundation and deserves to be dismissed.

5. Reasoning and Conclusions:

The Applicant, Jail Superintendent at Aurangabad Prison, was entrusted with the additional charge of Jalgaon Prison. During his tenure, three prisoners escaped from Jalgaon Prison, resulting in his suspension and charges of dereliction of duty and a consequent punishment of stoppage of increment for two years. His period of suspension was treated as it is. Applicant claims that he is not responsible for the escape of the prisoners as he was not holding the regular charge. Relevant part of the preliminary enquiry report is reproduced below:

“प्रति,

मा. अपर पोलीस महासंचालक
व महानिरीक्षक, कारागृह व सुधारसेवा,
महाराष्ट्र राज्य, पुणे.

जा.क्र. पोठमनि/दप/जजिका/बंदीपलायन/प्रा.चौ.अ/313/२०२० कक्ष-३ म.वि.औ, बाद दि. २६.०७.२०२०

विषय :- जळगाव जिल्हा कारागृह येथील बंदी पलायन प्रकरणी अहवाल सादर
करणेबाबत.

महोदय,

उपरोक्त संदर्भाकित विषयान्वये जळगाव जिल्हा कारागृह येथुन दि.२५.०७.२०२० रोजी तीन न्यायाधिन बंधांनी कारागृहाचे मुख्यद्वारातून पलायन केले प्रकरणी कारागृहास भेट देऊन घटना स्थळाची प्रत्यक्ष पाहणी करून संबंधीत अधिकारी श्री. राजेंद्र वसंत मरळे, तु.अ.श्रेणी-१ तथा प्रभारी अधीक्षक, श्री. बहादुरखॉ मुस्तफा तडवी तु.अ.श्रेणी-२ व कर्मचारी श्री. प्रकाश फुलसिंग मालचे, श्री. संजय काशिनाथ पाटील, श्री. पंडीत दामु गुंडाळे, श्री. कुलदिपक सुंदर दराडे, श्री. सचिन कोरके शिपाई, श्रीमती कविता साळवे महीला रक्षक यांचेकडे चौकशी करण्यात आली संबंधीत अभिलेखांची पाहणी केली. याबाबतचा अहवाल खालीलप्रमाणे सादर करण्यात येत आहे.

कारागृहाच्या सर्कल विभागात श्री प्रकाश मालचे हवालदार यांची ओपनिंग ते दु. १२ पर्यंत जनरल। अंमलदार म्हणून तसेच श्री. संजय काशिनाथ पाटील, शिपाई यांची सर्कल अंमलदार म्हणून

ड्युटी होती त्यांच्याकडे सदर घटने संदर्भात चौकशी केली असता पलायन झालेले जे तीन आरोपी कारागृहाच्या मेनगेटकडे गेले त्यांना अडवणे हे त्यांचे प्रथम कर्तव्य होते, मात्र त्यामध्ये त्यांनी कसुर केल्याचे दिसून येते.

श्री. पंडीत दामु गुंडाळे शिपाई यांची सकाळी ओपनिंग ते दु. १२ पर्यंत मेनगेट फाटक ड्युटी होती, त्यांच्याकडे चौकशी केली असता ज्या तीन बंधांनी मुख्यद्वारातून पलायन केले त्यावेळी त्यांनी सदर बंधांची झडती घेतली नाही, त्यांना अडविण्याचा प्रयत्न केला नाही तसेच घटना घडत असतांना त्यांनी धोक्याचा इशारा म्हणुन इतरांना सावध करण्यासाठी आरडाओरड किंवा शिटी वाजवली नाही, व बंधांनी पलायन केलेनंतर आरडाओरड केल्याचे दिसून येते.

श्री. बहादुरसिंग तडवी तु.अ.श्रेणी-२ यांना पूर्वीपासुन सर्कल तुरुंगाधिकारी म्हणुन कर्तव्य नेमुन देण्यात आलेले आहे, परंतु ते नियमित ओपनिंगसाठी येत नसल्याचे दिसून आले. घटनेच्या दिवशी देखिल ते कारागृहाच्या ओपनिंगसाठी कर्तव्यावर हजर नव्हते. ओपनिंगसाठी ते जर हजर असते तर सदरची अनुचित घटना टळली असती.

श्री. किरण पवार, तु.अ.श्रेणी-२ यांचेकडे कारागृह सुरक्षा प्रमुख म्हणुन वरीष्ठ तुरुंगाधिकारी व न्यायविभाग प्रमुख ही जबाबदारी सोपविण्यात आलेली असुन कारागृह सुरक्षा व्यवस्थेची प्रमुख जबाबदारी ही वरीष्ठ तुरुंगाधिकारी यांचेवर असते, कारागृहातील तीन बंधांनी कर्मचाऱ्यास धमकावुन कारागृहाच्या मुख्यद्वारातून पलायन करणे ही बाब कारागृह सुरक्षा व्यवस्थेत कमालीची कमतरता असल्याचे दिसून येते. पलायन केलेले तीनही बंदी हे भा.दं.वि. ३९५ व आर्म्स अॅक्ट सारख्या गुन्ह्यातील असुन देखिल यापैकी दोन बंधांना श्री. किरण पवार हे न्यायविभाग तुरुंगाधिकारी, या नात्याने त्यांना काम करण्यासाठी न्यायविभागात नियमित बोलावत होते, पर्यायाने सदर बंधांना मुख्य प्रवेशद्वारात व न्यायविभागात मुक्त वावर करणे सुलभ झाले तसेच त्यांना मुख्यप्रवेश द्वारातील सुरक्षा व्यवस्थेचा अचुक आढावा घेता आला व सदरची घटना घडणेस सदर बाब देखिल प्रामुख्याने कारणीभूत आहे.

