

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 608 of 2020 (S.B.)

Anand S/o Tukaram Bandebuche,
Aged about 55 years, Occ. Service,
R/o C/o Anil Dhote, Mahadeo Colony,
Timmohra Chowk, Morshi, District Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Urban Development Department,
Mantralaya, Mumbai.
- 2) Commissioner / Director of Municipal Administration,
Having its office at 3rd floor, Madam Cama Road,
Sir Pochkhanwala Marg, Worli, Mumbai.
- 3) Chief Officer, Municipal Council,
Paoni, District Bhandara.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri M.I. Khan, learned P.O. for respondent nos.1&2.
S/Shri M.I. Dhattrak, S.A. Sahu, Advs. for respondent no.3.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 23rd June,2022.

Date of Pronouncement of Judgment : 4th July,2022.

JUDGMENT

(Delivered on this 4th day of July, 2022)

Heard Shri S.P. Palshikar, learned counsel for the
applicant, Shri M.I. Khan, learned P.O. for respondent nos.1&2, Shri

S.A. Sahu, learned counsel holding for Shri M.I. Dhattrak, learned counsel for respondent no.3.

2. The applicant was appointed as a Junior Engineer on 12/12/1985 and was posted at Municipal Council, Pauni, Dist. Bhandara. While working as a Junior Engineer at Pauni, offence punishable under sections 7,13 (1) (d), (i) (2) of the Prevention of Corruption Act, 1988 was registered against him. The applicant was suspended as per order dated 19/3/2017. Thereafter, applicant made representation on 22/9/2017 and requested the concerned authority to reinstate him in pursuance of the Judgment of Hon'ble Apex Court in the case of **Ajay Kumar Chaudhary Vs. Union of India through its Secretary and another**, but the said representation was yet not replied by the authority concerned.

3. On 1/1/2019, the Collector, Bhandara has requested the respondent no.2 that as per the review committee decision, the applicant has to be reinstated in service and should be given the posting as a Junior Engineer. But in spite of recommendation, no detailed posting order was issued by the respondent no.2, therefore, the applicant approached to this Tribunal by filing the O.A. No. 609/2019. The said O.A. was disposed off by this Tribunal with a direction to reinstate the applicant by revoking the suspension order. On 14/8/2019, the applicant was reinstated. The applicant joined his

duty on 16/8/2019 at Municipal Council, Morshi. The applicant requested the respondents to pay him the salary of the suspended period treating the said period as on duty. The respondents have not given any salary of the said period. The applicant, therefore, approached to this Tribunal with following prayers –

“(1) direct the respondents to pay 50% of salary (-) the subsistence allowance which was paid to the applicant for initial 6 months;

(2) further be pleased to direct the respondents to pay 25% of his salary deducting the 75% which he has received from December,2018 onwards till his retirement ;

(3) further be pleased to direct the respondents to release the increment which has been withheld by the employer of the applicant on such terms and conditions as may be deem fit and proper to this Tribunal.”

4. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was paid the subsistence allowance during the suspension period. The respondents are paying regular salary after his reinstatement, therefore, the present O.A. is not maintainable. At last submitted that the applicant is not entitled for the relief prayed, hence, the O.A. is liable to be dismissed.

5. Heard Shri S.P. Palshikar, learned counsel for the applicant. He has submitted that once the suspension is revoked, then the applicant is entitled for salary of the suspended period, the

said period shall be treated as duty period. The applicant is entitled for increments etc. He has pointed out copy of order of this Tribunal in O.A. No. 609/2019.

6. Heard Shri M.I. Khan, Id. P.O. for the respondents. He has relied on the decision of Hon'ble Supreme Court in the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra & Ors. (1997) 3 SCC,636.**

7. There is no dispute that the applicant was arrested for the offence punishable under the Prevention of Corruption Act, 1988. The charge sheet was filed against him. Nothing is on record to show that departmental inquiry is initiated against him. But there is no dispute that the charge sheet is pending against the applicant in the Special Court, Bhandara for the offence punishable under sections 7,13 (1) (d) (i) (2) of the Prevention of Corruption Act, 1988. He was under suspension. The suspension order was not revoked, therefore, the applicant approached to this Tribunal by filing O.A. No.609/2019. As per order dated 30/08/2019, it appears that the O.A. was disposed of in view of the order passed by the respondents dated 13/8/2019. The copy of order dated 30/8/2019 is filed on record. From perusal of the order, it is clear that suspension of the applicant was revoked and he was reinstated in service subject to the decision of criminal case /

departmental inquiry. There is no dispute that criminal case is pending against the applicant.

8. As per Rule 72 of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, it is discretion of the disciplinary / appointing authority to treat the suspension period as duty period. As per Rule 72 of Rules, 1981 it is for the authority to pass a specific order regarding the pay and allowances to be paid to the Govt. servant of the period of suspension. The relevant Rule 72 (a) and (b) is as under—

*“(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement 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.”*

9. As per the Rule 72 of Rules 1981, the disciplinary authority shall record its opinion that the action of the suspension was “**wholly unjustified**”. As per the Judgment of Hon’ble Apex Court in the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra & Ors. (1997) 3 SCC,636**, It is held as under –

“ Legal evidence may be insufficient to bring home the guilt beyond doubt. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity

and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. If the alleged conduct is the foundation for prosecution, grant of consequential benefits with all back wages etc. cannot be as a matter of course, even if the employee may have been acquitted on appreciation or lack of sufficient evidence. It would be deleterious to the maintenance of the discipline if a person who was suspended on valid considerations is given full back wages as a matter of course, on his acquittal. The disciplinary authority has option either to enquire into the misconduct unless, the self-same conduct was subject matter of the charge and on trial the acquittal was not based on benefit of doubt but on a positive finding that the accused did not commit the offence at all. The authority may also, on reinstatement, pass appropriate order including treating suspension period as not spent on duty, after following the principles of natural justice.

Rule 72 gives a discretion to the disciplinary authority. The appellant is not entitled to consequential benefits on his reinstatement after acquittal. He is also not entitled to be treated as on duty from the date of suspension till the date of acquittal, for the purpose of computation of pensionary benefits etc.”

10. There is no dispute that criminal proceeding is pending against the applicant. The Hon'ble Bombay High Court in the case of **Vasant Krushnaji Kamble Vs. State of Maharashtra & Ano., 2003 (4) Mh.L.J., 606** has held that “ as per rule 72 (3) (5) suspension of the employee shall be decided by the competent authority as to whether suspension was wholly unjustified or not”. In the cited Judgment, the

appellant was acquitted in a criminal case even though it is held that acquittal by criminal court did not ipso facto entitled him to the benefits of salary under Rule 72. What was required to be seen was whether in the opinion of the competent authority, the action of suspension of the petitioner was “wholly unjustified”. In other words, a negative test has to be applied for holding the person to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty.”

11. In view of the above cited Judgment, it is for the competent authority to record its opinion as to whether the suspension was unjust or not. In this case, it appears that the suspension of the applicant was revoked subject to the decision of criminal case pending before the Court. There is no dispute that criminal case is pending before the Special Court and therefore the applicant is not entitled for the relief as prayed. Hence, the following order –

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 04/07/2022.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman

Judgment signed on : 04/07/2022.

Uploaded on : 04/07/2022.

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