

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

ORIGINAL APPLICATION NO. 464 OF 2021

DISTRICT : AURANGABAD

Vilas s/o Kailas Hiwale,)
Age : 36 years, Occu. : Service (as Armed)
Police Constable, SRPF Group No. 14, Aurangabad))
R/o. Godavari, Flat No. 9, SRPF Group 14,)
Satara Parisar, Aurangabad.)
.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Addl. Chief Secretary,)
Home Department,)
M.S., Mantralaya, Mumbai-32.)
2. **The Additional Director General of Police,) (Administration), M.S. Maharashtra State,) Police HQ, Old Council Hall, Shahid) Bhagat Singh Marg, Mumbai-01.)**
3. **The Special Inspector General of Police,) State Reserve Police Force, SRPF Camp,) Hingna Road, MIDC, Nagpur.)**
4. **The Commandant,**)
State Reserve Police Force, Group No. 14,) Aurangabad, Mauje Satara, Satara Tanda,) Aurangabad.)
... RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh, Counsel for Applicant.

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

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATE : **16.02.2024**

ORAL - ORDER

1. Heard Shri Avinash Deshmukh, learned counsel appearing for the applicant and Shri N.U. Yadav, learned Presenting Officer appearing for respondent authorities.

2. By filing the present Original Application, the applicant is seeking quashing and setting aside letters dated 18.01.2021 (Annexure A-13 (ii)) and 24.02.2021 (Annexure A-12) issued by respondent Nos. 1 and 4 respectively. The applicant is also seeking quashing and setting aside para No. 3 of the operative part of order dated 11.12.2018 (Annexure A-6) passed by the Hon'ble Minister. The applicant in connection with the above said two prayers seeking directions to respondent No. 4 to take appropriate steps under Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981 and pass specific order under clauses (a) and (b) of sub-rule (1) of Rule 70 regarding pay and allowances to be paid to the applicant for the periods from 14.05.2013 to 26.06.2013 and from 18.12.2015 to 04.02.2019 spent out of service by him and further decide the manner in which the aforesaid two periods are to be treated.

3. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

(i) The applicant entered the service of State Reserve Police Force (SRPF) on 26.09.2008. On 31.10.2009, the respondent No. 4 was pleased to initiate a Departmental Enquiry against him for the charge that the applicant secured Government service by indulging in an act of forging Government documents, more particularly the Attestation Form, which he required to submit at the time of entry in the service. The said enquiry was finally concluded on 14.05.2013 and respondent No. 4 was pleased to issue an order imposing punishment of removal of service upon him. Copy of the said order dated 14.05.2013 is marked as Annexure A-1. In view of the said order, the applicant was immediately removed from the service.

(ii) Being aggrieved by the order as above imposing major punishment of removal of service, the applicant had preferred departmental appeal before respondent No. 3 on 24.05.2013. By order dated 26.06.2013 (Annexure A-2), the respondent No. 3 was pleased to set aside the

Departmental Enquiry directing respondent No. 4 to conduct a fresh Departmental Enquiry against the applicant. In view of the quashment of the DE against the applicant, the respondent No. 3 was pleased to direct the applicant's reinstatement in service w.e.f. the date he joined back the duty. So far as the period spent out of service by the applicant due to the order of his removal from service dated 15.05.2013 is concerned, the respondent No. 3 had ordered that the decision in respect thereof would be taken after conclusion of the DE afresh.

(iii) It is further case of the applicant that in terms of the said order, DE afresh was conducted against him, in which the Enquiry Officer had submitted his report on 29.09.2015 to respondent No. 4 holding him guilty of the charge levelled against him. By order dated 18.12.2015 (Annexure A-3), the respondent No. 4 was again pleased to impose the punishment of removal from service upon the applicant. In terms of the said order, the applicant came to be removed from service.

(iv) Being aggrieved by the said order dated 18.12.2015 the applicant has preferred departmental appeal before

respondent No. 3 on 15.02.2016. However, by order dated 28.06.2016 (Annexure A-4), the respondent No. 3 dismissed the said appeal preferred by the applicant. Being aggrieved by the same, the applicant has preferred Revision Application before the respondent No. 2 on 26.09.2016. By order dated 20.12.2017 (Annexure A-5), the respondent No. 2 also rejected the said Revision Application.

(v) It is further case of the applicant that the applicant thus preferred a mercy application before respondent No. 1 on 19.03.2018 and urged for his reinstatement in service. The said mercy application was heard by the Hon'ble Minister of State for Home Department, who was pleased to pass an order dated 11.12.2018 (Annexure A-6) cancelling thereby the punishment of removal of service imposed upon the applicant by respondent No. 4 and instead, inflicted the minor punishment of withholding of next increment of the applicant for a period of one year without affecting his future increments.