श्री.राजेंद्र मरळे तु.अ.श्रेणी-१ व प्रभारी अधीक्षक यांचे प्रशासनावर कोणतेही प्रकारचे नियंत्रण नसल्याचे चौकशीमध्ये दिसून आले आहे. घटनेच्या वेळी ते स्वतः ओपनिंगसाठी हजर नव्हते. कारागृह सुरक्षा व्यवस्था अबाधित राखणेचे दृष्टीने कारागृह ओपनिंग व बंदीच्या वेळी जास्तीत जास्त मनुष्यबळाची सुरक्षेकामी नेमणूक करणे, अधिकारी/कर्मचारी हे कर्तव्यावर वेळेत हजर आहेत किंवा नाही हे याची स्वतः प्रत्यक्ष उपस्थित राहून पाहणी करणे हे त्यांचे कारागृह सुरक्षेच्या दृष्टीने कर्तव्य होते, मात्र त्यांनी कर्तव्यात कसुर केल्याचे दिसून येते. कारागृहात महत्वाच्या वेळी व ठिकाणी सुरक्षेसाठी मनुष्यबळ नेमले नसल्याचे दिसून आले. सदर घटनेच्या वेळी अत्यल्प प्रमाणात कर्मचाऱ्यांचे कर्तव्य नेमले असल्याचे दिसून आले आहे. सदर प्रकरणी सदोष ड्युटी व्यवस्था नेमणूक व प्रशासनावरील नियंत्रणाचा अभाव या बाबी पलायनाच्या घटनेस प्रामुख्याने कारणीभूत असल्याचे दिसून येते.

दि. २५.०७.२०२० रोजी सकाळी ७.२५ ते ७.३० च्या दरम्यान उक्त नमूद तीन बंदी हे कारागृहाच्या मेनगेटमध्ये येवून तेथे एकमात्र कर्तव्यावरील रक्षक श्री. गुंडाळे यांच्याशी झटापट करुन रिक्टॉवरचा धाक दाखवुन त्यांच्या हातातील मेनगेट फाटकाच्या चाव्या हिसकावून घेत मुख्यद्वारातुन सदर तीनही बंधांनी पलायन केले आहे, अशा प्रकारे घटना घडल्याचे श्री. गुंडाळे यांनी कथन केले असुन त्याबाबत जिल्हापेठ पोलीस स्टेशन गु.र.क्र.२८६/२०२० भा.दं. वि. कलम ३५३, ३०७, १२०ब, २२४ आर्म्स अॅक्ट ३/२५ अन्यये गुन्हा नोंद करण्यात आलेला असुन गुन्ह्याचा तपास पोलीस यंत्रणेमार्फत सुरु आहे.

प्राथमिक चौकशीत श्री. राजेंद्र वसंत मरळे, तु.अ.श्रेणी-१ तथा प्रभारी अधीक्षक, श्री. बहादुरसिंग तडवी तु.अ.श्रेणी-२, श्री. किरण संतोष पवार तु.अ.श्रेणी-२, श्री. पंडीत दामु गुंडाळे शिपाई, श्री. प्रकाश फुलसिंग मालचे हवालदार व श्री. संजय काशिनाथ पाटील शिपाई हयांनी कर्तव्यात गंभीर कसुर केलेला असून त्यांचेवर कठोर कारवाई होणेस अहवाल सादर आहे.

आपला विश्वास

(दिलीप कृ.झळके)
पोलीस उपमहानिरीक्षक
कारागृह व सुधारसेवा
मध्य विभाग, औरंगाबाद”

The applicant was suspended primarily based on the Preliminary Inquiry Report submitted by the Deputy Inspector General (DIG) of Prisons (Central Region). The report reproduced above pointed out two major instances of misconduct:

1. The applicant was not present during the morning opening of the prison, which is considered a critical time for maintaining security and control.
2. The applicant failed to deploy maximum available manpower during the opening for security reasons and did not personally oversee or verify the deployment of prison staff, which is a key responsibility to ensure safety and prevent incidents like the escape.

