

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.625 OF 2018

(Subject :- Suspension Period)

DISTRICT : AURANGABAD

Shri Subhash S/o Gopinath Chavan,)
Age: 61 years, Occ: Retired,)
R/o. Khandeshwari Area,)
Kannad, Dist. Aurangabad.)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
The Secretary,)
Public Works Department,)
Maharashtra State, Mumbai-32.)
2. **The Superintending Engineer,**)
Public Works Department,)
Aurangabad.)...**Respondents.**

Shri K.B. Jadhav, learned Advocate for the Applicant.

**Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer
for the Respondents.**

CORAM : B.P. PATIL, ACTING CHAIRMAN

RESERVED ON : 21.11.2019.

PRONOUNCED ON : 28.11.2019.

ORDER

1. The Applicant has challenged the order passed by the Hon'ble Governor of Maharashtra on 25.10.2018 in the appeal preferred by the Applicant against the order passed in departmental enquiry by the Respondent No.1 dismissing his appeal and treating his suspension period from 09.10.2000 to 24.11.2006 as suspension period except qualifying services for retirement by filing the present Original Application and prayed to quash the said order and direct the Respondents to consider his suspension period as duty period for all purposes and grant all consequential benefits to him including annual increments.

2. The Applicant was working as Sectional Engineer under the Respondent No.2. He was suspended by the Respondent No.2 by order dated 09.10.2000 in view of the provisions of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979 until further orders in contemplation of departmental enquiry. The departmental enquiry was not conducted within six months as per the guidelines of the Hon'ble Apex Court and the State Government. However, the enquiry officer conducted the enquiry and submitted his report on 25.09.2002 to the disciplinary authority by recording the finding that the charges levelled against

the Applicant had not be proved therefore, he proposed to exonerate the Applicant from the charges. The Respondent i.e. the disciplinary authority was not satisfied with the finding recorded by the enquiry officer. Therefore, it recorded its one finding and punished the Applicant by order dated 7.12.2005 and withheld two annual increments of the Applicant with cumulative effect on future increments and also directed recovery of amount of Rs.2,19,245/- from the Applicant. The Applicant accordingly deposited the said amount with the Respondents. He challenged the said punishment order on 7.12.2005 by filing the Original Application No.18 of 2007 before this Tribunal. This Tribunal rejected the Original Application by order dated 11.9.2008. The Applicant filed Writ Petition No.6779 of 2008 before the Hon'ble High Court. The Hon'ble High Court initially granted interim relief to the Applicant. The Respondent authority issued order granting increments to the Applicant and pressurized him for withdrawal of the Writ Petition. The Applicant trusted on the word of the Respondent authority and had withdrawn the Writ Petition on 29.11.2013. Meanwhile, the Applicant deposited the amount of Rs.2,19,245/- on 29.12.2013 through challan. The Applicant came to be retired on 30.04.2014 on attaining the age of superannuation.

3. In spite of the withdrawal of the Writ Petition on the assurance given by the Respondents, the Respondents had not granted increments to the Applicant. The Applicant had filed application for grant of deemed date of promotion as Sectional Engineer which was granted w.e.f. 1.1.1986. On 29.7.2015, the Respondent No.1 issued the order treating the suspension period of the Applicant w.e.f. 9.10.2000 to 24.11.2006 as suspension period except qualifying services for retirement benefits of the Applicant. It is contention of the Applicant that in fact, the enquiry officer had exonerated him against the charges levelled against him. But the Respondent No.1 failed to consider the said fact and wrongly treated the suspension period as suspension period except qualifying services for retirement benefits.

4. The Applicant has approached this Tribunal by filing the Original Application No.596 of 2016 challenging the order dated 29.7.2015. At the time of hearing the Applicant has withdrawn the Original Application on 17.01.2018 with liberty to challenge the order before the Respondent No.1. Thereafter, he filed appeal before the Hon'ble Governor of Maharashtra State on 8.2.2018 and challenged the order dated 29.07.2015. The Respondent No.1 had not decided the appeal in time therefore, he approached this Tribunal by filing the Original Application. During the pendency of the Original Application, the Hon'ble Governor

decided the appeal and dismissed it on 25.10.2018 and confirmed the order passed by the Respondent No.1 on 29.07.2015. The Applicant has challenged the said order also in this O.A.

5. It is his contention that the Respondents had not considered his contentions and submissions while passing the impugned order and while deciding the appeal. It is his contention that he was suspended on 9.10.2000 and thereafter reinstated on 24.11.2006. He was under suspension for the period of 6 years and 15 days. When the enquiry officer conducted the enquiry and submitted his report holding that no charges are proved against the Applicant, the Respondents ought to have exonerated him. The departmental enquiry was not completed within reasonable time in view of the direction given by the **Hon'ble Apex Court in case of Prem Nath Bali Vs. Registrar High Court of Delhi & Another in Civil Appeal No.958 of 2010 decided on 16th December, 2015.** It is his contention that the Respondent ought to have treated the suspension period as duty period and granted consequential benefits to him as there is delay on the part of the Respondent in conducting the departmental enquiry and therefore, he has prayed to quash the impugned orders by allowing the Original Application.

