

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.122 OF 2020

DISTRICT : THANE

Shri Appa Sampat Bhamare.)
Age : 62 Yrs., Occu.: Nil, Retired as)
Assistant Sub-Inspector from Vitthalwadi)
Police Station, Ulhasnagar, Dist : Thane)
and R/o. Pravin Complex, Block No.102,)
Opp. Gaondevi Temple, Ulhasnagar – 4,)
District : Thane.)...**Applicant**

Versus

1. The Commissioner of Police,)
Thane, Through Additional)
Commissioner of Police (Admn.),)
Thane Police Commissionerate,)
Thane.)
2. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 05.01.2021

JUDGMENT

1. The challenge is to the order dated 26.06.2018 passed by Additional Commissioner of Police, Thane thereby treating the period from 16.09.2003 to 11.01.2004 suspension, as such invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated undisputed facts necessary for the decision of the present O.A. are as under :-

(i) While Applicant was serving as PSI at Vitthalwadi Police Station, Crime No.60.2003 was registered against him by Anti-Corruption Bureau under Section 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 and consequent to it, he was suspended w.e.f. 16.09.2003.

(ii) After investigation, Special Case No.7/2004 was filed by Anti-Corruption Bureau before Special Judge, Kalyan.

(iii) Applicant came to be reinstated in service on 19.11.2004.

(iv) He retired from service on 30.06.2015 on attaining the age of superannuation.

(v) Accused got acquittal in Special Case No.7/2004 by Judgment dated 09.05.2017 and the acquittal had attained finality.

(vi) Respondents did not initiate the departmental proceedings against the Applicant.

(vii) Additional Commissioner of Police, Thane issued Show Cause Notice to the Applicant on 07.05.2018 as to why period of suspension from 16.09.2003 to 18.11.2004 should not be treated

As such to which the Applicant had submitted his reply on 07.08.2018.

(viii) Additional Commissioner of Police, Thane by order dated 26.06.2018 observed that the explanation submitted by the Applicant is not satisfactory and consequently treated the period from 16.09.2003 to 18.11.2004 as suspension period invoking Rule 72 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).

3. It is on the above background, being aggrieved by order dated 16.06.2018 treating the period of suspension As such, the Applicant has filed the present O.A.

4. Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned order on following grounds :-

(a) The competent authority for issuance of order under Rule 72 of 'Rules of 1981' is Commissioner of Police, but the impugned order being admittedly passed by Additional Commissioner of Police is without jurisdiction and liable to be quashed.

(b) Once the Applicant is acquitted by learned Special Judge, Kalyan in Special Case No.7/2004, there was no reason whatsoever to treat the period of suspension As such and the said period in view of his acquittal ought to have been treated as duty period for all purposes.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to contend that the Applicant was acquitted by giving benefit of doubt, and therefore, acquittal *ipso-facto* does not entitle the Applicant for full pay and allowances for the period of suspension and Respondent has rightly exercised discretion by treating the period of suspension As such.

As regard competency, he initially sought to contend that in view of delegation of power by Office Order dated 18.06.2012 issued by Commissioner of Police, the Additional Commissioner was empowered to pass the impugned order. However, in alternative submission, he submits that if the Tribunal found Additional Commissioner of Police was not competent to pass the impugned order, the matter be remitted back directing Commissioner of Police to pass appropriate order in accordance to law.

6. In so far as remitting the matter to the Commissioner of Police, Thane as canvassed by the learned P.O. is concerned, the learned Advocate for the Applicant contends that the Applicant has undergone *ordeal* for near about 17 years since the date of suspension in 2003, and therefore, considering the time already consumed and sufferings of the Applicant, the Tribunal should put to rest the issue by setting aside the impugned order.

7. Rule 72 of 'Rules of 1981' provides for the issuance of order by competent authority to regulate the period of suspension. In this behalf, Rule 72(3) and 72(5) of 'Rules of 1981' are material, which are as follows:-

“72(3) 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:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the presentation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

72(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the 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, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has not been served, as may be specified in the notice.”

8. As such, it is explicit from Rule 72(3), the competent authority was required to form an opinion whether the action of suspension of the Applicant was wholly unjustified. In case, if the suspension was found wholly unjustified, the concerned Government servant would be entitled to full pay and allowances subject to provision of sub-rule 8. As such, the competent authority is required to apply negative test for holding the person to be entitled to all benefits of the period of suspension. Thus, mere acquittal of a Government servant by Criminal Court did not *ipso-facto* entitle him to the benefit of full pay and allowances under Rule 72 of ‘Rules of 1981’.

