

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.109 OF 2019

DISTRICT : PUNE

Shri Vinayak Mahadev Khandare ,)
A-3, Paradise Co-op Hos. Soc. Behind)
Sai Sagar Hotel, Shivarkar Road,)
Wanvadi, Pune.)

Legal heirs

1.Vimal V. Khandare, Age – 50 years)
A-3, Paradise Co-op Hos. Soc. Behind)
Sai Sagar Hotel, Shivarkar Road,)
Wanvadi, Pune.)

2. Shri Swapneel V. Khandare, Age 28 year))
A-3, Paradise Co-op Hos. Soc. Behind)
Sai Sagar Hotel, Shivarkar Road,)
Wanvadi, Pune.)

3. Miss Meenal V. Khandare, Age 27 years)
A-3, Paradise Co-op Hos. Soc. Behind)
Sai Sagar Hotel, Shivarkar Road,)
Wanvadi, Pune.)

Versus

1. The Secretary, Home Department,)
Mantralaya, Mumbai 400 032.)
2. The Additional Director General of)
Police, Maharashtra State, Shahid)
Bhagatsingh Marg, Mumbai.)...**Respondent**

Ms Asawari Ghate holding for Smt. Punam Mahajan, Advocate for Applicant.

Smt. Archana B. K., Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.10.2021

JUDGMENT

1. The Applicant has challenged the order dated 30.10.2018 passed by the Respondent No.2 whereby his suspension period from 03.01.2012 to 16.08.2014 has been treated as suspension period under Rule 72(5) & (7) of Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 (Hereinafter referred as Rules, 1981) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to Original Application are as under:-

In the year 2011, the Applicant was in charge of Railway Police Station, Solapur. In that period, one Shri Umar Pathan was detained in Police Station on allegation of indulging in purchase and sale of stolen goods. Two mobile handsets, driving licenses, Suzuki Motorcycle and cash of Rs.2500/- came to be seized from him but no entry to that effect was taken in record nor any action was taken for his illegal activities and thereby the Applicant as well as co-diligent namely Shri Manik Kokani, Police Naik committed dereliction in duties. Shri Mohamad Hanif, Shri Ahmed Pathan (father of Umar Pathan) lodged complaint with Anti Corruption Bureau on the allegation that the Applicant had demanded bribe of Rs.25,000/- to release seized articles to Umar Pathan and accepted bribe of Rs.15,000/-. On this allegation, on 02.01.2012, offence under Section 7, 12, 13(1)(d) read with 13(2) under the Provisions of Prevention of Corruption Act, 1988 came to be registered against the Applicant as well as Police Naik, Shri Kokani. It is on this background, the Applicant was suspended in view of registration of crime under the provisions of Corruption Act by order dated 14.01.2012. Later, by order dated 12.08.2014, suspension of the Applicant was revoked and

he was reinstated in service subject to initiation of D.E. Accordingly, D.E. was initiated against the Applicant wherein punishment for deduction of pension of Rs.2500/- for one month came to be passed by order dated 31.05.2018. In the meantime, the Applicant retired from service w.e.f. 30.06.2016. The order of punishment has attained finality.

3. Insofar as the criminal prosecution is concerned, the Anti Corruption Bureau submitted discharge report stating that sanction for prosecution was refused by competent authority. Thereon, learned Sessions Court discharged the Applicant under Section 169 of Code of Criminal Procedure, 1979.

4. As regard suspension period, the Applicant was given show cause notice dated 11.07.2018 as to why his period of suspension from 03.01.2012 to 16.08.2014 should not be treated as suspension period as such. The Applicant submitted his reply on 03.09.2018 stating that he is discharged from offences registered under the provisions of Prevention of Corruption Act and in D.E. minor penalty of deduction of Rs.2500/- from pension for one month is imposed which is minor punishment, and therefore, the suspension period is required to be treated as duty period for all purposes.

5. However, the Respondent No.2 by impugned order dated 30.10.2018 held that the suspension was justified in fact and circumstances of the case and in D.E. also he is held guilty, and accordingly treated suspension period 'as such' in terms of Rule 72 of Rules 1981 which is under challenge in the present O.A.

