

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

ORIGINAL APPLICATION NO. 932 OF 2017
(Subject – Regularizing the Period of Absence & Period of Suspension)

DISTRICT : BEED

Walmik s/o Laimbaji Kande,)
Age : 64 years, Occu. : Nil (Pensioner),)
R/o. At Lalzari, Post Ghatnandur,)
Tal. Parli, Dist. Beed.)
.... **APPLICANT**

V E R S U S

1. **The Special Inspector General of Police,**)
Aurangabad Range, Aurangabad.)
2. **The Superintendent of Police,**)
Beed.)
... **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Advocate for the
Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for Respondents.

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

DATE : **21.07.2022.**

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 impugned order dated

14.09.2016 (Annexure A-12) issued by the respondent No. 2 i.e. the Superintendent of Police, Beed, thereby the suspension period, as well as, out of service period of the applicant due to dismissal is treated only for pension purpose as per Rule 70(5) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, as well as, further impugned order dated 14.08.2018 (Annexure A-16) issued by the respondent No. 1 i.e. the Special Inspector General of Police, Aurangabad Range, Aurangabad confirming the order issued by the respondent No. 2 stated as above.

2. The facts in brief giving rise to the present Original Application can be summarized as follows :-

(a) The applicant entered into the service of Government of Maharashtra in Police Department as Police Constable on 17.10.1978 in Beed District Police Force. He belongs to NT-D category. In the year 1997, he was promoted as Police Head Constable. In the year 1999, when he was posted at Police Station Shirsala in Parli Taluka of Beed District, he was falsely implicated in an offence under the Prevention of Corruption Act. Consequent thereto, the applicant was put

under suspension by the order dated 14/17.01.2000 (Annexure A-1) issued by the respondent No. 2. The order of his suspension was revoked by the respondent No. 2 by issuing the order dated 10.08.2001 (Annexure A-2). Upon that the applicant joined the duty at the Police Headquarter, Beed on 12.08.2001. In view of the same, total period of suspension of the applicant was from 18.01.2000 to 11.08.2001 i.e. for a total period of 1 year, 6 months and 24 days.

(b) It is further stated that in the circumstances as above, the applicant was prosecuted in Special Case No. 02/2000 in the Court of learned Additional Sessions Judge / Special Judge, Ambajogai in Beed district for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. The applicant was convicted in the said case as per the judgment and order dated 31.01.2002 passed by the learned Special Judge for the above-stated offences and he was sentenced to suffer three years rigorous imprisonment and fine of Rs. 3000/- on each count.

(c) It is further stated that on the basis of above-referred conviction, the respondent No. 2 was pleased to issue show

cause notice dated 22.02.2002 (Annexure A-3) to the applicant to show cause as to why he could not be dismissed from the service in view of his conviction. The applicant submitted his reply dated 01.03.2002 thereto. However, his reply dated 01.03.2002 was not accepted and the respondent No. 2 was pleased to issue order of dismissal from the service on 02.03.2002 (Annexure A-4), which was served upon the applicant on or about 09.03.2002. It is submitted that meanwhile, the applicant filed Criminal Appeal No. 83/2002 before the Hon'ble High Court of Bombay, Bench at Aurangabad challenging the judgment and order dated 31.01.2002 passed by the learned Special Judge in Special Case No. 02/2000 convicting and sentencing him. The said Criminal Appeal No. 83/2002 came to be decided by the Hon'ble High Court of Bombay, Bench at Aurangabad vide its judgment and order dated 05.08.2015 (Annexure A-5), thereby the said Criminal Appeal was allowed and the impugned judgment and order of the learned Special Judge was set aside by the Hon'ble High Court and the applicant was acquitted of all the offences levelled against him.

(d) It is further submitted that in view of the afore-stated backdrop and more particularly in view of his acquittal, the applicant submitted a request application dated 16.11.2015 (Annexure A-6) to the respondent No. 2 urging for necessary action according to rules and payment of arrears to him of pay and allowances. It is further submitted that meanwhile, the applicant attained the age of 58 years during the pendency of the Criminal Appeal No. 83/2002. In view of the same, had the applicant been in service then he would have retired w.e.f. 30.04.2011, but for his dismissal from service vide above-referred order dated 02.03.2002.

(e) It is further submitted that as the above-referred request application dated 16.11.2015 submitted by the applicant did not bear any fruits, the applicant was constrained to submit repeated applications to the respondent No. 2 on 25.01.2016, 09.02.2016, 15.03.2016, 21.03.2016, 03.06.2016 & 14.06.2016 (Annexure A-7 collectively).

