

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.166 OF 2022

DISTRICT : SINDHUDURG
Sub.:- Treatment of
suspension period as duty
period.

Shri Mayur P. Chindarkar.)
Age : 35 Yrs, Working as Constable)
in the Office of Sindhudurg District Prison,))
Oras, District : Sindhudurg.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Addl. Director General of Police)
And Inspector General of Prison and)
Correctional Services, Old Central)
Building, 2nd Floor, M.S, Pune-01.)
3. The Special Inspector General of)
Police (Prison), South Region,)
Byculla, Mumbai.)
4. The Deputy Inspector General of)
Police (Prison), South Region,)
Byculla, Mumbai.)
5. The Superintendent.)
Sindhudurg District Prison, Oras,)
District : Sindhudurg.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 31.03.2023

JUDGMENT

1. The Applicant has challenged the order dated 18.11.2021 whereby Respondent No.2 – Additional Director General of Police and Inspector General of Prison, Pune treating the period from 07.03.2014 to 03.03.2017 ‘suspension as such’ and treated the period from 04.03.2017 to 25.12.2019 (out of duty period) as ‘duty period’ for all purposes except pay and allowances of the said period.

2. While Applicant as serving as Constable at Central Jail, Thane on 07.03.2014 in the morning at the time of joining the duty when he was subjected to fixing by the authorities, he was found carrying Narcotic substance concealed in the socks. Consequent to it, an offence under Narcotic Drugs and Psychotropic Substances Act, 1985 was registered against him in Thane Nagar Police Station and was arrested on the same day. On 08.03.2014, he came to be suspended in view of registration of crime as well as in contemplation of departmental enquiry (DE). In DE instituted under Rule 8 of Maharashtra Civil Services (Discipline and Appeals) Rules, 1979 (hereinafter referred to as ‘D & A Rules of 1979’ for brevity), the punishment of dismissal from service was imposed by order dated 04.03.2017. Being aggrieved by it, he preferred appeal. The Appellate Authority by order dated 05.10.2019 modified the punishment of dismissal into punishment of withholding of two increments. Accordingly, the Applicant was reinstated in service. Thereafter, he made representation for pay and allowances of the suspension period as well as out of duty period.

3. It is on the above background, the Respondent No.2 by order dated 18.11.2021 treated the period of suspension from 07.03.2014 to 03.03.2017 ‘suspension as such’, but insofar as period from 04.03.2017 to 25.12.2019 is concerned, it was treated as ‘duty period’ for all

purposes except pay and allowances for the said period, which is under challenge in the present O.A.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the order dated 18.11.2021 *inter-alia* contending that once punishment of dismissal is set aside and minor punishment of withholding of two increments is imposed, the suspension period ought to have been treated as 'duty period'. As regard out of duty period, she submits that since punishment of dismissal is set aside and Applicant is reinstated, he cannot be deprived of pay and allowances of out of duty period. She further raised the issue of non-giving opportunity of submitting explanation before passing impugned order as required under Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as 'Joining Time Rules of 1981' for brevity).

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer sought to justify the impugned order *inter-alia* contending that since punishment of withholding of increments has attained finality, it goes to show the sufficiency for suspension, and therefore, Applicant is not entitled to treat suspension period as duty period. As regard out of duty period, she submits that since Applicant was out of duty in view of his dismissal, he is not entitled to pay and allowances on the principle of 'no work no pay'. It is, however, rightly considered as duty period for pensionable purposes in view of reinstatement in service.

6. In view of submissions, the question first posed for consideration is whether the order treating the period from 07.03.2014 to 02.03.2017 'suspension as such' is in conformity with 'Joining Time Rules of 1981' and secondly, whether Applicant is entitled to full pay and allowances for out of duty period.

7. The procedure how to treat and regularize suspension period after reinstatement is provided in Rule 72 of 'Joining Time Rules of 1981'. Here Rule 72(3), (4) and (5) are relevant, which are as under :-

“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 terminate of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, 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 representation, 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.

4. In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

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 been served, as may be specified in the notice.”