4. In the backdrop of the aforesaid facts, learned counsel for the applicant submits that there were two time spans during which the applicant was out of service. The first period

was from 14.05.2013 till 26.06.2013, when the applicant was reinstated in service on the basis of the order dated 26.06.2013 passed by respondent No. 3 and the second time span was from 18.12.2015 till 04.02.2019, when the applicant was reinstated in service on the basis of the order dated 11.12.2018 passed by respondent No. 1 by order dated 04.02.2019.

5. Learned counsel for the applicant submits that the respondent No. 1 while setting aside the punishment of removal of service imposed upon the applicant, has proceeded ahead by issuing directions the manner in which the period spent out of duty by the applicant was to be treated by directing that the said period was not to be treated as duty period, but for the purpose of pension. Learned counsel submits that even though the respondent No.1 has granted relief in applicant's favour by setting aside the major punishment of removal of service imposed upon him, however the action treating the period as detailed above causes serious grievance to the applicant.

6. Learned counsel for the applicant submits that the order dated 11.12.2018 passed by respondent No. 1 to the extent of clause No. 3 was per-se bad and illegal and being in violation of the provisions of Rule 70 of the Maharashtra Civil Services

(Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981 (hereinafter called as Rules of 1981). Learned counsel submits that in terms of provisions of Rule 70 of the Rules of 1981, it is for the competent authority to pass a specific order regarding pay and allowances to be paid to the applicant for the period spent by him out of service and further to order as to whether or not the said period was to be treated as the period spent on duty.

7. Learned counsel for the applicant submits that the order dated 11.12.2018 passed by respondent No. 1 to the extent of clause No. 3 and also the order dated 04.02.2019 passed by respondent No. 4 in this context, are without assigning any reasons. It is for the respondent No. 4 to pass an appropriate order by giving an opportunity of being heard to the applicant in this context. Further the aforesaid orders are without application of mind, as there is no reference to the two time spans when the applicant was out of service.

8. Learned counsel for the applicant submits that so far as order / communication dated 28.05.2020 issued by respondent No. 4 is concerned, it is merely informed to the applicant that the decision was already taken by respondent No.

1 / Hon'ble Minister and without referring the provisions of Rule 70 of the Rules of 1981 and even without referring the grounds raised by the applicant for treating the said period spent out of service as duty period, the aforesaid order dated 24.02.2021 (Annexure A-12) was passed.

9. Learned counsel for the applicant submits that the clause No. 3 of the order passed by respondent No. 1 dated 11.12.2018 is required to be quashed and set aside and consequently, the order dated 18.01.2021 (Annexure A-13(ii)) and order dated 24.02.2021 (Annexure A-12) passed by respondent Nos. 1 and 4 respectively are also required to be quashed and set aside with the further direction to respondent No. 4 to take appropriate steps under Rule 70 of the Rules of 1981 and pass specific order regarding pay and allowances to be paid to the applicant for the period from 14.05.2013 to 26.06.2013 and from 18.12.2015 to 04.02.2019 spent out of service by him and further decide the manner in which those two periods are to be treated.

10. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 and 2 and also on the basis of affidavit in filed on behalf of respondent Nos. 3 and 4

submits that the Hon'ble Minister of the State for Home Department has set aside the major punishment imposed upon the applicant and reinstated him in service withholding of his one increment without affecting the further increments and further directing the period spent out of service was to be treated as out of duty period. Learned P.O. submits that the said order has been passed by respondent No. 1 in terms of Rule 70 of the Rules of 1981.

11. Learned Presenting Officer submits that though the applicant has filed an application in this regard for regularization of the same, but the Hon'ble Minister of the State has already passed the order about the said period, there was no reason to reconsider the request of the applicant.

