

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

**ORIGINAL APPLICATION NO. 561 OF 2020  
(Subject – Regularization of Suspension Period / Pension)**

**DISTRICT : AURANGABAD**

**Namdeo s/o Dhondiba Pawar,** )  
Age : 63 years, Occu. : Pensioner, )  
R/o. Chouka, Taluka Phulambri, )  
Dist. Aurangabad. )  
.... **APPLICANT**

**V E R S U S**

**1. The Chief Conservator of Forest (Regional)**  
Vanbhavan, Near SSC Board, Railway )  
Station Road, New Osamanpura, )  
Aurangabad, Dist. Aurangabad. )  
... **RESPONDENT**

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**APPEARANCE** : Shri V.B. Wagh, Advocate for the Applicant.

: Smt. Deepali S. Deshpande, Presenting Officer  
for Respondent.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J).**

**DATE** : **06.06.2022.**

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**O R D E R**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the order dated 17.03.2020 (Annexure A-3) issued by the respondent directing the period of

suspension from 04.10.2013 to 30.09.2015 to be treated to the extent of 80% of pay and allowance only and further seeking declaration for regularization of the suspension of the said period as a duty period and to pay all the consequential benefits for all the purpose and further seeking direction to the respondent to prepare the pension papers of the applicant and to forward it to the office of Accountant General (A.G.) Nagpur for sanction and to pay all the retirement benefits with interest which the applicant is entitled for.

2. Case of the applicant can be summarized as follows :-

(a) The applicant came to be appointed as Forest Guard on 08.04.1980. In the year 2007, he was promoted as Forester. While working at Khultabad as a Forester ,the applicant was suspended by the order dated 04.10.2013 (Annexure A-1) issued by the respondent in view of the registration of offences punishable under Section 7, 12, 13(1)(d) r/w 13, of the Prevention of Corruption Act. In that respect, the applicant was tried by the Special Court (A.C.B.) Aurangabad in Special case No. 03/2014. During pendency of the said case and during the suspension period, the applicant stood retired on superannuation on

30.09.2015. Ultimately the applicant by the order dated 14.01.2019 was acquitted in the said Special Case No. 03/2014. In view of the same, the applicant submitted representation dated 25.02.2020 to the respondents and to take the decision in respect of his suspension period i.e. 04.10.2013 to 30.09.2015 and to pay all the benefits in view of the acquittal given by the Special Court, Aurangabad. However, without taking into consideration and without application of mind, the respondent issued impugned order dated 17.03.2020 (Annexure A-3) holding that the applicant is entitled only for 80% of his pay and allowances for the said period. The said impugned order is not legal and proper and same is liable to be quashed and set aside.

(b) It is further submitted that in that regard, the applicant submitted representations dated 09.06.2020 & 23.06.2020 (Annexure A-2 collectively) to the respondent seeking reconsideration of the order of suspension in accordance with law and more particularly in accordance with the provisions of Rule 72 (3) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.

In this regard, the applicant also preferred representation / appeal dated 27.07.2020 before the higher authority i.e. the Additional Principal Chief Conservator of Forests (Administration), Maharashtra State, Nagpur. The same is pending.

(c) In view of above, it is the contention of the applicant that in view of acquittal of the applicant from judicial proceedings, the applicant is entitled for pay and allowances at full rate and also for releasing pensionery benefits in accordance with law. Hence, the Present Original Application.

3. The affidavit in reply is filed on behalf of respondent by one Shri Dilip S/o Ramnath Wakchaure, presently working as Assistant Conservator of Forest Sillod, Dist. Aurangabad, Division Aurangabad, thereby he denied all the adverse contentions raised in the Original Application. It is however, not disputed that the applicant has been acquitted in Special Case No. 3/2014 by the Special Court (A.C.B.) Aurangabad by the order dated 14.01.2019 and the State has not preferred any appeal against the said order. It is however, specifically contended that the impugned order dated 17.03.2020 (Annexure

A-3) is issued by the respondent in accordance with law in view of the provisions of Rule 72 (5) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 by issuing show cause notice. Hence, it is legal and proper. The representation / appeal dated 27.07.2020 preferred by the applicant against the said order dated 17.03.2020 is pending before the authority of the Additional Principal Chief Conservator of Forests (Administration), Maharashtra State, Nagpur. Hence, the present O.A. is not maintainable. Moreover, the respondent is going to take necessary steps for processing the regular pension and pensionary benefits and in that regard, the service book of the applicant is sent to the Pay Verification Unit. The applicant is already granted provisional pension. Hence, the O.A. is liable to be dismissed.

4. The applicant filed rejoinder affidavit and denied all the adverse contentions raised in the affidavit in reply. It is specifically submitted that though the respondent submitted that the service book of the applicant is sent to the Pay Verification Unit on 06.08.2020, no further progress in that regard is placed on record by the respondent. It is further submitted that

meanwhile he received the amount of GIS and GPF, but the other pensionary benefits are withheld illegally.

5. I have heard the arguments advanced at length by Shri V.B. Wagh, learned Advocate for the applicant on one hand and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent on the other hand.

