

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.233 OF 2020**

**DISTRICT : PUNE**

Shri Dilip Shamrao Mane. )  
Age : 58 Yrs., Now under suspension from )  
the post of Inspector of Motor Vehicles, )  
R/o. Sanjay Park Lane No.1, Bungalow )  
No.18, Viman Nagar, Pune. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through Principal Secretary, )  
Home Department (Transport), )  
Mantralaya, Mumbai – 400 032. )...**Respondent**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondent.**

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

**DATE : 09.03.2021**

**JUDGMENT**

1. The Applicant has challenged the suspension order dated 14.11.2017 and also prayed for grant of Subsistence Allowance of the period of suspension, which was not paid to him, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The facts giving rise to the O.A. and circumstances subsequent to suspension order are very peculiar in nature, which are as follows :-

The Applicant was serving as Inspector of Motor Vehicles, Check Post of District Solapur. The Respondent – Government of Maharashtra by order dated 14.11.2017 suspended the Applicant alleging misconduct while issuing Fitness Certificate of 74 Vehicles in breach of Rule 62 of Motor Vehicles Rules, 1989 in contemplation of departmental enquiry (D.E.) invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). While issuing suspension order, the Head Quarter of the Applicant was kept Amravati, which is far away i.e.500 kms. Accordingly, the Applicant reported at Amravati on 30.11.2017.

The Applicant has challenged the suspension order mainly on the ground that he was subjected to prolong suspension without taking review of suspension in terms of G.Rs. dated 14.10.2011 and 09.07.2019, which *inter-alia* provides for periodical review of suspension and completion of D.E. within six months. Belatedly, the Charge-sheet dated 06.08.2018 under Rule 8 of 'Rules of 1979' was issued which was served on 17.11.2018. However, there is no progress in D.E. He made representation dated 19.03.2020 for revocation of suspension and reinstatement in service, but in vain. The Applicant further raised grievance that he was not paid Subsistence Allowance to which he was entitled in law. With these pleadings, the Applicant has filed the present O.A. challenging the legality of suspension dated 14.11.2017 and for declaration of entitlement to pay and allowances after expiry of 90 days in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** and also prayed for reinstatement as well as direction to release Subsistence Allowance.

3. The Respondent resisted the O.A. by filing Affidavit-in-reply thereby denying that suspension order suffers from any legal infirmity and further denied the entitlement of the Applicant to the relief claimed.

The Respondent contends that though Applicant's Head Quarter was kept at Amravati during the period of suspension, he did not stay at Amravati. As regard non-payment of Subsistence Allowance in terms of Rule 68 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), the Applicant was required to submit Certificate that he did not accept any private employment or engaged himself in trade or business during the period of suspension. However, the Applicant did not furnish the Certificate despite the letter issued by Regional Transport Officer, Amravati on 08.02.2019, and therefore, Subsistence Allowance was not paid. The Respondent further contends that by order dated 04.05.2019, the Applicant was ordered to be reinstated in service and was reposted at Buldhana, but he did not join there. The Respondent thus sought to blame the Applicant contending that his behavior is irresponsible. In D.E, the Charge-sheet was issued on 06.08.2018 by the Government, but since the Applicant was not staying at Amravati, it could be served only on 17.11.2018. As regard legality of suspension order, the Respondent sought to justify the suspension in view of renewal of 74 vehicles in breach of Motor Vehicles Rules. With these pleadings, the Respondent prayed to dismiss the O.A.

4. The Applicant then filed Affidavit-in-rejoinder to counter the pleas taken by the Respondent in its Affidavit-in-reply. In Rejoinder, the Applicant specifically denied the service of reinstatement order dated 04.05.2019. He contends that it was never served upon him, and therefore, he could not join at Buldhana in terms of order dated 04.05.2019. He contends that in terms of Government Circular dated 19.03.2008, the Head Quarter during the period of suspension should have been Solapur, but deliberately, his Head Quarter was kept far away at Amravati by way of punishment. In this behalf, he therefore contends that fixing Head Quarter at Amravati is illegal.

5. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents. They reiterated the contentions raised in the pleadings adverted to above.

6. As regard non-payment of Subsistence Allowance, admittedly, no Subsistence Allowance was paid to the Applicant. The learned P.O. sought to justify non-payment of Subsistence Allowance on the ground that the Applicant has not furnished Certificate of not engaged in any employment as contemplated in Rule 69(4) of 'Rules of 1981'. According to her, the Applicant was not staying at Amravati i.e. the Head Quarter given in suspension order. Rule 69(4) of 'Rules of 1981' reads as under:-

**“69(4)** No payment under rule 68(1) shall be made unless the Government servant furnishes a certificate to the following effect before payment is made every month :-

“I certify that I did not accept any private employment or engage myself in trade or business during the period in question.”