12. Learned Presenting Officer submits that the order for treating the period of absence from duty i.e. from 18.12.2015 to 04.02.2019 as duty period only for the pensionary purpose by respondent No. 1/ Hon'ble Minister of the State is proper, correct and legal specifically in view of the provisions of Rule 70(1)(a) and (b) of the Rules of 1981. Learned P.O. submits that it is for the authority competent to order instatement to decide the pay and allowances to be paid to the Government servant for the period of

his absence from duty including the period of suspension preceding of his dismissal, removal or compulsory retirement, as the case may be and as to whether or not the said period to be treated as period spent on duty. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

13. In the undisputed facts of the present case, the Departmental Enquiry initiated against the applicant on 31.10.2009 was finally concluded on 14.05.2013 when the respondent No. 4 was pleased to issue an order imposing punishment of removal of service upon the applicant (Annexure A-1). Being aggrieved by the same, the applicant has preferred departmental appeal before the respondent No. 3 and by order dated 26.06.2013 (Annexure A-2), the respondent No. 3 has set aside the order passed on 14.05.2013 (Annexure A-1) by directing respondent No. 4 to conduct the enquiry afresh against the applicant. Consequently, the respondent No. 3 was pleased to direct the reinstatement of the applicant in service w.e.f. the date the applicant joined back the duty. Further the Departmental Enquiry afresh was conducted against the applicant, in which the Enquiry Officer has submitted report holding the applicant guilty for the charges levelled in the

Departmental Enquiry. By order dated 18.12.2015 (Annexure A-3), the respondent No. 4 has again imposed punishment of removal of service upon the applicant. Being aggrieved by the same, the applicant has preferred appeal and by order dated 28.06.2016 (Annexure A-4), the respondent No. 3 has dismissed the said appeal by confirming the order passed by respondent No. 4. Revision Application filed before the respondent No. 2 also came to be rejected by the order dated 20.12.2017 (Annexure A-5).

14. Further on 19.03.2018, the applicant has filed mercy petition before respondent No. 1 and urged for his reinstatement in service. By order dated 11.12.2018 (Annexure A-6), the Hon'ble Minister of the State for Home Department has set aside the punishment of removal of service imposed upon the applicant and instead inflicted minor punishment of withholding next increment for one year without affecting his future increments.

15. In the backdrop of these facts, it is clear that there were two time spans during which the applicant was out of service. First period was from 14.05.2013 till 26.06.2013 and second time span was from 18.12.2015 till 04.02.2019.

16. By order dated 11.12.2018 (Annexure A-6), the respondent No. 1 while setting aside the punishment of removal of service inflicted upon the applicant issued direction in respect of the manner in which the said absence period from duty of the applicant preceding his removal as not to be treated as duty period, but for the purpose of pension. In the operative part of the order dated 11.12.2018 (Annexure A-6) of clause No. 3, the respondent No. 1 has directed as under :-

“३. वादी श्री विलास कैलास हिवाळे यांना सक्तीने सेवानिवृत्त केल्याच्या दिनांकापासून ते प्रत्यक्ष कामावर रुजू होण्याच्या कालावधीतील सेवाबाह्य कालावधी हा सेवानिवृत्ती वेतनाव्यतिरिक्त इतर कोणत्याही लाभासाठी ग्राह्य धरण्यात येऊ नये.”

The aforesaid clause No. 3 of the operative part of the order dated 11.12.2018 (Annexure A-6) gave rise to the present Original Application.

17. In view of the rival submissions made on behalf of the respective parties by their respective counsel, it is necessary to reproduced herein under the Rule 70 of the Rules of 1981, which prescribes provisions about regularization of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside as a result of appeal or review and such Government servant is re-instated :-

“70. Regularization of pay and allowances and the period of absence from duty where dismissal, removal or

compulsory retirement is set aside as a result of appeal or review and such Government servant is re-instated.-

1. When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and*
- (b) Whether or not the said period shall be treated as a period spent on duty.*

(2) Where the authority competent to order re-instatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule(2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In a cases other than those covered by sub-rule (2), (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held the Government

servant shall, subject to the provisions of sub-rules (6) and (7), be paid such proportion of the full pay and allowances to which he would have been entitled., had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

Provided that payment under this sub-rule to a Government servant (other than Government who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936) shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority, or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

Note:- The order of competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of –

- (a) extraordinary leave in excess of three months in the case of a temporary Government servant; and*
- (b) leave of any kind in excess of five years in the case of a permanent Government servant.*

(6) The payment of allowance under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 68.

8. Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement. Where the pay and allowances admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.”

In terms of Rule 70 of sub-rule (1) of the Rules of 1981, the authority competent to order re-instatement shall consider and make a specific order- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and (b) whether or not the said period shall be treated as a period spends on duty.

