

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1022 OF 2017

[Subject : Punishment (minor)]

DISTRICT : SATARA

Shri Pravin Popatrao Pawar)
Age : 34 years, Occ. Police Constable,)
R/o. Room No.2, Building No.1, Godoli,)
Satara 415 002.) **..Applicant**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 32.)

2. The Addl. Director General and Inspector)
General of Police (Prison), M.S.)
Old Central Building, 2nd floor, Pune 1.)

3. Shri Rajendra Dhamane,)
Dy. Inspector General of Prison,)
West Division, Pune -6.) **..Respondents**

Shri R.M. Kolge, the learned Advocate for the Applicant.

Ms. S. Suryawanshi, the learned Presenting Officer for the Respondents.

CORAM : Justice Shri A.H. Joshi, Chairman

DATE : 09.01.2018.

J U D G M E N T

1. Heard Shri R.M. Kolge, the learned Advocate for the Applicant and Ms. S. Suryawanshi, the learned Presenting Officer for the Respondents.
2. In the present Original Application, this Tribunal had issued notice for final disposal by order dated 13.11.2017. Returnable date which was fixed is 14.12.2017. Office report shows that notice was served on 13.11.2017 on all Respondents.
3. Ms. S. Suryawanshi, the learned P.O. for the Respondents made earnest request on the ground that though it is not possible to put forward any reasons as to why the matter should be adjourned but in the interest of justice adjournment may be granted. When asked learned P.O., she said that so far any letter of request for grant of time is not received from the respondents, and even para-wise remarks too are not received.
4. In the background that Respondent No.3 who is also added in personal capacity by name had chosen to remain absent. It is thus evident that despite service of notice, Respondents have failed to appear, and therefore present is a fit case to proceed ex-parte.
5. The officer of the rank of Deputy Inspector General of Prison, when remains absent, inspite of being arrayed as party in personal capacity, the matter does not deserve any latitude, hence, taken up for hearing.
6. It is seen that Applicant was subject to charge-sheet. The enquiry officer, the Additional Superintendent of Jail delivered his findings which are quoted below :-

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निष्कर्ष

- १) शिक्षा, बंदी इम्तियाज रमजान खान याची पत्ना श्रीमती तब्बसूम इम्तियाज खान हिने सन्माननीय उच्च न्यायालय, मुंबई येथे क्रिमिनल अपीलकेशन नं.७०५ दाखल करून कारागृह प्रशासनावर, वैधकिय अधिकारी, परिचारक तथा अपचारी श्री. प्रवण पोपटराव पवार यांचेवर केलेला खोटा गंभीर आरोप (अपचारी यांनी पैसे घेतल्याचे किंवा पैसे गोळा केल्याचे) विभागीय चौकशीमध्ये सिध्द झालेला नाही.
- २) शिक्षा बंदी इम्तियाज रमजान खान याने अधिकांचे दैनंदिन संचार फेरीच्या वेळी लेखी अथवा तोंडी तक्रार केलेली नाही.

- ३) अपचारी श्री. प्रविण पोपटराव पवार रक्षक-परिचारक यांच्या विरुद्ध सुरु असलेल्या विभागीय चौकशीमध्ये सदर तक्रारदार शिक्षा बंदी इमित्याज रमजान खान यास तो कारागृहातून रजेवर असताना समक्ष चौकशीमध्ये हजर राहणे बाबत या कार्यालयाने कळविले असतानाही सदर शिक्षा बंदी हा चौकशीमध्ये जाणीव पुर्वक हजर राहिला नाही.
- ४) शिक्षा बंदी इमित्याज रमजान खान याच्या आजाराचा व त्याच्यावरील औषधापचाराचा सर्व खर्च वेळोवेळी कारागृह प्रशासनाने केलेला आहे.
- ५) दिनांक १८.०५.२०११ रोजी असून सर्वेपचार रुग्णालयास शासकीय सुटटी असल्याने सदर दिवशी शिक्षा बंदी इमित्याज रमजान खान यास Angiography करिता पाठविले नाही.
- ६) शिक्षा बंदी इमित्याज रमजान खान याचेकडे अपचारी यांनी शिक्षा बंदी इमित्याज रमजान खान याचेकडे पैसे मागितले किंवा सदर बंदयाने पैसे दिलेला बाबत प्रबळ पुरावा चौकशी मध्ये सिध्द झालेले नाही.
- ७) कारागृहात चलनी नोटा बाळगणे अवैध असून, (कारागृह नियमावली पुस्तिका १९७९) प्रकरण २६ Prison Discipline पान क्र.३८३ नियम क्र.१७.४) पान क्र.३८४ हे कोठेही सिध्द झालेले नाही.

त्यामुळे सदर प्रकरणी अपचारी श्री. प्रविण पोपटराव पवार, रक्षक-परिचारक, येरवडा मध्यवर्ती कारागृह पुणे ६ यांचेवर लावलेले दोषारोप जोडपत्र-१, जोडपत्र-२ व जोडपत्र-३ मध्ये नमुद केल्याप्रमाणे त्यांचेकडून महाराष्ट्र नागरी सेवा (शिस्त व अपील) नयम - १९७९ चे नियम (३) (१) (दोन) चे व महाराष्ट्र नागरी सेवा (शिस्त व अपील) नयम - १९७९ चे नियम ८ प्रमाणे उल्लघन झालेले नाही असे दिसून येते.