If the authority has any reasons to doubt this certificate; it may ask the Police Authorities to verify the certificate and if the Government servant is found to have given a false certificate, that should be construed as an act of misconduct and made an additional charge against him.

In the case of Gazetted Officers under suspension, they should furnish the certificate themselves to the Treasury Officer/Audit Officer, who should see that the certificate is furnished before the claim for payment is admitted. In case of doubt regarding the certificate, the case should be referred to the Head of Department, who will ask the Police Authorities to verify the same.”

7. True, the Regional Transport Officer, Amravati by his letter dated 08.02.2019 asked the Applicant to furnish the Certificate, but Applicant failed to comply the same. As such, non-submission of Certificate was the reason for non-payment of Subsistence Allowance and fault certainly lies with the Applicant.

8. It is thus explicit that the Applicant was required to give Certificate every month for grant of Subsistence Allowance, which is admittedly not given by the Applicant. Even in case of Gazetted Officer under suspension, he is required to furnish Certificate himself to the Treasury Officer/Audit Officer. In case of doubt regarding genuineness of Certificate, it required to be referred to the Head of the Department, who can ask the Police authorities to verify the same. Suffice to say, the submission of Certificate is condition precedent for payment of Subsistence Allowance. Since the Applicant has, admittedly, not furnished the Certificate, he has to thank himself. Needless to mention that the Applicant was entitled to Subsistence Allowance as of right for his survival during the period of suspension and it is not charity. At the same time, it should be released on production of Certificate. The Applicant has already retired on 31.05.2020. Therefore, it would be appropriate to direct the payment of Subsistence Allowance in accordance to Rules on production of Certificate, so that the Applicant should get his Subsistence Allowance.

9. In this connection, material to note that at the time of suspension, the Applicant was serving at Solapur. However, while passing suspension order, his Head Quarter was kept at Amravati, which is near about 500 kms. away from Solapur. The learned Advocate for the Applicant has referred to Circular issued by GAD dated 19<sup>th</sup> March, 2008, which *inter-alia* provides that the Head Quarter of Government servant should normally be assumed to be the last place of duty in case of suspension. Para No.2 of Circular is important, which is as under :-

**“2.** An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave the station without prior permission. As such the headquarters of a Government servant should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, there is no objection to a competent authority changing the headquarters if it is satisfied that

such a course will not put Government to any extra expenditure like grant of T.A. etc. or any other complication.”

10. In the present case, admittedly, the Applicant did not ask for change of Head Quarter, much less at Amravati which was detrimental to his interest. No reason is forthcoming for giving Head Quarter at Amravati. It is nowhere case of respondent that for some special reasons, his Head Quarter was kept at Amravati. Indeed, the D.E. was being conducted at Pune. The rationale behind Circular dated 19<sup>th</sup> March, 2008 seems to be that while under suspension, a Government servant gets only 50% salary, and therefore, to avoid hardship and inconvenience, the Head Quarter should be last place of duty. Since last place of duty of Applicant was at Solapur and his permanent address is at Pune, I see no justification to keep his Head Quarter at Amravati, which is far away from Solapur. This would be nothing but amounting to harassment of a Government servant, who is already facing suspension. In any case, in absence of any justification in respect of Head Quarter at Amravati, the Government ought not to have changed the Head Quarter and Head Quarter could have been at Solapur in terms of Circular dated 19<sup>th</sup> march, 2008. Suffice to say, the action of Government to change Head Quarter is unsustainable in law.

11. Next issue comes about the entitlement of the Applicant for full pay and allowances after expiration of 90 days of period of suspension in terms of decision of Hon'ble Supreme Court in **Ajay Kumar Chaudhary's** case (cited supra) as canvassed by learned Advocate for the Applicant and effect of reinstatement order dated 04.05.2019.

12. In so far as reinstatement order dated 04.05.2019 (Page No.67 of P.B.) is concerned, in reply, all that Respondent stated that by order dated 04.05.2019, the Applicant was reinstated in service. The pleading in reply is conspicuously silent about the service of order of reinstatement. Whereas, the Applicant by filing Rejoinder has

specifically averred that he had no knowledge of reinstatement order and it was never served upon him. Despite this specific stand taken by Applicant, nothing is produced on record to show the service of reinstatement order. Indeed, the Applicant had made representation on 19.03.2020 (Page No.30 of P.B.) for revocation of suspension and reinstatement in service, which bears acknowledgement of Home Department. Had Applicant served with the reinstatement order or he had knowledge of reinstatement order, he would not have made any such representation. It is difficult to digest that a Government servant under suspension would ignore and keep himself away from duty knowing that he is reinstated in service.

