

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.162 OF 2016

(Subject : Transfer)

Shri Mohammad Arif Mohammad Ibrahim Sayyed,)
 R/at. 4-1-147, Rest Camp, ward No.4, Yadgir Road,)
 Wadi Juncation, Taluka : Chintapur,)
 District Gulbarga.) **.... Applicant.**

Versus

1. The State of Maharashtra,)
 Through the Principal Secretary,)
 Department of Irrigation,)
 Mantralaya, Mumbai 400 032.)
2. The Deputy Secretary,)
 Department of Irrigation,)
 Mantralaya, Mumbai 400 032.)
3. The Superintendent Executive Engineer,)
 Kukadi Project Mandal Pune,)
 Baner Road, Sinchan Bhavan, Pune.)
4. Executive Engineer,)
 Sinha Mada Project Division,)
 Bhimanagar, District :Solapur) **....Respondents.**

Shri S. Prabhune, the learned Advocate for the Applicant is absent.

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

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

DATE : 21.09.2016.

J U D G M E N T

1. Shri S. Prabhune, the learned Advocate for the Applicant is absent. Heard Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

2. Perusal of the record reveals that the Applicant was suspended by order dated 09.03.1998. The opening paragraph of the suspension order reads as follows :-

“: कार्यालयीन आदेश क्रमांक २/९८ :

- आ दे श-

श्री. एम.एम. स-यद, शाखा अभियंता यांचे विरुद्ध त्यांनी मोजे डिकसळ, ता. इंदापूर जि. पुणे येथील गटार काम निविदा क्र. : १/७३ सन ९७-९८ च्या बांधकामात खोटी मोजमापे लिहिणे, कामात निष्काळजीपणा व बेजबाबदारीस कारणीभूत याबाबत विभागीय आयुक्त, पुणे विभाग, पुणे यांनी त्यांचेकडील गोपनीय पत्र क्र रोहयो/ डीई-१ /११/ २३८, दिनांक २३-२-९८ अन्वये शिफारस केल्यानुसार महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ मधील नियम-४ च्या उपनियम (१) (अ) (ब) नुसार श्री. एस.एस. स-यद, शाखा अभियंता, यांना शासन सेवेतून तारीख ९-३-९८ पासून निलंबित करण्यात येत आहे.”

(Quoted from page 15 of the paper book)

3. By virtue of Rule 4(1) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which is referred to in the suspension order, it is evident that applicant was suspended in contemplation of disciplinary proceedings. Rule 4(1) is quoted below for ready reference :-

“4. Suspension

(1) *The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the behalf by the Governor by general or special order may place a Government servant under suspension –*

- (a) *where a disciplinary proceeding against him is contemplated or is pending, or*
- (b) *where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or*
- (c) *where a case against him in respect of any criminal offence is under investigation, inquiry or trail;*

(Quoted from page 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.)

4. Rule 4(1)(a) refers to suspension where disciplinary proceedings are contemplated. Though Rule 4(1)(b) is referred to facts which do not show that suspension has been or could be ordered due to ground referable to said clause (b) of Rule 4(1) of M.C.S. (Discipline and Appeal) Rules, 1979. Clause (c) of Rule 4(1) of M.C.S. (Discipline & Appeal) Rules, 1979 provides that the suspension is possible and

permissible, where the case against the Government servant in respect of any criminal investigation, enquiry, and/ or a trial is pending. However, while passing the order of suspension reference or reliance on clause (c) of Rule 4(1) has not been placed. By this conscious omission of reference to clause (c) of Rule 4(1), the suspension is shown to have been ordered owing to contemplated disciplinary action only.

5. Record suggests that charge sheet towards misconduct was served on the applicant and other Government servants on 15.02.2008.

6. The departmental enquiry was completed and the Government has issued a composite order dated 05.02.2010 for imposing penalty against all delinquents. The copy of order dated 05.02.2010 is at page 47 and 48. The text of the order by which the applicant is punished is seen at page 48, relevant portion is quoted below for ready reference :-

“.....
 श्री. स-यद यांचेविरुद्धवे दोषारोप त्यावरील चौकशी अधिका-यांचे निष्कर्ष, चौकशी अहवालावरील त्यांचे अभिवेदन यांचा सर्वकष विचार करता श्री. स-यद, शाखा अभियंता यांची पुढील वेतनवाढ एका वर्षाकरीता भविष्यकालीन वेतनवाढीवर परिणाम न करता रोखण्यात यावी अशी शिक्षा देण्याच्या निष्कर्षाप्रत शासन आलेले आहे.
 म्हणून आता राज्यपाल, महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ मधील नियम ६ व ९ मधील शक्तीचा वापर करून या आदेशान्वये श्री. महंमद अरिफ इब्राहिम स-यद, शाखा अभियंता (सध्या निलंबित) यांची पुढील वेतनवाढ एका वर्षाकरीता भविष्यकालीन वेतनवाढीवर परिणाम न करता रोखण्याची शिक्षा देत आहेत.

.....”
 (Quoted from page 48 of the paper book.)

7. The order imposing penalty is not challenged by Applicant nor it is reviewed or revised by any higher authority, and order of penalty has attained finality.

8. By order dated 01.01.2016, exhibit 'D', at page 81 to 83 the period during which the applicant was under suspension i.e. 09.03.1998 is treated as period spent on suspension i.e. "As such". This order is impugned in present O.A..

9. The impugned order reveals that furtherance to the Government decision dated 27.06.2008, the Review Committee considered the matter of continuation or revocation of suspension. By said order Government has decided to reinstate the applicant and

post him on a non executive post. However, in view of the fact that the applicant has already retired on superannuation, there was no occasion to reinstate him.

