

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.425 OF 2021

DISTRICT : PUNE

Shri Krushnanath Ramchandra Pise,)
Aged 59 years, Retired as Sub Divisional)
Engineer from Hydrology Project, Sub)
Division, Karjat, Dist. Raigad.)
R/o. A/6, Shalaka Apartment, Wagholi)
Park, Baramati, Dist. Pune 413 102.)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.
Shri A. J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.09.2021

JUDGMENT

1. In the present matter, the Applicant has challenged the order dated 21.01.2021 passed by the Respondent No.1 whereby his suspension period from 13.04.2018 to 03.03.2020 has been treated as a leave period though in the same order suspension is held unjustified invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. In 2018, while the Applicant was serving as Sub-Divisional Engineer at Solapur, he was arrested for offence registered under Section 7 of Prevention of Corruption Act, 1988 alleging that he demanded bribe of Rs.5000/- to complainant namely Babasaheb Chavan, resident of Solapur. Since he was in custody for more than 48 hours, he came to be suspended by order dated 15.06.2018.

However, later Government by order dated 20.01.2020 revoked the suspension and reinstated the Applicant in service at Karjat. He retired on 31.05.2021.

3. By impugned order dated 21.01.2021, the Government has treated the suspension period from 13.04.2018 to 03.03.2020 as a leave period which is impugned in the present O.A.

4. Having noticed that in impugned order dated 21.01.2021 itself, the Government has categorically held that the suspension was not justified, the question was posed to learned P.O. to explain how the suspension period could be adjusted or treated as a leave period. Once the suspension is found unjustified, there was no question of treating the said period towards leave period. Learned P.O. was, therefore, directed to file Affidavit of Principal Secretary, Water Resources Department to explain the stand taken by the Government in order dated 21.01.2021. However, no Affidavit is filed. On 25.08.2021 when the matter was taken up for hearing at the stage of admission, the directions were given to file Affidavit and the matter was adjourned to 02.09.2021. Today again learned P.O. requested for grant of time to file Affidavit. Since already enough time is availed in the matter, I am not inclined to give further time. No reply is filed by the Respondent in the matter to justify the impugned order dated 21.01.2021.

5. Shri A. J. Chougule, learned Presenting Officer tendered a letter dated 26.08.2021 stating that he had already informed to the Principal Secretary, Water Resources Department about the order passed by the Tribunal and necessity to take further steps. Thus, it appears that learned P.O. has already communicated about the order passed by the Tribunal to Principal Secretary, Water Resources Department but he did not bother to file Affidavit-in-Reply. Even nobody is present from the department which again shows total casual approach of the Respondents.

6. Be that as it may, the small question posed for consideration is whether the impugned order treating suspension period from 13.04.2018 to 03.03.2020 could have been treated as a leave period and the answer is empathic negative.

7. What the Respondent states in impugned order dated 21.01.2021 is very important which is as follows:-

“ श्री.पिसे यांचा अटकेचा कालावधी ४८ तासांपेक्षा अधिक असल्याने त्यांना संदर्भ क्र.१ वरील दि.१५.६.२०१८ च्या आदेशान्वये अटकेच्या दिनांकापासून मानीव निलंबित करण्यात आले होते. श्री.पिसे यांच्याविरुद्ध न्यायालयात अभियोग दाखल करण्यास मान्यता देण्याचा लाचलुचपत प्रतिबंधक विभागाने सादर केलेल्या प्रस्तावाची छाननी केली असता, श्री.पिसे यांनी लाचेची मागणी केली असल्याचे निर्विवाद स्पष्ट न झाल्याने त्यांच्याविरुद्ध न्यायालयात अभियोग दाखल करण्यास सहमती न देण्याचा निर्णय शासन स्तरावर घेण्यात आला, तसेच त्याच प्रकरणी विभागीय चौकशी करण्याची आवश्यकता नसल्याचा निर्णय शासनाने घेतला आहे.