8. Thus, where Government servant has to be reinstated in service after revoking suspension, the Competent Authority has to form opinion as to whether suspension was wholly justified or otherwise. Where Competent Authority formed opinion that suspension was wholly unjustified, in that event, Government servant is entitled to full pay and allowances to which he would have been entitled, if not suspended. Whereas, as per Rule 72(4) in a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes. In other words, there has to be formation of opinion or conclusion of the Competent Authority as to whether suspension was wholly justified or

otherwise by applying negative test. Where suspension is found wholly unjustified, necessarily a Government servant is entitled to full pay and allowances and to treat the said period as duty period. Whereas, the cases which do not fall in Sub-rule (3), the Competent Authority is required to give notice to a Government servant of the quantum proposed and after considering the representation, if any, submitted by a Government servant, he has to pass an appropriate order.

9. In the present case, neither there is conclusion of the Competent Authority as to whether suspension was wholly unjustified or otherwise nor Competent Authority had given notice to the Applicant before treating the period of suspension as such for all purposes. This being so, without applying Rule 72(5), the impugned order to the extent of treatment of suspension order is totally unsustainable in law and to that extent, matter is required to be remitted back to Respondent No.2 who will be under obligation to comply Rule 72(3) and (5) and the pass appropriate order in accordance to law.

10. Now turning the second aspect of out of duty period from 02.03.2017 to 25.12.2019. The Applicant was out of duty because of punishment of dismissal from service imposed in DE. As such, he was out of duty as a consequence of proven guilt in DE. True, later in appeal, the order of dismissal was substituted by order of withholding two increments, but fact remains that the finding of disciplinary authority holding the Applicant guilty was confirmed. The said order had attained finality and was not challenged by the Applicant.

11. Thus, this is not a case where Government servant is fully exonerated from the charges and thereafter reinstated in service where he could be justified to claim pay and allowances for the said period. The Applicant was found guilty carrying Narcotic substances in Jail and the charge was held proved in DE. True, in criminal prosecution under the provisions of NDPS Act, the Applicant was acquitted on 04.01.2018.

However, that hardly matters. The acquittal in criminal case in criminal case is not decisive factor in the present case, since punishment of dismissal was imposed in DE and not on the basis of prosecution. Needless to mention that DE and criminal case may go on simultaneously and concluded independently since in criminal case, proof is required beyond reasonable doubt whereas in DE, preponderance of probability is the Rule. This being so, it is well settled that even if there is acquittal in criminal case, the charges proven in DE will subsist and acquittal in criminal case will have no effect much less adverse effect about the effect of punishment imposed in DE.

12. It is because of dismissal, the Applicant was out of duty. Thus, though he got acquitted in criminal case by taking the benefit of reasonable doubt, the stigma of finding him guilty in DE subsists. This being so, he cannot be said completely innocent so as to claim back-wages for out of duty period. On the principle of 'no work no pay' also, he cannot be said entitled to pay and allowances of the said period. If a person who is proven guilty for possessing transporting Narcotic Substances in Jail is given pay and allowances of the out of duty period, it would be totally against the public policy and impermissible in law. I, therefore, see no illegality in the second part of the order whereby Competent Authority treated the period from 04.03.2017 to 25.12.2019 as duty period only for pensionary benefits and rightly refused pay and allowances.

13. The totality of aforesaid discussion leads me to sum-up that the impugned order to the extent of treatment given to suspension period is unsustainable in law and for that purpose only, matter is required to be remitted to Respondent No.2 for decision afresh, as discussed above. Insofar as order of no pay and allowances for out of duty period is concerned, it needs no interference. Hence, the following order.

ORDER

- (A) Original Application is allowed partly.
- (B) Impugned order to the extent of treatment of suspension period dated 18.11.2021 is quashed and set aside.
- (C) Matter is remitted back to Respondent No.2 with direction to decide the treatment of suspension period afresh in compliance of Rule 72 of 'Joining Time Rules of 1981' within two months from today and the decision shall be communicated to the Applicant within two weeks thereafter.
- (D) If Applicant felt aggrieved, he may avail further remedy.
- (E) The order denying pay and allowances for out of duty period is maintained.
- (F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 31.03.2023

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2023\March, 2023\O.A.166.22.w.3.2023.Suspension Period.doc

Uploaded on