6. Considering the facts and circumstances of the case, the present matter revolves around the provisions of Rule 72 of the of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, which is as follows :-

***“72. Reinstatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty.-***

*(1) When a Government servant who has been suspended is reinstated or would have so reinstated but for his retirement on superannuation while under suspension, 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 suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and*
- b) whether or not the said period shall be treated as a period spent on duty.*

*(2) Notwithstanding anything contained in rule 68, where a Government servant under suspension dies before the disciplinary or*

*Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not suspended, subject to adjustment in respect of subsistence allowance already paid.*

*(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended,:*

*Provided that where such authority is of the 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 recorded in writing, that the Government servant shall be paid of such delay only such amount (not being the whole ) of such pay and allowances as it may determine.*

*(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.*

*(5) In cases other than those falling under sub-rules(2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount ( not being the whole ) of the pay and allowances to which he would have been entitled had he not been suspended, 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, as may be specified in the notice.*

(6) *Where suspension is revoked pending finalisation of the of the disciplinary or court proceedings, any order passed under sun-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case be.*

(7) *In a case falling under sub-rule (5) the period of suspension 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 order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.*

*Note.- The order of the competent authority under 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 temporary Government servant: and*

*(b) leave of any kind in excess of five years in the case of permanent Government servant.*

(8) *The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.*

(9) *The amount determined under the proviso to sub-rule (3) or under sun-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 68.”*

Perusal of the above-said provision would show that as per the Sub-rule (3), where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the



provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended.

7. In the case in hand however, by invoking the sub-rule (5) of the abovesaid Rule 72, the pay and allowances are granted for the suspension period only to the extent of 80% thereby necessarily holding that the suspension was not wholly unjustified.

8. Learned Advocate for the applicant strenuously urged before me that once the applicant is acquitted in the criminal case on the basis of which he was put under suspension and when there is no disciplinary proceeding against the applicant, the applicant would be entitled for full benefits of pay and allowances under Sub-rule (3) of the Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. In this regard, he placed reliance on the citation of the Hon'ble Supreme Court reported in **1984 AIR (Supreme Court) 380** in the matter of **Brahma Chandra Gupta Vs. Union of India in Civil Appeal No. 730 of 1978**, dated 29.11.1983. In the said citation case, the appellant was suspended pending criminal prosecution. He was convicted in the said criminal case by Trial Court but he was

acquitted in appeal. After conviction, he was dismissed from the service, but after acquittal, he was reinstated in service, but was given pay and allowances for the suspension period only to the extent of 75%. It is held that the appellant never hauled up for departmental enquiry. He was acquitted in judicial proceeding. In these circumstances, the appellant was entitled for full salary on reinstatement for the suspension period.

9. Facts of the case in hand are similar to the fact in the citation case to great extent. In view of the ratio laid in the above-said citation, if the impugned order dated 17.03.2020 is examined, it is found that though the applicant is acquitted of the criminal prosecution, it is observed that the applicant said to have contravened the provisions of Rule 3 and 11 of the Maharashtra Civil Services (Conduct) Rules, 1979. Rule 3 speaks duty of Government servant to maintain integrity, devotion to duty, etc. Rule 11 speaks subscriptions which means no Government servant shall, except with the previous sanction of the Government or of the prescribed authority, ask for or accept contributions to, or otherwise associate himself with the raising of, any funds or other collections in cash or in kind in pursuance of any object whatsoever. It is stated that the said contravention

is proved partly and therefore, the impugned order of suspension cannot be said to be wholly unjustified.

10. It is a fact that no Departmental Enquiry initiated against the applicant in respect of suspension. The applicant faced only criminal prosecution, in which the applicant is acquitted and no appeal is preferred by the State against the said order of acquittal. In these circumstances, the impugned order issued by the respondent dated 17.03.2020 (Annexure A-3) is not legal and proper and is not sustainable in the eye of law. The citation relied upon by the learned Advocate for the applicant would be aptly applicable in the instant case.

11. The representation / appeal dated 27.07.2020 preferred by the applicant before the higher authority i.e. the Additional Principal Chief Conservator of Forests (Administration), Maharashtra State, Nagpur against the suspension order dated 17.03.2020 (Annexure A-3) is not yet decided by the respondent. Six months are already over. In view of the same, pendency of the said administrative appeal will not have any bearing. In the circumstances as above, I hold that the impugned order dated 17.03.2020 is not sustainable and the applicant's case would be covered under Rule 72 (3) of the Maharashtra Civil Services

(Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 and not under Rule 72 (5) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. Consequently, the applicant shall also be entitled for processing his pension papers for regular pension and pensionary benefits. Hence, I proceed to pass following order :-

**ORDER**

The Original Application No. 561/2020 is allowed in following terms:-

- (A) The impugned order dated 17.03.2020 (Annexure A-3) issued by the respondent is hereby quashed and set aside and it is held that the applicant shall be entitled for full pay and allowances in respect of suspension period dated 04.10.2013 to 30.09.2015 under Rule 72 (3) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.
- (B) The respondent is directed to grant full benefits of pay and allowances to the applicant in accordance with law under Rule 72 (3) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules,

1981 and further to process the pension papers of the applicant in accordance with law within a period of three months from the date of this order.

(C) There shall be no order as to costs.

**PLACE : AURANGABAD.**

**DATE : 06.06.2022.**

**(V.D. DONGRE)**

**MEMBER (J)**

**KPB S.B. O.A. No. 561 of 2020 VDD Regularization of suspension period**