(f) It is further submitted that after about lapse of 10 months from the date of acquittal of the applicant, the

respondent No. 2 issued show cause notice dated 16.06.2016 (Annexure A-8) calling upon the applicant explanation as to why the period of suspension from 18.01.2000 to 12.08.2001 and the period spent out of service by him from 09/10.03.2002 till the date of his retirement on account of order of his dismissal be not treated as duty period only for the purpose for pension under Section 70(5) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 without taking action as mandatorily required by him under Rule 70(1)(a) and 70(4) of the said Rules. The applicant submitted his reply dated 19.07.2016 (Annexure A-9) to the show cause notice issued by the respondent No. 2 as stated above. In order to substantiate his contentions in the reply, he also annexed the copy of order of this Tribunal dated 15.12.2015 (Annexure A-10) passed in the O.A. No. 261/2015, which was similarly placed case, in which entire benefits of pay and allowances were released in favour of the applicant therein. The respondent No. 2 however, did not take decision within reasonable time in that respect and therefore, the applicant submitted two more

applications dated 08.08.2016 and 29.08.2016 (Annexure A-11 collectively) to the respondents reiterating his request for regularization of the period of his suspension and the period spent out of service by him as duty period for all purposes.

(g) It is further submitted that thereafter ultimately the respondent No. 2 issued impugned communication dated 14.09.2016 (Annexure A-12) not treating both the periods for all the purposes with the resultant effect that the applicant is deprived of the pay and allowances for those two periods.

(h) It is further submitted that the respondent No. 2 subsequently was pleased to issue two orders dated 10.10.2016 & 13.10.2016 (Annexure A-13 collectively) sanctioning leave encashment to the applicant and fixing his pay for facilitating calculation of his pensionary benefits. However, the applicant has been deprived of the arrears of pay and allowances for those two periods. As such, the applicant has been aggrieved by the impugned communication dated 14.09.2016 (Annexure A-12) issued by the respondent No. 2.

(i) Therefore, the applicant submitted representation / appeal before the respondent No. 1 on 24.10.2016 (Annexure A-14). However, nothing was heard by the respondent No. 1. Therefore, the applicant submitted further subsequent applications dated 31.01.2017 and 24.06.2017 (Annexure A-15 collectively) to the respondent No. 1. The said representations / appeals however, did not bear any fruits within reasonable time and the applicant filed the present Original Application on or about 07.12.2017. Thereafter, during pendency of the present Original Application, the respondent No. 1 by issuing communication/ order dated 14.08.2018 (Annexure A-16) dismissed representations / appeal made by the applicant, thereby confirming the impugned order dated 14.09.2016 (Annexure A-12) issued by the respondent No. 2. The applicant accordingly sought amendment in O.A. in that regard. Hence, the present Original application.

3. The present Original Application is resisted by the respondent Nos. 1 and 2 by initially filing affidavit in reply, which is at page Nos. 72 to 80 of the paper book and further affidavit in reply, which is at page Nos. 81 to 86 of the paper book, which was in view of the amendment carried out in the O.A.

4. By the above-said affidavits in reply, the respondent Nos. 1 and 2 have denied all the adverse contentions raised in the O.A. and it is specifically contended in nutshell that the applicant has been acquitted in Criminal Appeal No. 83/2002 by the order dated 05.08.2015 by the Hon'ble High Court setting aside the judgment and order of conviction and the said acquittal is granted a benefit of doubt i.e. not the honorable acquittal. If the applicant had been acquitted honorably, then only as per the Rules he would have been entitled for entire pay and allowances under Rule 70 (2) & (3) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 in respect of the suspension period, as well as, out of service period due to his dismissal in view of the conviction of the applicant by the learned Additional Sessions Judge / Special Judge, Ambajogai. In view of the same, the impugned orders are rightly passed under Rule 70 (5) of the said Rules, 1981 by following the requisite procedure of giving show cause notice and granting benefit of treating the suspension period and period spent out of employment as duty period only for the purpose of pension. In view of the same, the impugned orders viz. the order dated 14.09.2016 (annexure A-12) issued by the respondent No. 2 and order dated 14.08.2018

(Annexure A-16) issued by the respondent No. 1 are legal and proper. In the circumstances, the Original Application is liable to be dismissed.

5. I have heard the arguments advanced at length by Shri Avinash Deshmukh, learned Advocate for the applicant on one hand and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents on the other hand.

6. Learned Advocate for the applicant strenuously urged before me that the provisions of Rule 70, as well as, Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 would come into play and more particularly according to him the case of the applicant will fall for consideration specifically under Sub-rule (2) and (3) of Rule 70, as well as, Sub-rule (2) & (3) Rule 72 of the said Rules, 1981 and not under the Rule 70(5) of the said Rules, 1981 as invoked by the respondents.

7. Learned Advocate for the applicant has specifically placed reliance on the decision of the co-ordinate Bench of this Tribunal at Aurangabad Bench in 261/2015 in the matter of Shri Madhukar s/o Rangnath Malve Vs. State of Maharashtra and

Ors. decided on 15.12.2015 (Annexure A-10). In the said case, the applicant, who was working in Police Department was accused in the crime registered under the Prevention of Corruption Act, 1988. In view of the same, he was put under suspension. The suspension order was revoked in view of the representation made by him. He was convicted in Special Case. After his conviction, he was dismissed. He challenged the said dismissal order. He was reinstated in service. After giving show cause notice, he was again dismissed from service. Against conviction, he preferred Criminal Appeal. During pendency of the said Criminal Appeal, the applicant retired on superannuation. He was acquitted in criminal appeal. Upon his representation after his acquittal, suspension period and period spent out of service were treated as duty periods, but only for the purpose of pension and pensionary benefits as per the Sub-rule (5) of rule 70 of the said Rules, 1981. In the said O.A., the impugned orders were quashed and set aside and the respondents therein were directed to consider the case of the applicant for releasing his yearly increments as claimed in prayer clause (C) of the O.A. and with all other consequential benefits, if he is found fit as per the rules and regulations.