18. It is part of the record that, in terms of the order passed by the respondent No. 1 / Hon'ble Minister of the State for the Home Department dated 11.12.2018 (Annexure A-6), the respondent No. 4 has reinstated the applicant in service by issuing an order dated 04.02.2019 (Annexure A-6). In terms of sub-rules (2) and (3) of the Rule 70 of the Rules of 1981, it is for the authority competent to pass the appropriate order in given situation as prescribed in the said sub-rules about the pay and allowances and also regarding the period of absence from duty

including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be and also to pass the order in terms of sub-rule (3) to treat the period of absence as period spent on duty for all purposes. Further in terms of sub-rule (4), in cases other than those covered in sub-rule (2), it is for the competent authority to determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection about the proportion of the pay and allowances to be paid to such a Government servant and further in terms of sub-rule (5) of Rule 70 of the Rules of 1981, in a case falling under sub-rule (4), the period of absence from duty shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose. Further if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant. It is further made it clear in the note that the order of the competent authority under the preceding proviso as discussed above shall be absolute and no higher sanction shall be necessary for the grant of the same.

19. In the instant case, the Hon'ble Minister of the State for Home Department has entertained the mercy petition filed by the applicant and by order dated 11.12.2018 (Annexure A-6), set aside the punishment of removal of service imposed upon the applicant by respondent No. 4 and instead imposed the minor punishment of withholding of next increment for the period of one year without affecting the future increments of the applicant. Thus the respondent No. 4, the competent authority has given the effect to the said order and reinstated the applicant in service by order dated 04.02.2019 (Annexure A-7). It is for the respondent No. 4 to pass the appropriate order in terms of Rule 70 of the Rules, of 1981. In the instant case, the respondent No. 4 in response to the application submitted by the applicant dated 17.03.2020 (page No. 39 of the paper book), by communication dated 28.05.2020 (Annexure A-8) informed to the applicant that the respondent No. 1 / Hon'ble Minister of the State for Home Department has already taken a decision regarding the period spent out of service by him and such, no decision is required to be taken at his end.

20. In view of the aforesaid facts, it is clear that there is no compliance of the provisions of Rule 70 of the Rules of 1981. The respondent No. 1 / Hon'ble Minister of the State for Home

Department has exceeded his jurisdiction by passing an order dated 11.12.2018 (Annexure A-6) to the extent of clause No. 3 of the operative part of the said order. In terms of Rule 70 of the rules of 1981 as reproduced hereinabove and discussions made in the foregoing paragraphs, it is for the authority competent to order reinstatement and to pass the appropriate order in terms of Rule 70 of the Rules of 1981 either in terms of sub-rules (2) & (3) or either in terms of sub-rules (4) and (5), as the case may be. In the instant case, the respondent No. 4 is the authority competent to pass the order in terms of Rule 70 of the Rules of 1981 and he has failed to exercise the said jurisdiction solely for the reason that respondent No. 1 / Hon'ble Minister of the State for Home Department has already passed the order as per clause No. 3 of the operative part of the order dated 11.12.2018 (Annexure A-6).

21. In view of the above discussions in foregoing paragraphs, the present Original Application deserves to be allowed by quashing and setting aside the clause No. 3 of the operative part of the order dated 11.12.2018 (Annexure A-6) passed by the Hon'ble Minister of the State for Home Department and direct to respondent No. 4 to pass the appropriate order in terms of Rule 70 of the Rules of 1981 regarding pay and allowances to be paid to the applicant for the period from

14.05.2013 to 26.06.2013 and from 18.12.2015 to 04.02.2019 spent out of service by the applicant and further decide the manner in which the aforesaid two time spans are to be treated. Hence, the following order :-

ORDER

(i) The Original Application is hereby allowed in terms of prayer clause 12 (A), (A-1) & (B), which is as under :-

“(A) This Original Application may kindly be allowed thereby quashing and setting aside the impugned letters dated 18.01.2021 (Annexure A-13 (ii)) and 24.02.2021 (Annexure A-12) of respondent Nos. 1 and 4 respectively.

(A-1) This Original Application may kindly be allowed thereby quashing and setting aside para No. 3 of operative part of the order dated 11.12.2018 (Annexure A-6) passed by the Hon’ble Minister.

(B) This Original Application may kindly be allowed thereby directing the Resp. No. 4 to take appropriate steps u/r 70 of the M.C.S. (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981 and pass specific order under clauses (a) and (b) of sub-rule (1) of Rule 70 regarding pay and allowances to be paid to the applicant for the periods from 14.05.2013 to 26.06.2013 and from 18.12.2015 to 04.02.2019 spent out of service by him and further deciding the manner in which those two periods are to be treated.”

(ii) In the circumstances there shall be no order as to costs.

(iii) The Original Application accordingly disposed of.

PLACE : Aurangabad.

DATE : 16.02.2024

(Justice V.K. Jadhav)
Member (J)