

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.325 OF 2022

**DISTRICT : PALGHAR
SUBJECT : SUSPENSION
PERIOD**

Shri Rajiv Narasinh Chaudhari,)
Aged 54 yrs, Occu: working as ASI)
R/at Akruti 152-A, India Colony,)
Opp. MBBI School, Vevaji, Tal-Talasari,)
Dist.-Palgahr, Mob:- 8830529950.)
Email. rajiv.chaudhari78@gmail.com)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Addl. Chief Secretary,)
Home Department, Mantralaya, Mumbai-32.)
- 2) The Director General of Police,)
State of Maharashtra, having office at)
Old Council Hall, Maharashtra State Police)
Headquarters, Shahid Bhagat Singh Marg,)
Colaba, Mumbai.)
- 3) The Superintending of Police,)
SP Office, Palghar, Central Administrative)
Building, Bidco Road, Palghar (w) 401404)... **Respondents**

Shri Rajeshwar G. Panchal, learned Advocate for the Applicant.

Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 09.12.2022.

JUDGMENT

1. The Applicant has challenged communication dated 18.02.2020 whereby the Applicant was informed by Respondent No.3 – The

Superintendent of Police, Palghar that his suspension period is already treated suspension as such by communication dated 28.09.2015, and therefore his representation to treat suspension period as duty period stands rejected.

2. Shortly stated undisputed facts giving rise to this O.A. are as under:-

- A) While the Applicant was serving as Police Hawaldar he came to be suspended by Respondent No.3 – The Superintendent of Police Palghar on 27.11.2013 in contemplation of D.E.
- B) Later, the Applicant was reinstated in service during the pendency of D.E. by order dated 28.09.2015.
- C) 28.09.2015 itself the Respondent No.3 passed separate order stating that in D.E. charges against the Applicant is proved, and therefore his suspension period 29.11.2013 to 28.09.2015 is treated suspension as such for all purposes in terms of Rule 72(4) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'MCS Rules, 1981' for brevity).
- D) D.E. in fact concluded later and the Applicant was subject to punishment of fine of Rs.5,000/- (Rupees Five Thousand Only) by order dated 08.12.2015.
- E) The Applicant therefore made representation on 29.01.2020 contending that in view of minor punishment his suspension period required to be treated as duty period for all purposes in reference to Circular issued by Director General of Police on 24.10.2007 in which it is mentioned that were Police Personnel is subject to censure or fine, suspension cannot be said justified.
- F) The Respondent No.3 however by cryptic communication dated 18.02.2020 rejected the claim of the Applicant simply stating that decision is already taken by communication dated 28.09.2015.

It is on the above background the Applicant has challenged the order dated 18.02.2020.

3. Heard Shri R.G. Panchal, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

4. As stated above, by impugned communication dated 18.02.2020 all that the Applicant was informed that his suspension period is already treated as duty period by communication dated 28.09.2015 forgetting that when order dated 28.09.2015 was passed, D.E. was not concluded finally. Be that as it may, notably, in order dated 28.09.2015, Respondent No.3 treated suspension period as such for all purposes stating that in D.E. the Applicant is already held guilty which is *ex-facie* erroneous since D.E. was finally concluded on 08.12.2015 whereby fine of Rs.5,000/- was imposed upon the Applicant. As such, the statement and foundation of communication dated 28.09.2015 that the Applicant is already held guilty is totally wrong and very foundation of passing such order is crashed. Thus, the order dated 28.09.2015 was premature.

5. That apart, while issuing order dated 28.09.2015 no opportunity of hearing was given to the Applicant. Thus, Respondent No.3 passed the order treating the period of suspension as such for all purposes under wrong assumption in very causal manner.

6. Rule 72 of M.C.S. Rules, 1981 provides how to determine suspension period. As per Rule 72(3) of Rules, 1981 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. Whereas, as per Rule 72(5) in cases other than those falling under sub-rules(2) and (3), the Government servant shall, subject to the provision of sub-rules (8) and (9), be paid such amount of 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 of the Government servant.

7. Thus, competent authority is required to form opinion as to whether suspension was wholly unjustified or otherwise and then to proceed with the matter for payment of full pay and allowances. Where matter does not fall in sub-rule(3) competent authority is required to follow procedure laid down in sub-rule(5) of Rule 72 of Rules, 1981.

8. In present case, no such finding is recorded by the competent authority nor notices has been issued before taking in such decision. Indeed, the order of treating period of suspension as such itself was issued when D.E. was subjudice.

9. The submission advanced by learned P.O. that the Applicant has not challenged communication dated 28.09.2015 within period of limitation, and therefore the Applicant is not entitled to any relief is not acceptable. True, the Applicant has not challenged order dated 28.09.2015 whereby suspension period is treated suspension as such for all purposes. Material to note, as stated above at the time of passing that order D.E. itself was subjudice and not concluded as stated in the order. Secondly, Rule 72(6) of Rules, 1981 provides that where suspension is revoked pending finalization of D.E. any order passed by the authority before conclusion of the proceeding against the Government servant, shall be reviewed on its own merit 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 (5), as the case may be. Thus, after the conclusion of proceeding an order of treatment of suspension period needs to be reviewed.

10. In the present case, no such exercise was taken up by the Respondent No.3 which was required to be undertaken on its own merit as contemplated in sub-rule(6). The Applicant therefore made representation and thereon the impugned order dated 18.02.2020 has been passed that period of suspension is already treated suspension as such by communication dated 28.09.2015. Indeed, at least after receipt of representation, Respondent No.3 ought to have examined the matter in the light of provision of Rule 72 of MCS Rules, 1981 but he mechanically issued the communication dated 18.02.2020, that suspension period is already decided as such. Suffice, to say the Applicant got fresh cause of action on receipt of order dated 18.02.2020 and O.A. cannot be termed barred by limitation.

11. For the aforesaid reasons, there is no escape from the conclusion that order dated 28.02.2020 is unsustainable in law and matter is required to be remitted back to Respondent No.3 to take decision about the suspension period a fresh in accordance to Rule 72 of MCS Rules, 1981. Hence, the Order.

ORDER

- A) The Original Applicant is allowed partly.
- B) Impugned order dated 18.02.2020 is quashed and set aside.
- C) Respondent No.3 is directed to take decision a fresh about the pay and allowance to the Applicant for suspension period in observance of Rule 72 of MCS Rules, 1981 within three months from today and decision as the case may be shall be communicated to the Applicant.
- D) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 09.12.2022
Dictation taken by: N.M. Naik.
Uploaded on: _____