

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 530 /2015

Manohar Annaji Ingale,
Aged about 64 years,
R/o Sanjay Gandhi Nagar No. 2,
Amravati.

----- **Applicant.**

Versus

The State of Maharashtra,
Through its Secretary,
Urban Development and Public Health Department ,
Mantralaya, Mumbai

2. The Commissioner,
Employees' State Insurance Scheme,
(Govt. of Maharashtra) Panchdeep Bhavan, N.M. Joshi
Marg, Lower Parel, Mumbai.

3. The administrative Medical Officer,
Employees' State Insurance Scheme,
(Govt. of Maharashtra), Vidarbha Region,
Imamwada,
Nagpur.

----- **Respondents.**

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1. Shri K.V. Bhoskar, Advocate for the applicant.
2. Shri A.P. Potnis, Presenting Officer for the respondents.
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CORAM : J.D. Kulkarni : Member (J)

Judgment (Delivered on 27th October, 2016)

The applicant, Manohar Annaji Ingale was appointed as a Peon in Employees' State Insurance Scheme (ESIS) (Dispensary), Amravati vide order dtd. 3/5/1982. While serving as such as a Peon, the applicant was kept under suspension since criminal case under Sections 468, 471 and 420 r/w 34 of the IPC was filed against him. Admittedly, the applicant was under suspension w.e.f. 14/10/1991 to 21/4/1997. The suspension was revoked subsequently.

2. In view of the investigation in crime No. 280/1991, a criminal case bearing No. R.C.C. 104/1997 (old criminal case No.121/1996) was filed and tried before the Chief Judicial Magistrate, Amravati. The said case came to be finally decided and the applicant was acquitted from the criminal charges. The acquittal order is dtd. 22/9/2008.

3. The Respondent No. 1 filed criminal appeal along with the application for condonation of delay against the order

of acquittal. The Misc. Application for condonation of delay is bearing No. 27/2009 and the Criminal Application No. is 28/2009. In the meantime , the applicant stood retired on superannuation on 30/9/2011. The appeal and the application for condonation of delay filed against the acquittal order were also dismissed.

4. The applicant from time to time filed representations. Such representations were filed on 15/4/2014 and 18/11/2014. However , his claim was not considered and his suspension period was not regularized. The applicant was therefore constrained to file this O.A.

5. During the pendency of the O.A., the representations filed by the applicant for regularization of his suspension period was rejected vide order dtd. 4/11/2015 by the Director (Administration) ESIS, Mumbai, i.e. R/3. The applicant has therefore claimed that the said communication/letter dtd. 4/11/2015 be quashed and set aside.

6. The respondents tried to justify the order of rejection on representations. It is stated in the reply-in-affidavit of the Respondents 2 and 3 that the applicant's representations were considered as per the provisions of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 and in the opinion of the respondents the suspension period was to be treated as suspension period only and therefore, the representations have been rightly rejected.

7. Heard the Id. Counsel for the applicant Shri K.V. Bhoskar and the Id. P.O. for the respondents Shri A.P. Potnis. Perused the application, affidavit-in-reply and various documents placed on record.

8. The only material point to be considered is whether the communication dtd. 4/11/2015 issued by the Director (Administration) ESIS, Mumbai rejecting the applicant's

representations to treat the suspension as duty period is legal and proper ?

9. From the admitted facts it is clear that the applicant was acquitted in criminal trial by the Id. Chief Judicial Magistrate, Amravati. It seems that against the order of acquittal, the State filed the appeal along with application for condonation of delay for filing the appeal. However, the application for condonation of delay has been rejected and consequently the appeal is not admitted. Thus, there is no criminal case pending against the applicant. It is also admitted fact that no departmental enquiry was ever initiated against the applicant. In such circumstances, the only alternative left for the respondents was to treat the suspension period as duty period. Admittedly, the applicant was under suspension w.e.f. 14/10/1991 to 21/4/1997 and therefore, this period should have been treated as duty period.

10. The impugned communication which has been challenged vide amendment dtd. 4/11/2015 is at paper book page no. 64. The said communication reads as under :-

“ क. आयुक्त /राकावियो/मइं/उइं /सेवक/निलंबनकालावधी/काक
२/२०१५ दिनांक १४/११/२०१५

विषय :- दिनांक १४/१०/१९९१ पासून ते दिनांक २१/४/१९९७
पर्यंतचा निलंबन कालावधी नियमित करणेबाबत१. श्री.
म.अ. इंगळे सेवानिवृत्त सेवक व श्री यू.एच. इंगळे
सेवक

संदर्भ :-१. आदेश क. आयुक्त/ राकावियो/३५२१२/काक १०
दिनांक १३/१२/१९९१

२. आदेश क. आयुक्त/ राकावियो/३५२०९/काक १०
दिनांक १३/१२/१९९१

संदर्भित आदेशानुसार श्री. म.अ. इंगळे सेवानिवृत्त सेवक हे
वैद्यकीय प्रशासन अधिकारी राकावियो योजना नागपूर येथून दिनांक १४/१०/१९९१
ते दिनांक २१/४/१९९७ पर्यंत निलंबित होते. वरीलपैकी श्री. म.अ. इंगळे हे दिनांक
३०/९/२०११ (म.न.) पासून नियतवयोमानाने सेवानिवृत्त झाले आहेत.

श्री. म.अ. इंगळे सेवानिवृत्त सेवक व श्री यू.एच. इंगळे सेवक यांचा
दिनांक १४/१०/१९९१ ते दिनांक २१/४/१९९७ पर्यंतचा २०१७ दिवसांचा
निलंबन कालावधी हा सर्व प्रयोजनार्थ निलंबन कालावधी म्हणून नियमित करण्यात

येत आहे. तसेच सदर २०१७ दिवसांचा कालावधी सर्व प्रयोजनार्थ अग्राह्य असा सेवाखंड समजण्यात यावा. ”

11. Plain reading of the aforesaid letter/communication clearly shows that the respondents have not given any reason as to why the suspension period cannot be treated as duty period and as to why the said period was being treated as suspension period. Since the applicant was acquitted from the criminal charges and the acquittal become final and in addition to that it is a fact that no departmental enquiry was ever initiated against the applicant, the only recourse should have been to treat the suspension period as duty period. There is no reason given for using discretion for treating the suspension period as suspension period. The impugned communication dtd. 4/11/2011 is therefore arbitrary and has no legal base and therefore the same is quashed and set aside. In view thereof the following order :-

Order

- a) The O.A. is allowed in terms of amended prayer clause i-a.
- b) The communication dtd. 4/11/2015 issued by the Director, (Administration), ESIS, Mumbai is quashed and set aside.
- c) The respondents are directed to consider the applicant's suspension period from 14/10/1991 to 21/4/1997 as duty period and shall grant all consequential pecuniary benefits arising out of it to the applicant. If the said consequential pecuniary benefits are not granted to the applicant within 2 months from the date of this order, the applicant will be at liberty to file representation for claiming interest as per admissible rate as per rules therefor.
- d) No order as to costs.

(J.D. Kulkarni)
Member (J)

Skt.