

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.34 OF 2022**

DISTRICT : MUMBAI

Shri Kishor Appa Shinde,)
Age 36 Years, Retired as Police Constable,)
R/o Bldg. No.5, Room No.106, Santacruz Police Qrts.)
Link Road, Santacruz (West), Mubai 400054)..Applicant

Versus

1. The State of Maharashtra,)
Through its Additional Chief Secretary,)
Department of Home, Mantralaya, Mumbai-32)
2. The Commissioner of Police,)
D.N. Road, Kalbadevi, Mumbai 400001)
3. The Additional Commissioner of Police,)
West Region, Hill Road, Bandra, Mumbai-50)
4. The Deputy Commissioner of Police,)
Zone-9, Hill Road, Bandra (W), Mumbai-50)
5. The Assistant Commissioner of Police,)
Oshiwara Division, Best Colony Road,)
Anand Nagar, Jogeshwari (W), Mumbai-102)

6. The Sr. Police Inspector,)
Amboli Police Station, Patel Estate Road,)
Jogeshwari West, Mumbai-102)
7. The Sr. Police Inspector,)
Khar Police Station, S.V. Road, Khar West,)
Mumbai 52)
8. The Sr. Police Inspector,)
Versova Police Station, D.N. Nagar,)
Andheri (W), Mumbai 53)
9. Shri S.M. Dhamapurkar,)
Desk Officer, Kaksh-9,)
Mumbai Police Commissionerate Office,)
D.N. Road, Kalbadevi, Mumbai 400001)..Respondents

Shri S.S. Dere – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

DATE : 15th November, 2022

PER : Smt. Justice Mridula Bhatkar, Chairperson

J U D G M E N T

1. Heard Shri S.S. Dere, Ld. Advocate for the Applicant and Ms. S.P. Manchekar, Ld. Chief Presenting Officer for the Respondents.

2. The applicant who is working as Police Constable has submitted his resignation on 28.5.2019. However, the Government has not accepted the said resignation and therefore he has approached this Tribunal with a prayer that respondent no.2 be directed to relieve the applicant immediately by issuing relieving order. He also prays that respondent no.2 be directed to give him compensation from 28.6.2019 i.e. the deemed date of relieving until he is relieved from the work and for forcefully keeping him in service. He also prays that suspension order dated 6.7.2019 be quashed and set aside. He also challenges the dismissal order dated 2.12.2021 passed by respondent no.4.

3. The chronology of events in this matter is to be placed on record. The date of resignation is 28.5.2019. It was received by the office of Commissioner of Police, Mumbai, who is the competent authority, on the same date. Thus within 30 days i.e. on or before 27.6.2019. It is obligatory for the competent authority to take decision about acceptance or rejection of his resignation and to communicate him accordingly in writing.

4. On 17.6.2019 a letter was written by the Establishment Officer of the respondents to Administrative Officer, Western Region informing about the resignation and the requirement of the necessary documents. However, till 27.6.2019 i.e. within a period of 30 days there was no written communication from the respondents to the applicant about his resignation. The respondents issued suspension order on 6.7.2019 which was signed on 2.7.2019 informing the applicant that he has been suspended in contemplation of Departmental Enquiry on account of misconduct. Thereafter DE was conducted. Applicant was held guilty for misconduct and then ultimately he was removed from service on account of misconduct for remaining absent.

5. The main challenge in this matter as submitted by the Ld. Advocate for the applicant is inaction on the part of the respondents of not taking any decision about his resignation. Ld. Advocate has read over the relevant clauses 4 & 9 of the said GR and has argued that the resignation of the applicant is deemed to be accepted on 27.6.2019 and thus he stands relieved from 27.6.2019. He further submits that applicant was not in service from 27.6.2019. The suspension order dated 6.7.2019 which was signed on 2.7.2019 is illegal so also the order of removal is also illegal in view of the relevant clauses of the said GR.