6. The Respondent No.2 resisted the O.A. by filing Affidavit-in-Reply *inter-alia* contending that even if the Applicant is discharged from criminal case for want of sanction in D.E. he was subjected to punishment, and therefore, the decision of suspension was quite

justified, and he is not entitled for full pay and allowances for the suspension period.

7. Ms Asawari Ghate holding for Smt. Punam Mahajan, learned Counsel for the Applicant challenged the impugned order *inter-alia* contending that in view of discharge from offences under the provisions of Prevention of Corruption Act and minor punishment imposed in D.E. the period of suspension could not have been treated as suspension and it should have been treated as a duty period for all purposes. According to her, in case of minor punishment, the suspension period will have to be treated as a duty period in view of the decision of the Hon'ble High Court in **1999(3) Mh.L.J. 351 S.P.Naik v/s. Board of Trustees, Mormugao Port Trust, Goa and another**. Besides reliance is also placed on the decision rendered by this Tribunal in **O.A.No.769/2017 (Shaikh Rashid Shaikh Munir v/s State of Maharashtra) decided on 16.07.2019**.

8. Per contra, learned P.O. sought to justify the impugned order contending that mere acquittal or discharge *ipso-facto* would not entitle the Applicant for pay and allowances of the suspension period particularly when in D.E. he is subjected to punishment though minor which has attained finality. In this behalf, reliance is placed on the judgment of the Hon'ble Supreme Court in **(1997) 3 SCC 636 Kirishnakant Rahunath Bibhavnekar V/s State of Maharashtra & Ors. decided on 28.02.1997** and the decision rendered by this Tribunal in **O.A. No.419/2014 (Mantappa Basappa Chenigund V/s State of Maharashtra & Anr.) decided on 14.11.2014**.

9. In view of the submissions advanced at a bar in the facts and circumstances of the case, the issue posed for consideration is whether the Applicant is entitled to treat the suspension period as duty period for all purposes and the impugned order suffers from any

legal infirmity. In my considered opinion, the answer is in emphatic negative.

10. Indisputably, the incident giving rise to registration of crime under the provisions of Prevention of Corruption Act as well as for initiation of D.E. took place in the last week of December 2011. The Applicant was admittedly in charge of Railway Police Station, Solapur. One Shri Umar Pathan was detained on suspicion on indulging in sale and purchase of stolen mobiles. Two mobiles, driving licenses and Suzuki Motorcycle and cash of Rs.2500/- were seized from him but no entry was taken in the record nor it was returned to Umar Pathan neither any action was taken against him in respect of his criminal liability. On the contrary, the Applicant allegedly demanded bribe to the father of Shri Umar Pathan who lodged complaint with Anti Corruption Bureau and the Applicant allegedly arrested while accepting bribe of Rs.15,000/-. True, the Anti Corruption Bureau filed the discharge report under Section 169 of Code of Criminal Procedure, 1973 on the ground that the competent authority has refused to grant sanction for the prosecution and the Applicant came to be discharged under Section 169 of Code of Criminal Procedure, 1973 by order dated 01.10.2018.

11. Needless to mention that mere acquittal or discharge in criminal case *ipso-facto* would not render a Government servant entitle to pay and allowances for the period of suspension. Even if a Government servant acquitted or discharged in criminal case, he can be subjected to D.E. Apart the competent authority on reinstatement of a Government servant will have to record findings as to whether the suspension was wholly unjustified after giving notice to a Government servant. In other words, the competent authority is required to examine as to whether the suspension was wholly unjustified or otherwise and mere discharge or acquittal of a Government servant

ipso-facto could not rendered him entitle to treat the suspension period as a duty period for all purposes.

12. Material to note that this is not a case where the Applicant is exonerated in D.E. Indeed, he is held guilty for the charges leveled against him i.e. dereliction in duties and in view of his retirement minor punishment of deduction of Rs.2500/- from pension for one month has been imposed which has attained finality. In other words, the very cause for suspension of the Applicant was his conduct that led to the registration of offence under the provisions of Prevention of Corruption Act, 1988 as well as dereliction in duties in the matter of inaction in respect of stolen properties against Umar Pathan. Suffice to say, mere acquittal or discharge in criminal case *ipso-facto* would not entitle the Applicant for full pay and allowances of the suspension period and suspension period is required to be determined independently by the competent authority as to whether suspension was wholly unjustified or otherwise as contemplated in Rules, 1981. In present case, the competent authority has specifically recorded the finding that suspension was justified in the fact and circumstances of the matter.