13. Be that as it may, the issue still remains about service of reinstatement order. The perusal of reinstatement order dated 04.05.2019 (Page No.67 of P.B.) reveals that it was passed by Government and copies were marked to Accountant General, Mumbai, Transport Commissioner, Mumbai, Sub-Regional Transport Officer, Buldhana/Amravati and copies are also marked to the Applicant through Commissioner of Transport, Mumbai. As such, it was for these authorities to serve the order of reinstatement on the Applicant. As stated above, despite specific stand taken by the Applicant on Affidavit that he had no knowledge of reinstatement order and there was no service upon him, the Respondent chose to remain silent instead of producing material to show the service of reinstatement order. Rejoinder was filed by the Applicant on 18.08.2020 and thereafter matter was adjourned for hearing from time to time, but Respondent did not produce any such evidence of service of reinstatement order. Indeed, when Affidavit-in-rejoinder was filed and issue was discussed, it was brought to the notice of learned P.O. that there is no evidence of service of reinstatement order. This gives rise to adverse inference that no such effort was made by the concerned Department to serve the reinstatement order upon the Applicant, otherwise Respondent ought to have placed some material to that effect on record.

14. In this behalf, a reference of letter dated 08.06.2020 sent by Regional Transport Officer dated 08.06.2020 is material. In this letter, all that it is stated that Applicant did not join at Buldhana. What is important to note that in this letter also, there is nothing to indicate that reinstatement order was served or sent to the Applicant on his address available in Service Book. The letter is conspicuously silent on this material aspect. Apart, the reply of Respondent is also silent on this point, as stated earlier. This being the position, it will have to be held that there was no service of reinstatement order upon the Applicant, may be due to non-coordination between the Departments or lapses on the part of concerned.

15. However, the fact remains that Applicant was ordered to be reinstated by order dated 04.05.2019, but it being not served, the claim of the Applicant for pay and allowances from the date of reinstatement till retirement cannot be rejected. It is not the case that reinstatement order was sent on some address available with the Office, but it returned back for want of correct address, etc. Suffice to say, in view of reinstatement order and failure of the Respondent to serve it, the Applicant cannot be deprived of pay and allowances from the date of reinstatement till retirement.

16. As regard pay and allowances after expiry of 90 days period of suspension, since the Applicant is already reinstated and D.E. is underway, the claim of the Applicant for pay and allowances is premature. True, a Charge-sheet in D.E. was served after about one year and not within three months in terms of decision of Hon'ble Supreme Court in **Ajay Kumar Chaudhary's** case. However, since D.E. is already initiated and the same is in progress, in my considered opinion, the issue of pay and allowances for the period of suspension i.e. from 14.11.2017 to 04.05.2019 needs to be decided by the competent



authority at appropriate time i.e. after conclusion of D.E. in terms of Rule 72 of 'Rules of 1981'.

17. Appalling to note inordinate and undue delay in deciding the D.E. The Applicant was suspended by order dated 14.11.2017, the charge-sheet was served on 17.11.2018. However, thereafter no steps were taken to complete the D.E. within reasonable time. The Applicant retired on 31.05.2020 but till date the D.E. is pending without any substantial progress. Indeed, D.E. ought to have been completed within six months or maximum within a period of one year in terms of the Circulation issued by G.A.D. on 07.04.2008. It *inter-alia* provides that where D.E. is not completed within six months, extension is required to be sought from the Head of the Department to complete the same within next three months of extended period and where it is not completed within a year, extension is required to be sought from the Government for extending time limit for completion of D.E. However, there is total laxity and negligence on the part of concerned to follow the instructions given in Circular and to complete the D.E. This is common phenomenon noted by the Tribunal and the Respondent needs to take serious note of it. Due to pendency of D.E. certain retiral benefits of the Applicant are still withheld for long time.

18. In view of above, the O.A. is disposed of by passing following order.

### **ORDER**

- (A) The Original Application is allowed partly.
- (B) The Respondent is directed to pay Subsistence Allowance to the Applicant for the period from 14.11.2017 to 04.05.2019 in accordance to Rules on production of Certificate as contemplated under Rule 69(4) of 'Rules of 1981'. The Applicant shall submit the Certificate within a month and on receipt of the same, Subsistence Allowance in accordance to

Rules be released in accordance to Rules within two months from receipt of Certificate.

- (C) The Applicant is also entitled for pay and allowances from - 4.05.2019 till 31.05.2020 and it be paid to him within two months from today.
- (D) The Respondent is further directed to complete the departmental enquiry by passing final order therein within three months from today.
- (E) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 09.03.2021

Dictation taken by :

S.K. Wamanse.

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