त्यानुसार, श्री.पिसे यांचे निलंबन संदर्भ क्र.२ वरील दि.२०.०१.२०२० च्या आदेशान्वये उठविण्यात आले असून दि.२८.२.२०२० च्या आदेशान्वये त्यांना मुख्य अभियंता, नियोजन व जलविज्ञान नाशिक अंतर्गत जलविज्ञान प्रकल्प, उपविभाग, कर्जत या पदावर पदस्थापना देण्यात आली असून सदर पदावर श्री.पिसे दि.०४.०३.२०२० रोजी रुजू झालेले आहेत.

परिणामी संदर्भ क्र.१ येथील दि.१५.६.२०१८ अन्वये करण्यात आलेले त्यांचे निलंबन समर्थनीय ठरत नाही. म्हणून श्री.पिसे यांचा दि.१३.०४.२०१८ ते दि.०३.०३.२०२० हा निलंबन कालावधी हा रजा कालावधी (due and admissible) म्हणून ग्राह्य धरण्याचा व निलंबन कालावधीतील कार्यालयीन अनुपस्थिती ही रजा कालावधी म्हणून ग्राह्य धरण्याचा शासनाने निर्णय घेतलेला आहे.

महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीयेतर सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे याच्या काळातील प्रदाने नियम १९८१ च्या नियम ७२(३) मधील तरतूदीनुसार श्री.पिसे यांचा दि.१३.०४.२०१८ ते दि.०३.०३.२०२० हा निलंबन कालावधी “रजा कालावधी” म्हणून ग्राह्य धरण्यात येत आहे. तसेच निलंबन कालावधीतील कार्यालयीन अनुपस्थिती ही रजा कालावधी म्हणून ग्राह्य धरण्यास मंजूरी देण्यात येत आहे. श्री.पिसे यांना वेतन व भत्त्याची थकबाकी अदा करताना त्यांना निर्वाह भत्त्यापोटी अदा करण्यात आलेली रक्कम त्यातून समायोजित करण्यात यावी.”

8. It is thus obvious that no sanction was given for prosecution since there was no material to show demand of bribe by the Applicant. The Government had taken conscious decision not to give sanction for prosecution. Resultantly, no criminal case was filed in the court of

law. Insofar as the D.E. is concerned, in that respect also Government had taken conscious decision not to initiate any D.E. It is on this background, the Government had come to conclusion that the suspension of the Applicant was not justified. However, even after holding that the suspension was not justified still Government took somersault and treated the period from 13.04.2018 to 03.03.2020 as a leave period thereby causing loss of leave to the Applicant. Indeed, once the suspension is held not justified and no D.E. was initiated, there was nothing to treat the suspension period as a leave period.

9. At this juncture, reference of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 (Hereinafter referred as Rules, 1981) is inevitable which *inter-alia* provides for regularization of suspension period on reinstatement of the Government servant in service. As per Rule 72 (3) of Rule 1981, 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. Furthermore, Rule 4 specifically provides that in case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

10. As such, conjoined reading of Rule 72, clauses (3) and (4) of Rules, 1981 makes it quite clear that the competent authority is required to form its opinion as to whether the suspension is fully unjustified. In other words, there has to be negative test. In present case, the Government found no material of demand of bribe, therefore, even sanction for prosecution has been declined. Apart Government has also taken conscious decision not to initiate D.E. since it was found not at all necessitated. It is on this background, the Government formed opinion that suspension was not justified. As such, once the suspension was held not justified, there was no

question of treating suspension period towards leave period since it is totally contrary to Rule 72(3) and (4) of Rules 1981.

11. Apart, before passing such order of treating suspension period towards leave period, no opportunity of hearing or notice was given to the Applicant and there is a breach of principle of natural justice. The notice ought to have been issued before passing any such order as contemplated under sub-rule (5) of Rule 72 of Rules 1981.

12. Suffice to say, the impugned order treating suspension period towards leave period is totally indefensible and devoid of law. There is complete non application of mind and law.

13. The totality of the aforesaid discussion leads me to sum that impugned order to the extent of treating suspension period as a leave period is de hors the law and liable to be quashed. Hence the following order :-

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 21.01.2021 to the extent of treating suspension period from 13.04.2018 to 03.03.2020 as leave period is quashed and set aside. Consequently, pay and allowances for the said period be paid in accordance to Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 within a month from today.
- (C) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J