10. Impugned order reveals that it was not possible to anticipate as to the extent of span of time which may be required for conclusion of the criminal case, therefore, the Government has considered the applicant's case for regularization of period of suspension and has decided / ordered as to following effect :-

- (a) The **period of suspension** as be treated as period spent on suspension i.e. "As such" subject to outcome of criminal case because the applicant is found guilty in disciplinary proceedings, and penalty has been ordered through order dated 05.02.2010.
- (b) The pay and allowances during suspension, be restricted to subsistence allowance already paid.

11. The grounds on which impugned order is challenged are summarized as follows:-

- (a) Though the decision to treat suspension period as Suspension, is taken subject to outcome of criminal case, which is pending, admittedly the disciplinary proceedings were taken and the Government way back in 2010, and Government had decided to impose upon the applicant, a penalty of stoppage of one increment without cumulative effect, which is minor penalty, there exists no cause or justification for ordering that suspension be treated "As Such", that too subject to outcome of criminal case.
- (b) The suspension order was not passed on account of lodgement of FIR or pendency of a criminal case, the continuation of suspension for about 13 years could not be attributable either to pendency of Criminal case.
- (c) For all purposes it has to be believed that the suspension order was passed in contemplation of disciplinary proceedings and not on account of pendency of criminal case.
- (d) Impugned order reveals gross non application of mind, in view that since the applicant was not suspended under Rule 4(1)(c) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 continuation etc. of his suspension cannot be related or attributed to the pendency of criminal case. Similarly, forfeiture of full pay and allowance on that ground can be ordered.
- (e) Delay in service of charge sheet and delay in completing the Disciplinary proceedings is not attributable to the employee i.e. applicant.

- (f) After issuance of Government Resolution of 2008 the review of suspension was liable to be taken because of closure of departmental enquiry and result of imposition of minor penalty which has attained finality.

12. The State has justified the impugned order with a plea that such power exists and that such long suspension cannot be treated as period spent on duty. Any pointed reply to averments and submissions of applicant is not given.

13. This Tribunal has given curious and conscious consideration to various factual and legal aspects involved in present case.

REASONS

14. In ordinary cause as per practice, decision to suspend is ordinarily taken if, prima facie, opinion can be arrived on the point that disciplinary proceedings likely to result in major penalty of removal, dismissal etc. also if it is considered necessary to keep the employee away from venue of employment.

15. Whenever disciplinary authority records a final conclusion that the employee cannot be punished with major penalty, the Government has to examine in retrospect as to whether the decision to suspend, taken way back, may be a course available at that time and need not be examined by sitting in a judgment thereon, it being an administrative action as was deemed just at the given point of time. However in order to do justice, now the competent authority has to act with discretion to decide as to whether the same decision be adhered to.

16. The decision to suspend could largely be subjective, though supported by fact as those emerge prima facie. However the decision to decide the period of suspension is and ought to be based on objective and facts and grounds, namely not what emerged prima facie on facts, in past, but what is the fact finding now at hand, which has attained finality.

17. Now, when it is conclusively held that the facts as proved, did not warrant of major penalty, the delinquent cannot be held liable to lose his regular pay and allowances, during the period of suspension, lest it would amount to imposing upon him the major penalty of forfeiture of salary and allowances. Such an act by competent authority would and leads to creating a paradox as well as it is jeopardizing the interest at the Government servant. This would also mean that decision taken on what appears, prima facie, is permitted to override whatever is found out upon due fact finding and a decision based on such fact finding.

18. By virtue of acceptance of the fact that the charge / case against the applicant was that of minor penalty the State/ competent authority is estopped from denying to or deprive the applicant any monetary benefit. Else such deprivation would mean taking review of penalty, contrary to law or without authority of law, that too be an order which is passed without application of mind and in violation of principles of natural justice.

19. Therefore, the act of imposing minor penalty by necessary implication has to exclude any other higher penalty either direct or indirect. Therefore, once penalty of withholding increment for one year without cumulative effect is ordered, by no stretch, the applicant can be saddled with liability of forfeiture of full pay and allowances.

20. The period between date of suspension and actual day of service of charge i.e. 1998 to 2008. By no stretch applicant can be held responsible for this duration of ten long years in serving charge sheet is too long and applicant cannot be made to suffer towards such long delay caused by the Government.

21. Time spent in completing the disciplinary proceedings is between 2008-2010. Reasons towards this delay have not been attributed to applicant which is evident from the impugned order.

22. Government took over five years to pass impugned order, and reasons as to why 5 years time was spent are not disclosed. By no stretch applicant can be made to suffer for such delay.

23. The delay on account of any one or all actions referred to in foregoing three paragraphs is not attributed or is shown to be attributable to the applicant.

24. In the result, upon collective reasons, impugned order denying full salary and allowances to the applicant, turns out to be wholly baseless and is not sustainable. In the aforesaid premises, the applicant is held to be entitled for having his suspension period treated as period spent on duty. The difference between the pay due and payable one hand and the subsistence allowance actually paid to him will have to be paid to him.

25. In the result O.A. succeeds, impugned order is set aside. It is held and declared that applicant shall be entitled to full amount towards pay and allowances and all consequential benefits upon deducting the subsistence allowance actually paid to him during that period.

26. In the facts and circumstances, ordinarily costs would follow however in view that non-appearance for the applicant, Applicant and Respondents are ordered to bear own costs.

(A.H. Joshi, J.)
Chairman

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