8. Learned Presenting Officer while opposing the submissions made on behalf of the applicant contended that in the case in hand, the applicant is acquitted by giving benefit of reasonable doubt and the acquittal is not honorable acquittal and therefore, there is no merit in the contentions raised by the applicant.

9. After having considered the rival pleadings and submissions made on behalf of both the parties, it is evident that the provisions of Rule 70 and 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 would come into play. The said Rule 70 & 72 of the said Rules, 1981 are as follows :-

“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 spends 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.*

72. Re-instatement 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 re-instatement 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 be 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.”*

10. Rule 70 of the above-said Rules, 1981 is relating to 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. This rule also deals with preceding suspension. Rule 72 of the said Rules, 1981 deals with re-instatement 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.

11. Rule 70(2) and (3) together provides treating the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, be treating as period spent on duty for all purposes. Similarly Sub-rule (2) and (3) of the Rule 72 of the said rules, 1981 deals with such benefit for the period of suspension. Sub-Rule (5) of Rule 70 & 72 provides and vest discretion in the competent authority to treat the said period of suspension and out of service for specified purpose and not for all purposes and that is to be done by giving prior show cause notice to the Government servant.

12. In the case in hand, before passing the impugned order dated 14.09.2016 (Annexure A-12) issued by the respondent No. 2 i.e. the Superintendent of Police, Beed, show cause notice was given to the applicant, to which the applicant replied. Thereafter, the said impugned order came to be passed treating the suspension and out of service periods as duty period, but only for the purpose of pension. Being aggrieved by the said impugned order dated 14.09.2016 (Annexure A-12), the applicant preferred

representation / appeal before the respondent No. 1 on 24.10.2016 (Annexure A-14). The same came to be dismissed by the respondent No. 1 by the impugned order dated 14.08.2018(Annexure A-16) during pendency of the present Original Application, which is also challenged.

13. Upon going through the decision of the learned Co-ordinate Bench of this Tribunal at Aurangabad Bench in 261/2015 in the matter of Shri Madhukar s/o Rangnath Malve Vs. State of Maharashtra and Ors. decided on 15.12.2015 (Annexure A-10), it is seen that one citation of the Hon'ble High Court, Bench at Aurangabad has been relied upon, which is reported in **2002 (3) BOM. C.R. 212 (BABAN S/O SHRIRAM WAFARE VS. ZILLA PARISHAD)**. In the said case, the Hon'ble High Court held that on his acquittal the petitioner was entitled for reinstatement in service with continuity and other consequential benefits including pay and its fixation as if he had continued in service.

14. The facts of the said O.A. are similar to the present O.A. and to great extent identical. Nothing has been shown on behalf of the respondents from Rule 70 or 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, that when the

acquittal is on account of giving benefit of reasonable doubt, it does not amount to acquittal or exoneration as contemplated under Rule 70 (2) and (3) and / or Rule 72 (2) and (3) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981. In the facts and circumstances, it cannot be said that because of such acquittal, it cannot be said that action is not justified as contemplated under the said rules.

15. In view of above discussions in foregoing paragraphs, in my considered opinion, the case of applicant certainly falls under the provisions of Rule 70 (2) and (3) and/ or Rule 72 (2) and (3) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 and not under Rule 70(5) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 and is very well covered as held in O.A. No. 261/2015 (Annexure A-10). The impugned orders in the circumstances are wholly untenable and unsustainable in the eyes of law. It is incumbent upon the respondent authorities to grant full benefits as contemplated under those Rule 70 (2) and (3) and/ or Rule 72 (2) and (3) of the Maharashtra Civil Services (Joining Time, Foreign Service and

Payments During Suspension, Dismissal and Removal) Rules, 1981. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 932 of 2017 is allowed in following terms :-

- (A) The impugned orders dated 14.09.2016 (Annexure A-16) issued by the respondent No. 2 and 14.08.2018 (Annexure A-16) issued by the respondent No. 1 are hereby quashed and set aside.
- (B) The respondents are directed to regularize the period of absence from duty of the applicant on account of his dismissal and period of his suspension as his duty periods for all purposes and to pay the full pay and allowances to him for those two periods, if he is found fit as per rules and regulations. This exercise shall be completed by the respondents within a period of four months from the date of this order.
- (C) There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 21.07.2022.

(V.D. DONGRE)

MEMBER (J)

KPB S.B. O.A. No. 932 of 2017 VDD Regularizing the period of absence and period of suspension