6. The Respondent Nos.1 & 2 have resisted the contention of the Applicant by filing their affidavit-in-reply. They have admitted the fact that the Applicant was initially appointed as Junior Engineer and thereafter, he was promoted on the post of Sectional Engineer on 01.04.1995. In the year 1999, he was posted at Public Works Sub-Division, Kannad (West). While working on the said post, he committed irregularities in the repair work of Kannad-Shirpur State Highway No.47, District Aurangabad. Therefore, the Government had taken cognizance of the said irregularities and decided to take necessary action against those officers who were responsible for the said irregularities. The Government suspended the Applicant by order dated 09.10.2000 and thereafter the charge sheet was issued to the Applicant and others vide memorandum dated 19.03.2001. The Applicant filed reply/representation and denied the charges levelled against him. After considering the reply of the Applicant, the department came to the conclusion that departmental enquiry requires to be initiated against the Applicant as he was responsible for the irregularities committed in the repairs work of Kannad-Shirpur State Highway No.47, District Aurangabad. Thereafter, the Government appointed enquiry officer in the matter by order 30.08.2001. The Departmental Enquiry Officer conducted the enquiry in the matter and submitted its report to the Government. The Government

considered report of the departmental enquiry officer, finding given by the enquiry officer and decided to impose penalty on the Applicant by order dated 07.12.2005. The Government followed the due procedure and imposed the penalty withholding two annual increments with cumulative effect on future increments of the Applicant and also directed recovery of Rs.2,19,245/- from the Applicant. Dissatisfied with the said order, the Applicant approached the Hon'ble Governor of Maharashtra State by filing the appeal. On behalf of the Governor of Maharashtra, the Hon'ble Minister (Agriculture) heard the appeal and decided it on 11.08.2008 and dismissed the same. Thereafter, the Applicant approached this Tribunal by filing the Original Application No. 18 of 2007. The Original Application came to be dismissed by this Tribunal on 11.09.2008. The applicant challenged the said decision before the Hon'ble High Court by filing the Writ Petition No.6779 of 2008. Thereafter, the Applicant had withdrawn the said Writ Petition and accordingly, it was disposed of on 24.12.2013.

7. In view of the above said facts, the Government had arrived at conclusion that the suspension of the Applicant was proper and correct and therefore, it passed the order under Rule 72 (7) and Rule 72 (5) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal

and Removal etc.) Rules, 1981 and treated his suspension period w.e.f. 09.10.2000 to 24.11.2006 as suspension period and accordingly, issued the necessary memorandum to the Applicant on 15.05.2014. Thereafter, the Applicant had given representation and requested to regularize the said period of suspension. The Government in Public Works Department has sent proposal to the General Administration Department (G.A.D.) for its concurrence. In concurrence of the G.A.D. and approval of the Government, the Government in Public Works Department has issued order on 29.7.2015 stating that the said period of suspension of the Applicant will be treated as 'Suspension Period' as per the provision of Rule 72 (5) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal etc.) Rules, 1981.

8. The Applicant challenged the said order before this Tribunal by filing the Original Application No.625 of 2018. The said O.A. has been withdrawn by him subsequently. It is their further contention that the impugned order has been passed by the Respondents in view of the provision of Rule 72 (5) and (7) of M.C.S. (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal etc.) Rules, 1981 and there is no illegality.

9. The Applicant preferred the appeal before the Hon'ble Governor of Maharashtra. The Government instructed the Hon'ble State Minister (Co-operation) to hear the appeal and decide it. Accordingly the Hon'ble Minister heard the said appeal on behalf of the Hon'ble Governor and dismissed the appeal filed by the Applicant on 10.10.2018 and confirmed the order passed by the Government on 29.07.2015. It is their further contention that there is no illegality in the impugned order. The said order has been passed in view of the provision of M.C.S. (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal etc.) Rules, 1981 and therefore, they supported the impugned order and prayed to reject the Original Application.

10. I have heard Shri K.B. Jadhav, learned Advocate for the Applicant and Smt. Sanjivani K. Deshmukh-Gahte, learned Presenting Officer for the Respondents. I have gone through the documents on record.

11. Admittedly, the Applicant was initially appointed as Junior Engineer and thereafter he was promoted on the post of Sectional Engineer on 01.04.1995. There is no dispute about the fact that in the year 1999, the Applicant was posted at Public Works Sub-Division, Kannad (West). While making work of repairs of Kannd-Shirpur State Highway No.47, District Aurangabad, some

irregularities were committed by the Applicant and others and therefore, the Government decided to initiate the enquiry against the Applicant and others. The Applicant was accordingly suspended by the Government by order dated 09.10.2000 and thereafter memo of charge sheet was issued to the Applicant on 19.03.2001.