13. The submission advanced by learned Counsel for the Applicant that denial of full pay and allowances for the period of suspension amounts to punishment and in view of his punishment in D.E. rule of double jeopardy attracted is totally misconceived and fallacious. The punishment imposed in D.E. is one aspect and treatment to the suspension period is totally different aspect which needs to be decided by the competent authority bearing in mind Rule 72 of Rules 1981.

14. Reliance placed on the decision in **S.P. Naik's** case (cited supra) is totally misplaced. It was pertaining to Board of Trustees, Mormugao Port Trust, Goa (Classification, Control and Appeal) Regulation, 1964 where in view of Regulation No.12 minor

penalty is imposed, the period of suspension is not to be treated as not on duty. As such, the said Regulation specifically provides that minor penalty has to be ignored. Whereas in present case, we are dealing with the rules of 1981 which empowers competent authority to determine whether the suspension was wholly justified or otherwise irrespective of nature of punishment imposed in the matter. Therefore, this authority is of little assistance to the Applicant.

15. Insofar as the decision rendered by the Tribunal in **O.A.No.769/2017** is concerned, in that case there was no such findings of the competent authority that suspension period was justified and secondly in the matter of co-delinquent his suspension period was treated as a duty period for all purposes. Therefore, that decision turned on its own fact and quite distinguishable. Needless to mention, the decision rendered in one case cannot be made applicable to another case since single factual difference makes a lot of difference.

16. At this juncture, it would be apposite to refer the Judgment of Hon'ble High Court in **(2003) 4 Mh.L.J. 606 (Vasant Kamble Vs. State of Maharashtra)** where in Para No.6 in similar situation, the Hon'ble High Court held as follows :-

"In our opinion, therefore, acquittal of the Petitioner by Criminal Court did not ipso-facto entitle him to the benefit of salary under Rule 72. What was required to be seen was where in the opinion of the Competent Authority, the action of suspension of the Petitioner was "wholly unjustified". In other words, the 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."

17. In this behalf, this Tribunal is guided by the Judgment of Hon'ble Supreme Court **(1997) 3 SCC 636 (Krishnakant R. Bibhavnekar Vs. State of Maharashtra)** wherein ratio is laid down that mere acquittal of the employee because of insufficient evidence in

Criminal Case does not automatically entitle him to back-wages and the Competent Authority is empowered to treat the suspension period as not spent on duty. The principles and observations made by the Hon'ble Supreme Court are fully attracted to the present case. Para Nos.4 & 5 of the Judgment is material, which are as follows :-

"4. Mr. Ranjit Kumar, learned counsel for the appellant, contends that under Rule 72(3) of the Maharashtra Civil Services (Joining Time, foreign Services, and Payment during suspension, dismissal and Removal) Rules, 1991 (for short 'the Rules'), the Rules cannot be applied to the appellant nor would the respondents be justified in treating the period of suspension of appellant, as the period of suspension, as not being warranted under the Rules. We find no force in the contention. It is true that when a Government servant is acquitted of offences, he would be entitled to reinstatement. But the question is: whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period, as contended by Shri Ranjit Kumar? The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts, conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or fool proof. 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. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at

all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty, (and on payment of subsistence allowance etc.). Rules 72(3), 72 (5) and 72 (7) of the Rules give a discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paragraphs 5 and 6 of the additional affidavit.

5. Under these circumstances, we do not think that the Tribunal has committed any error."

18. In view of above discussion, it would be deleterious to the maintenance of discipline and public administration to grant full pay and allowances for the period of suspension where suspension is held justified. The principles of law enunciated in **Vasant Kamble** (supra) and **Krishnakant Bibhavnekar** (supra) in the light of Rule 72 of Rules 1981 are squarely attracted and challenge to the impugned order holds no water.

19. The necessary corollary of aforesaid discussion leads me to sum-up that Original Application is devoid of merit and liable to be dismissed. Hence, the following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J