Both grounds for the applicant's suspension are not reasonable, given that the applicant was not posted full-time at Jalgaon Prison but was merely holding additional charge while being stationed at Aurangabad. The expectation that the applicant should have been physically present during the morning opening and personally supervised the deployment of manpower is impractical. Such duties are typically performed by a regular Jail Superintendent who is permanently stationed at the prison and has day-to-day oversight of the institution. The applicant, holding additional charge from a distant

location, could not be expected to manage these tasks as effectively as a full-time officer at Jalgaon Prison. The responsibility for such critical operations lies with a dedicated Superintendent who is physically present to ensure smooth functioning, and the absence of a regular Superintendent at Jalgaon cannot be attributed as a failure of the applicant, who was already burdened with duties at Aurangabad Prison. Therefore, the grounds of action against the applicant are not justified in these circumstances.

6. The key issue in this Original Application is the extent of responsibility an officer holding additional charge bears for incidents such as a prison escape, especially when the officer is stationed at a different location.

1. Responsibility as an Officer Holding Additional Charge:
The Applicant's primary responsibility was towards Aurangabad Prison, where he held regular charge. Jalgaon Prison was only an additional responsibility, and it was neither feasible nor expected for him to monitor the day-to-day activities, particularly during the early morning shifts, at Jalgaon Prison. Since he was not stationed full-time at Jalgaon, expecting the Applicant to be physically present every morning is unrealistic. The applicant's absence in the morning does not amount to dereliction of duty but is a direct consequence of the dual charge imposed on him.

2. Overcrowding and Lack of Adequate Manpower:

The report of the DIG Prisons (Central Region) criticizes the applicant for failing to deploy the maximum available

manpower during the prison opening for security purposes. However, the report fails to specify from where this so-called "maximum manpower" could have been drawn. As the applicant was holding additional charge at Jalgaon while stationed at Aurangabad, his ability to directly control staffing was inherently limited. Furthermore, prisons across the state are known to face chronic manpower shortages, and Jalgaon Prison, like many others, likely struggled with limited staff availability. Without a clear directive on how additional manpower could be arranged or allocated, holding the applicant accountable for not achieving an undefined level of staffing is unjustified. The DIG's report does not account for the practical limitations the applicant faced, particularly without additional resources being made available to him for this temporary assignment. Therefore, the criticism regarding manpower deployment lacks a concrete basis and overlooks the systemic staffing issues present in the prison administration.

It is well-known that most prisons in Maharashtra are overcrowded, and the availability of manpower is stretched thin. Prisons rely on rotating shifts for their personnel, and with the constraints of overcrowded institutions, the scope for additional deployment of staff is severely limited unless further manpower is sanctioned by the government. Holding the Applicant accountable for manpower shortages without providing adequate resources reflects an unfair assessment of his role.

3. Institutional Shortcomings:

The responsibility for ensuring effective prison management should lie with the system as a whole. The escape of prisoners highlights a broader institutional failure, where the absence of a full-time Jail Superintendent at Jalgaon, inadequate staffing,

and perhaps lapses in infrastructure played significant roles. Rather than penalizing the Applicant, who was performing his duties in Aurangabad while balancing an additional charge, the government should have appointed a permanent Jail Superintendent at Jalgaon Prison to ensure proper day-to-day management and oversight. During the Covid pandemic, strict restrictions were placed on prison operations, including the suspension of personal prisoner counting to prevent the spread of the virus. This disrupted the normal functioning of prison management, making it impossible for officers to perform their duties as per pre-pandemic protocols. In such extraordinary circumstances, when the applicant was holding additional charge and was already managing dual responsibilities under restricted operational conditions, it is unreasonable to hold him responsible for the escape of prisoners. The pandemic significantly impacted all institutions, and the escape cannot be attributed to any neglect or failure on the applicant's part under such unprecedented constraints. Assigning blame to the Applicant for the escape of prisoners is not only disproportionate but also overlooks the systemic challenges in managing prisons with limited staff and infrastructure. Failure to provide a permanent Superintendent of Prison at Jalgaon, is the primary contributing factors to the incident. The Applicant, in the capacity of holding an additional charge, cannot be expected to perform the role of a full-time Superintendent, and penalizing him for circumstances beyond his control is unjust. Upon closer examination of the facts, it becomes evident that holding the applicant responsible for the escape is unreasonable, given the systemic and logistical challenges involved. In conclusion, the escape of prisoners from Jalgaon Prison cannot be attributed to any fault or negligence on the part of the Applicant as he was not holding the regular charge. The constraints of holding additional charge and the

inadequacies in manpower and management infrastructure absolve the Applicant of the alleged dereliction of duty. The real responsibility lies with the failure to appoint a full-time Jail Superintendent at Jalgaon and provide sufficient resources to prevent such incidents. Therefore, the punishment imposed on the Applicant needs be reconsidered and set aside as it is neither fair nor justified.

7. Hence following order:

ORDER

- a) Order dated 20.12.2022 passed by the Additional Chief Secretary (Appeal & Security), Home department in appeal No Jail/1222/Pra.Kra.23/Turung-1 is quashed and set aside.
- b) Respondents shall extend all consequential benefits to the applicant.
- c) OA is allowed in above terms without any order as to costs.

MEMBER (A)

Place : Aurangabad

Date : 25.10.2024