12. The Government appointed enquiry officer in the departmental enquiry by order dated 30.08.2001. Accordingly, the enquiry officer conducted the enquiry and submitted his report to the Government on 25.09.2002. He recorded the finding that charges levelled against the Applicant could not be proved and therefore, he proposed to exonerate the Applicant. The Disciplinary Authority disagreed with his findings and decided to give penalty to the Applicant withholding two annual increments with cumulative effect on future increments and also directed recovery of amount of Rs.2,19,245/- from the Applicant. The Applicant has challenged the said order before the Hon'ble Governor of Maharashtra. The Hon'ble Governor directed the Hon'ble Minister (Agriculture) to hear and decide the appeal. Accordingly, the Hon'ble Minister decided the appeal/representation filed by the Applicant on 11.08.2008 and dismissed the same and confirmed the decision of the Government. Thereafter, the Applicant approached before this Tribunal by filing the O.A.No.18 of 2007. This Tribunal dismissed

the Original Application on 11.9.2008. Being aggrieved by the said order, the Applicant approached the Hon'ble High Court, Bench at Aurangabad by filing the Writ Petition No.6779 of 2008. Thereafter, the Applicant had withdrawn the said Writ Petition accordingly and it was disposed of on 24.12.2013. The Applicant deposited the amount of Rs.2,19,245/- with the Respondents vide challan dated 29.12.2013. Thereafter, the Applicant came to be retired on 30.4.2014 on attaining the age of superannuation. After considering all the facts the Government had come to the conclusion that the suspension of the Applicant was proper and correct and therefore, it decided to treat the suspension of the Applicant as suspension period in view of the Rule 72 (5) and (7) of the Maharashtra Civil Services (Joining Time, Foreign and Payment During Suspension, Dismissal and Removal etc.) Rules, 1981 and thereafter, it has issued memorandum to the Applicant on 15.05.2014.

13. After considering the reply of the Applicant, the Government issued the order dated 29.7.2015 treating the suspension period of the Applicant as 'Suspension Period' as per the provision of Rule 72 (5) of MCS (Joining time, Foreign Services and Payment During Suspension, Dismissal and Removal etc.) Rules, 1981. The Applicant has challenged the said order before this Tribunal by filing the Original Application No.625 of 2018 but

thereafter, withdrew the same and filed the representation before the Hon'ble Governor. The Hon'ble Governor instructed the Hon'ble Minister of State (Co-operation) to hear and decide the appeal filed by the Applicant. The Hon'ble Minister heard the appeal/representation prepared by the Applicant and dismissed the same on 10.10.2018 and confirmed the order dated 29.07.2015 passed by the Government 29.7.2015.

14. On perusal of record it reveals that charge sheet has been issued to the Applicant for the irregularities committed by him while making work of repairs of the Kannd-Shirpur State Highway No.47, District Aurangabad. The departmental enquiry was conducted and thereafter the disciplinary authority imposed punishment withholding two annual increments with cumulative effect on future increments of the Applicant and also directed recovery of Rs.2,19,245/- from the Applicant. The Applicant challenged the said decision before the Hon'ble Governor. The Hon'ble Minister decided it on 11.08.2008 and dismissed the same. Thereafter, he approached this Tribunal by filing the Original Application No.18 of 2007. But this Tribunal dismissed the O.A. and upheld the order passed by the disciplinary authority vide judgment dated 11.09.2008. Thereafter, the Applicant approached the Hon'ble High Court by filing the Writ Petition No.6779 of 2008. But thereafter, he had withdrawn it. The Applicant was under

suspension from 9.10.2000 to 24.11.2006. After conclusion of the departmental enquiry, the Respondents passed the impugned order regarding suspension period of the Applicant and treated it as suspension period.

15. The Respondents passed the order in view of the provisions of Rule 72 (7) and Rule 72(5) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal etc.) Rules, 1981. The Applicant has also challenged the said decision before the Hon'ble Governor but his appeal was dismissed on 10.10.2018 and the appellate authority confirmed the order passed by the Government on 29.07.2015. While passing the impugned order dated 29.7.2015 and while deciding the appeal, the concerned authority had given opportunity of hearing to the Applicant and after hearing the Applicant, they passed the impugned order. The concerned authority has followed the principles of natural justice while passing the impugned order. The Applicant was placed under suspension because of the initiation of the departmental enquiry and after decision of the departmental enquiry, the impugned order came to be passed by the disciplinary authority. The disciplinary authority decided to treat the suspension period as duty period for all purposes except for retirement benefits.

16. The said order came to be passed in view of the provisions of Rule 72 (7) and Rule 72(5) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal etc.) Rules, 1981. There is no illegality on the part of the Respondents in passing the said orders. The Respondents and Governor have heard and considered the submission of the Applicant while deciding the appeal and upheld the decision of the disciplinary authority i.e. Government and dismissed the appeal. I find no irregularity or illegality in the impugned order passed by the Government and order passed by the Hon'ble Governor in the appeal. Therefore, no interference is called for. There is no merit in the Original Application. Hence, it deserves to be dismissed.

17. In view of the discussion in the foregoing paragraphs, the Original Application stands dismissed. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place:- Aurangabad

Date :- 28.11.2019

Sas. O.A.No.625 of 2018.Suspension Period. BPP