

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.795 OF 2021**

**DISTRICT: THANE  
SUBJECT: SUSPENSION  
PERIOD**

Smt. Kamal Uttam Nirbhavane, )  
Age: 55 years., Occ. Asstt. Police Inspector, )  
R/o. Kurla Nehru Nagar, Om Siddheshwar )  
Apartment, Bldg. No.51, Room No.704, )  
Nehru Nagar, Kurla (E), Mumbai 24. )... **Applicant**

**Versus**

1) The State of Maharashtra, )  
through the Addl. Chief Secretary, )  
Home Department, Mantralaya, Mumbai-32. )

2) The Director General of Police, )  
M.S. Shahid Bhagat Singh Marg, Coloba, )  
Mumbai-400 001. )... **Respondents**

**Shri Rajesh M. Kolge, learned Advocate for the Applicant.**

**Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.**

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

**DATE : 02.01.2023.**

**JUDGMENT**

1. The Applicant has challenged the order dated 13.02.2019 whereby period of suspension from 07.07.2011 to 14.05.2012 has been treated 'suspension As such', invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

The Applicant was A.P.I. at Shahapur Police Station, District Thane. She was investigation officer of Crime No.190/2010 registered under Section 376 (C), 324, 506 of IPC for short period i.e. from 04.09.2010 to 06.12.2010. She allegedly committed lapses during the investigation of the said crime. Consequent to it, she came to be suspended by order dated 07.07.2011 in contemplation of D.E. in which punishment of withholding was imposed by order dated 05.06.2017. Being aggrieved by it, she preferred appeal before the Government in which punishment of withholding of increment was set aside and punishment of strict warning was only imposed by order dated 28.08.2018. Respondent No.2 – The Director General of Police issued Show Cause Notice dated 15.10.2018 as to why suspension period should not be treated ‘suspension As such’ to which Applicant submitted Reply on 20.11.2018 stating that the punishment of withholding of increment being cancelled and he is subjected to punishment of strict warning only suspension be treated as duty period for all purposes in terms of circular dated 24.10.2007 issued by office of Director General of Police. However, Respondent No.2 by impugned order dated 13.02.2019 treated period of ‘suspension As such’ exercising the power under Section Rule 72 (5) & (7) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as ‘Rules of 1981’ for brevity) which is challenged in the present O.A.

3. Shri R.M. Kogle, leaned Advocate for the Applicant sought to assail the impugned order *inter-alia* contending that Respondent No.2 treated the suspension period as such on the basis of punishment of withholding one increment forgetting that the said punishment was already cancelled and only strict warning was given. He further submits that in terms of Circular issued by Respondent No.2 dated 24.10.2007, direction was issued that where punishment of fine or strict

warning is imposed, in such matters, the suspension period is required to be treated as duty period. Apart, he referred to the decision of Hon'ble Bombay High Court in **1999 (3) Mh.L.J. 351 (S.P. Naik Vs. Board of Trustees, Mormugao Port Trust, Goa & Anr.)**

4. Per Contra, learned P.O. sought to defend impugned order *inter-alia* contending that in D.E. though the punishment is later modified in appeal into strict warning it is not exoneration from the charges leveled against the Applicant, and therefore impugned order of treating the period from 07.07.2011 to 14.05.2012 'suspension As such' is in consonance with Rule 72 of Rules, 1981.

5. In view of submission advanced at the Bar, the issue posed for consideration is whether the impugned order treating the period from 07.07.2011 to 14.05.2012 'suspension As such' is legally sustainable in law.

6. Rule 72 of 'Rules of 1981' provides procedure for as to how to regulate the period of suspension, where the Government servant is reinstated in services. As per Rule 72(3) of 1981, where the authority competent to order the reinstatement is of the opinion that the suspension is wholly unjustified, the Government servant shall, subject to the provision 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) of Rules 1981, in case other than those falling under sub-rule (2) & (3), the competent authority is required to give notice to the Government servant of the quantum proposed and after considering the representation an appropriate order is required to be passed. Suffice to say, the competent authority has to form opinion as to whether suspension was wholly unjustified or otherwise.

7. Now turning to the facts of the present case, undisputedly, initially, punishment of withholding of one increment was imposed but

in appeal, it was set aside and strict warning was only given. Therefore, issue arises in facts and circumstances of the case, the impugned order treating the period 'suspension As such' is unsustainable.

8. Here, one need to see the charges framed against the Applicant in D.E. as well as order of appellate authority. The alleged lapses attributed to the Applicant was of negligence while conducting investigation of Crime No. 190/2010. In this behalf, the perusal of order of appellate authority reveals that in Criminal Case, Session Court convicted the accused. Notably, it is because of Suo-Moto W.P. No.132/2010 (PIL) the Department seems to have suspended the Applicant. However, the said W.P. was disposed of finally on 07.04.2017. The appellate authority has noted that there was no such observation of lapses on the part of Police in Judgment dated 07.04.2017 delivered in Suo-Moto PIL. Appellate authority has also noted that the Applicant was Investigation Officer for a very short period and accused were convicted by Court. Considering all these aspects, the appellate authority set aside the punishment and issued strict warning only. Thus there was no such serious charge against the Applicant.

9. Material to note, that Respondent No.2 by impugned order dated 13.02.2019 treated period of 'suspension As such' stating that in view of punishment of withholding of increment suspension was justified. However, Respondent No.2 seems to be oblivious of the fact that the said punishment was set aside by the appellate authority and only strict warning was given. Ex-facie the Appellate authority has not considered this material aspect of order of appellate authority and misdirected itself.