मा. महोदयांस चौकशी अहवाल सविनय सादर.

आपला विश्वासू,

Sd/-

(भा. म. बोसले)

टति अधिक्षक

कोल्हापूर मध्यवर्ती कारागृह, कळबा.”

(Quoted from page 50 and 51 of paper-book of O.A..)

7. Respondent No.2 who is competent authority felt dis-satisfied with the decision and hence issued notice of show cause, (copy whereof is on record at page 52 of O.A. paper book which is dated 24.01.2014). Perusal of notice of show-cause reveals only thing that Respondent No.2 was unhappy with the action / decision of the Competent Authority. The Respondent No.3 did not record and communicate to the Applicant the reasons for his dis-satisfaction. All that he has recorded is to be seen in penultimate paragraph of the notice dated 24.01.2014, relevant text which is at page 53 and is quoted below:-

“चौकशी अधिकारी यांनी निर्णयासाठीचे मुद्दे व त्यावरील निष्कर्ष यामध्ये सादर केले आहे की, अपचारी पवार यांचेवर ठेवण्यात आलेले दोषारोप सिध्द होत नाहीत. अपचारी पवार यांनी हेतुपरस्पर बंधास वैद्यकीय अधिकारी यांचे कडून वैद्यकीय दपवार देणेस अनियमिता दिसून येते व यानुसारच बंदीचे इमित्याज खान याचे पत्नीचे मा. उच्च न्यायालय, मुंबई येथे याचिका दाखल केली आहे. यास्तव चौकशी अधिकारी यांचे अहवालाशी आम्ही सहमत नसून खालील प्रमाणे कारणे दाखवा नोटीस प्रस्तववीत करित आहे.”

(Quoted from page 53 of paper book of O.A..)

8. Applicant herein furnished his reply and pleaded for withdrawal of notice and for maintaining the decision of the competent authority.

9. Thereafter, the impugned order is passed. The order runs around two pages. The case proceeds in admitted background that wife of the Prisoner who was the complainant had filed Writ Petition before the Hon'ble High Court, making allegation against Jail Personals and in particular, present Applicant, however had later on withdrawn the same.

10. All that Respondent No.2 as recorded in his order reads as follows :

“बंदीचे पत्नीने प्रथमतः निश्चित स्वरूपांची व नावानिशी तक्रार करणे व त्यांनती ती माघार घेणेची कृती निश्चित संशयास्पद आहे. बंदीचे पत्नीने तिचे अर्जात तक्रार मागे घेत असल्याचे नमुद आहे, परंतु अशी पूर्वी केलेली तक्रार खोटी होती असे म्हणता येणार नाही आणि म्हणूनच बंद्याचे पत्नीने मा. उच्च न्यायालयात केलेल्या तक्रारीत तथ्य असल्याचे निदर्शनास येते. यामुळे अपचारी पवारी यांचेवर महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ ये नियम ३(१)(दोन) नुसार ठेवण्यात आलेले दोषारोप सिध्द होतात. यास्तव अपचारी पवार खालील प्रमाणे शिक्षा लादण्याच्या निष्कर्ष पर्यंत आम्ही आलो असून खालील प्रमाणे आदेश देत आहोत.”

(Quoted from page 59 of paper book of O.A..)

11. It is thus evident that Respondent No.2 has elected and preferred to rely on suspension then on evidence. The result is that order which is passed is based on surmises and conjectures can never be regarded on based on facts and legal evidence.

12. Had any evidence however weak, but available and would have been relied upon by the Respondent No.2 then this Tribunal may have hesitated in interfering on the ground of “sufficiency of evidence”.

13. Present case, however, proceeds in the background that the decision of the Respondent No.2 to hold applicant guilty for misconduct is not based on evidence whatsoever. Therefore, impugned order is no sustainable and deserves to be quashed in view of “no evidence”.

14. In the result, Original Application is allowed. Impugned order passed by the Respondent No.2 dated 31.01.2014 (copy whereof is at Exhibit-I of page 58 of the paper book of O.A.) is set aside. The order passed by competent authority, which is at Exhibit-F from page 45 to 51, dated 06.01.2014, is restored.

15. Period of suspension of the Applicant during pendency of departmental enquiry be treated as duty for all purposes including all allowances and seniority etc..
16. Original Application succeeds with costs.
17. Considering the fact that despite of service of notice and despite of being arrayed as Respondent in personal capacity, Respondents No.2 and 3 have failed to appear and give instructions. It is necessary to bring this aspect to the notice of Director General / Inspector General of Prison.
18. The Director General / Inspector General of Prison is directed that he should take steps to appraise all his subordinates and also direct them to respond to the Tribunal's notice / learned P.O.'s order without loss of time.

Sd/-

(A.H. Joshi, J.)
Chairman
09.01.2018