6. Ld. CPO while opposing the OA of the applicant on the point of acceptance of the resignation submitted that applicant twice on 28.6.2015 and 15.7.2017 has submitted resignation and withdrew the same. She further pointed out that in his application dated 28.5.2019 he has mentioned that his resignation is to be accepted forthwith and he was ready to deposit salary of one month. Ld. CPO has further submitted that a Government servant who wants the Government to accept his resignation forthwith is required to deposit salary for one month and as the applicant did not deposit salary of one month the respondents did not take his application for resignation seriously on account of the earlier history and also conduct of the applicant. Ld. CPO submits that thus the competent authority cannot be blamed for not taking any decision of acceptance or rejection of his application for resignation within a period of 30 days. She submits that immediately on 2.7.2019 i.e. four days after the period of 30 days the Government issued order of suspension of the applicant as it intended to initiate DE on the ground of misconduct when he was in service. She further submits that thereafter after the order of suspension the respondents went on paying subsistence allowance to the applicant and the applicant has accepted the said amount for last 16 months from July, 2019 to October, 2020 amount to Rs.2,42,000/-

approximately. This shows that applicant was not serious about his resignation.

7. Ld. Advocate for the applicant in reply has submitted that applicant has written letter dated 30.7.2020 to the department that they should not pay subsistence allowance to him. He further submits that the applicant should have been relieved on 27.6.2019. However, due to unreasonable stand taken by the department the applicant could not take up any further occupation as he was not relieved.

8. A short question regarding resignation of government servant which is to be dealt with revolves around GR dated 2.12.1997 which states the general guidelines regarding acceptance of resignation of an employee in civil services. Admittedly, the applicant has joined the services in 2006 as Police Constable and has submitted his resignation on 28.5.2019 addressed to the Commissioner of Police, Mumbai without proper channel. In view of clause 9 of the said GR it is binding on the authority to accept the said resignation within one month from the date of receipt. If no decision is communicated about the acceptance or rejection of the resignation, then in that event such resignation is deemed to be accepted by the competent authority as per clause 4 of the said GR. Clause 9 is also to be read with clause 4 where it is further specified in detail if the competent authority is unable to take decision within one month from the date of receipt of such resignation what procedure is to be adopted by the competent authority. It is open for the competent authority not to accept the resignation and to take decision in due course even after more than one month. However, as per clause 9 of the said GR it is obligatory/mandatory on the part of the competent authority to communicate accordingly in writing to the government servant who has submitted his/her resignation. There is no ambiguity in the language of these clauses. The intention of the State is very clear about the procedure

to be followed in accepting or rejecting the resignation given by the government servant. It is mandatory on the part of the competent authority to take decision within one month after receipt of the said resignation. Though it is binding on the competent authority to take decision of rejection or acceptance within 30 days and some more time can be consumed for the same depending on the facts; however, what is mandatory is written communication. It is mandatory that competent authority should communicate in writing to the concerned government servant its decision of acceptance or delayed decision or rejection of the resignation. If in the absence of such written communication from the competent authority the resignation is deemed to be accepted after lapse of 30 days. In the present case there was internal communication between the offices of the respondents about the resignation however till 27.6.2019 the respondent competent authority did not communicate in writing to the applicant that his resignation cannot be accepted as the respondents intend to initiate DE on the ground of misconduct during his service period. Had the suspension order dated 2.7.2019 been communicated to the applicant on or before 27.6.2019 that would have been construed that the competent authority is not inclined to accept the resignation. However, it was not done within the time limit. We cannot go beyond the words in said GR dated 2.7.1997 which express the policy of the State. Thus we hold that on account of deeming provision made in clauses 4 and 9 the resignation of the applicant dated 28.5.2019 has been deemed to have been accepted on 27.6.2019 and he stood relieved on 27.6.2019.

9. As the applicant is relieved and no more in service after 27.6.2019 the suspension order which is served upon him on 6.7.2019 is rendered illegal so also is the case of the order of removal from service. We accept the submissions of Ld. CPO that at this juncture if at all applicant was held not in service after 27.6.2019 and his suspension order is illegal,

then the amount of subsistence allowance paid to him is also to be returned to the Government in view of his resignation. The amount of subsistence allowance which is received by the applicant is to be returned to the Government within six months i.e. on or before 31.5.2023. Hence, we pass the following order.

ORDER

The applicant stands relieved from service on 26.7.2019 as he has resigned from service and his resignation is deemed to have been accepted on 27.6.2019. The suspension order dated 6.7.2019 so also the removal order dated 2.12.2021 passed by respondent no.4 are rendered illegal. The competent authority is directed to issue formal order of relieving on or before 25.11.2022. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
15.11.2022

Sd/-

(Mridula Bhatkar, J.)
Chairperson
15.11.2022

Dictation taken by: S.G. Jawalkar.