10. Hon'ble High Court in **S.P. Naik' case (cited supra)** held that the order of treating suspension period 'suspension As such' is not sustainable, where the Government servant is subjected to minor punishment of withholding of one increment. In that case, Government

servant was subjected to punishment of withholding of increment. Whereas, in present case, the punishment of withholding of increment is already set aside and only strict warning is given. In Para No.9, Hon'ble High Court held as under:-

*“9. However, there is considerable force in the contention of the petitioner that in view of imposition of minor penalty, the period of suspension should have been treated as 'on duty'. The Mormugao Port Employees (Classification, Control and Appeal) Regulations, 1964 provide for major and minor penalties. With-holding of increments falls under the category of minor penalty. Regulation 9 deals with nature of penalties. Regulation 11 deals with imposition of major penalties and Regulation 12 deals with the procedure of imposing minor penalties. The penalty of with-holding of increments or promotion falling under Regulation 9(ii) is treated as minor penalty under Regulation 12. When minor penalty is imposed, period of suspension is not to be treated as not on duty. In fact, as per Schedule under the said Regulations, 1964, in case of Officers holding Class I post and above, the Appellate Authority for the imposition of penalty is Central Government. The Government of India, in decision dated 3-12-1985, reported under F.R. 54-B of the Fundamental Rules under heading 'Administrative Instructions', at item No. 3 at page 260 of Swamy's Fundamental Rules, Part-I, Twelfth Edition, has dealt with this issue. In this decision, the Government of India took into consideration the guidelines and instructions on the subject that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Government of India has ruled that when an inquiry has been held for imposition of a major penalty and finally minor penalty is awarded, the suspension should be considered unjustified and in terms of F.R. 54-B the employee should be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B. The same principle has to be applied in the case under consideration. Thus, in our opinion, the petitioner is entitled to full pay and allowances for the period of suspension and the order of the Disciplinary Authority, treating the said period as not on duty is required to be set aside.”*

11. Indeed, Respondent No.2 issued Circular dated 24.10.2017 taking note that often Police Personnel are kept under suspension without there being any such serious case of suspension and instructed to be careful

while passing any such order of suspension. It would be worth to see the contents of the Circular which are as under:-

“परिपत्रक :-

**महाराष्ट्र पोलीस नियमावली भाग-१ मधील नियम ४२२ (१)** मध्ये पोलीस अधिकारी/कर्मचारी हे कसुरदार आढळून आल्यास त्यांना कोणत्या परिस्थितीत निलंबित करावे याबाबतची मार्गदर्शक तत्वे देण्यात आलेली आहेत या नियमानुसार कसुरी गंभीर स्वरूपाची असेल व प्रथमदर्शनी पुराव्यावरून प्रकरण सेवेतून काढून टाकणे व बडतर्फ करण्याजोगे असेल अथवा त्यास सेवेत ठेवल्याने तपासात अडचणी येतील अथवा हस्तक्षेप होईल याचा विचार करून सक्षम अधिका-यांनी निलंबनाने आदेश काढले पाहिजेत. परंतु असे निदर्शनास आले आहे की, काही पोलीस अधिकारी व कर्मचारी यांचेविरुद्धची कसुरी गंभीर स्वरूपाची नसतांना व प्रथमदर्शनी पुराव्यावरून प्रकरण सेवेतून काढून टाकणे अथवा बडतर्फ करण्याजोगे नसतांना सक्षम प्राधिका-यांनी त्यांना निलंबन केलेले आहे. मात्र विभागीय चौकशीमध्ये अशा कसुरदारांना **दंड किंवा सक्त ताकीद** अशी सौम्य स्वरूपाची शिक्षा देण्यात आली आहे. अशा प्रकरणी कसुरदार पोलीस अधिकारी व कर्मचारी यांच्या निलंबन काळ नियमित करण्यास फारच अडचणी निर्माण होत आहेत. विभागीय चौकशीमध्ये **सक्त ताकिद किंवा दंड** अशा स्वरूपाची शिक्षा दिल्याने सहाजिकच कसुरीतील त्यांचे निलंबन **महाराष्ट्र नागरी सेवा (प्रदग्रहण अवधी, स्वीयेत्तर सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे यांच्या काळातील प्रदाने)नियम १९८१ च्या नियम ७२ (३)** मधील तरतुदीनुसार समर्थनियम ठरत नाही. परिणामी, कसुरीदार अधिकारी/कर्मचारी यांच्या निलंबन काळ हा सर्व प्रयोजनार्थ कर्तव्यकाळ म्हणून निमित्त करावा लागतो.

२. तरी, सर्व घटन प्रमुखांना विनंती आहे की, त्यांना कसुरदार अधिकारी/कर्मचारी यांचे विरुद्धच्या कसुरीच्या स्वरूपाचा अभ्यास करूनच त्यांचेवर निलंबनाची कार्यवाही करावी.”

12. In present case also, the Applicant is subjected to punishment of strict warning by appellate authority. The appellate authority also noted that Criminal Case, which was under investigation with the Applicant for short period, the Session Court convicted the accused and there were no such observation or structure against the Applicant in the Judgment. In such situation, in my considered opinion, the order of treating the period of ‘suspension As such’ would amount to penalize or punish the Applicant when there was no such serious charges. Therefore, it would be unjust to treat his suspension period ‘suspension As such’. Such order would obviously affect the Applicant adversely. To conclude, I have no hesitation to sum up that in facts and circumstances of the case, impugned order treating the period of ‘suspension As such’ is not sustainable in law and liable to be quashed. Hence, the order.

**ORDER**

- A) The Original Application is allowed.
- B) The impugned order dated 13.02.2019 is quashed and set aside.
- C) The period of suspension from 07.07.2011 to 14.05.2012 be treated as duty period for all purposes and consequential service benefits be given to the Applicant within a month from today.
- D) No order as to costs.

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

Place: Mumbai  
Date: 02.01.2023  
Dictation taken by: N.M. Naik.

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