9. In this behalf, I am guided by the decision of Hon’ble Bombay High Court **(2003) 4 Mh.L.J. 606 (Vasant Kamble Vs. State of Maharashtra)**. 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.”

10. Now turning to the facts of the present case, the perusal of impugned order dated 26.06.2018 does not satisfy the test laid down in Rule 72(3) of ‘Rules of 1981’. In impugned order all that Additional Commissioner of Police in one sentence stated that “explanation submitted by the Applicant is not satisfactory”. This can hardly be

termed as a compliance of Rule 72(3) of 'Rules of 1981'. As stated above, the competent authority was required to apply negative test to find out whether the suspension was wholly unjustified or otherwise and then to pass appropriate order as to in what manner the period of suspension should be treated or regulated.

11. Apart, admittedly, the appointing authority of the Applicant was Commissioner of Police, and therefore, the impugned order being passed by Additional Commissioner of Police is obviously without jurisdiction. The Office Order dated 18.06.2012 sought to be relied by the learned P.O. speaks about the delegation of powers to Additional Commissioner of Police to pass punishment as contemplated under Bombay Police (Punishment and Appeals) Rules, 1956 and the said Office Order does not speak about the orders to be passed under 'Rules of 1981'. This being the position, it will have to be held that the impugned order being passed by Additional Commissioner of Police was without jurisdiction, as the competent authority was Commissioner of Police only. The order passed by authority not vested with the powers to do so is obviously unsustainable in law.

12. The perusal of impugned order reveals that there is no reference of Judgment of acquittal of the Applicant in Criminal Case let alone any discussion in proper perspective to arrive at conclusion as to whether the suspension was wholly unjustified or otherwise. The competent authority was under obligation to consider the Judgment of Criminal Case and then to form opinion as to whether suspension was wholly justified or not, which is completely lacking.

13. The learned Advocate for the tried to canvass that Applicant got clean acquittal and the Tribunal should not be influenced with the wording or language used in the Judgment about benefit of doubt to the Applicant. He tried to canvass that perusal of Judgment of acquittal in Criminal Case would reveal that it was a case of no evidence and invalid

sanction. In so far as this aspect is concerned, I refrain myself from making any comment, as basically in the first place, it was for the competent authority to consider the Judgment and to form opinion whether the suspension was wholly justified or not, otherwise competent authority may get influenced by the observation made by this Tribunal. As such, in my considered opinion, the matter needs to be remitted back to the Commissioner of Police, who is the competent authority to pass appropriate order under Rule 72 of 'Rules of 1981' for regularizing the period of suspension, as he thinks fit in the light of Rule 72(3) of 'Rules of 1981'.

14. I do not think that any financial hardship would cause to the Applicant if the matter is remitted back to the Commissioner of Police for passing appropriate order in accordance to law. He was suspended on 16.09.2003 and reinstated in service on 19.11.2004 and was in service till his retirement in 2015. It is only in case where considerable period had elapsed and the person is likely to suffer more hardship or inconvenience, in that event only, the Tribunal may set the matter to rest without remitting it to the competent authority for passing appropriate order. Therefore, the reference of decision of Hon'ble Supreme Court in **2000 SCC (L & S) 213 (Sub-Inspector Rooplal Vs. Lt. Govenner, Delhi** and **2009 (5) Mh.L.J. 68 (Masood Pathan Vs. State of Maharashtra)** is misplaced.

15. The totality of aforesaid discussion leads me to conclude that the impugned order is not sustainable in law and matter needs to be remitted to the Commissioner of Police being competent authority to pass an appropriate order afresh in accordance to law. Hence, I proceed to pass the following order.

ORDER

(A) The Original Application is allowed partly.

- (B) The impugned order dated 26.06.2018 is hereby quashed and set aside.
- (C) The matter is remitted back to the Commissioner of Police, Thane with direction to pass order afresh regarding suspension period of the Applicant from 16.09.2003 to 18.11.2004 in the light of provisions of Rule 72 of 'Rules of 1981' and the observation made in this order within two months from today.
- (D) If the Applicant felt aggrieved by the decision, he may avail further remedy in accordance to law.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 05.01.2021

Dictation taken by :

S.K. Wamanse.

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