

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.461 OF 2020

DISTRICT: Nashik
SUBJECT : Regularization of
Suspension period

Shri Dilip Jagannath Ambilwade,)
Age:- 59 yrs, Occ. Retired Officer,)
R/at Flat No.1, Gayatri Darshan Society,)
Datey Nagar, Gangapur Road, Nashik.)... **Applicant**

Versus

1. The State of Maharashtra, through)
its Additional Chief Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 001.)
2. The Commissioner of Health Services,)
Arogya Bhavan, St. George Hospital)
Compound, Mumbai 400 001.)...**Respondents**

Shri S. S. Dere, learned Advocate for the Applicant.

Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondent.

CORAM : A.P. Kurhekar, Member (J)

DATE : 31.03.2023

ORDER

1. The Applicant has challenged the order dated 21.01.2016 issued by the Government whereby Government had taken decision to treat the suspension period from 30.03.2011 to 04.11.2012 for pensionable service and his entitlement to pay and allowances for the said period is restricted to 75% subject to further decision after final decision in D.E.

2. Shortly stated facts giving rise to the Original Application are as under:-

The Applicant was suspended by order dated 30.03.2011 in contemplation of D.E. alleging him certain irregularities in recruitment. He was subjected to disciplinary proceeding under Rule 8 read with 12 of Maharashtra Civil Services (Discipline & Appeal) Rules 1979. The Enquiry Officer conducted the inquiry under which Applicant participated and by his report to the Government on 29.01.2018, the Enquiry Officer held the Applicant guilty for charge nos.3 and 5 but exonerated from the charges for charge nos.1, 2 and 4. The Applicant was called upon to submit his reply which he submitted on 23.08.2018. However, since then no final order was passed in D.E. and the matter is in cold storage at the level of Government. This is subsequent development took place after passing of impugned order dated 21.01.2016.

3. It is on the above background, the Applicant had challenged the order dated 21.01.2016 raising grievance that though the Enquiry Officer has submitted report, the Government is sitting over the matter and, therefore, it has caused serious prejudice to him.

4. Indeed, in one other D.E. the Applicant was subjected to punishment of compulsory retirement by order dated 31.08.2018. The Applicant has challenged the punishment before the Division Bench by filing O.A. and it is subjudice. Notably, in the meantime, the Applicant had also attained the age of superannuation.

5. It may be noted that in one another D.E. initiated by charge sheet dated 21.02.2018, the Applicant was subjected to D.E. on the allegation of wrong pay fixation, getting of monetary benefits etc. in which Government by show cause notice dated 08.07.2022 called upon the Applicant to submit his explanation as to why punishment of 10% deduction of pension and recovery of Rs. 10,08,000/- for loss to the Government should not be imposed. The Applicant contend that he

submitted his explanation but no final order is passed by the Government.

6. Insofar as challenge to the impugned order dated 21.01.2016 which is subject matter of this O.A. is concerned, all that Government by the said order had taken following decision :-

" शासन निर्णय :- श्री. दिलीप जगन्नाथ आंबिलवादे यांना विभागीय चौकशीचे ज्ञापन दि.२.११.२०११ रोजी बजावण्यात आले आहे. चौकशी अधिका-याची नियुक्ती करण्यात आली आहे. प्रकरण चौकशी अधिका-याकडे प्रलंबित आहे. त्यामुळे श्री.आंबिलवादे यांनी केलेल्या विनंतीनुसार त्यांचा दि.३०.०३.२०११ ते दि.०४.११.२०२१ हा निलंबन कालावधी त्यांच्याविरुद्धच्या विभागीय चौकशीच्या निर्णयाच्या अधीन राहून महाराष्ट्र नागरी सेवा (पदग्रहण अवधी.....इ.) नियम, १९८१ मधील नियम ७२ (५)नुसार फक्त सेवानिवृत्ती वेतनासाठी ग्राह्य धरण्यात यावा व सदर कालावधीत वेतन व भत्ते ७५ टक्क्यापर्यंत सिमित ठेवण्यास मान्यता देण्यात येत आहे. विभागीय चौकशीच्या अंतिम निर्णयानंतर या निर्णयाचे पुनर्विलोकन करण्यात येईल."

7. Ms S.P Manchekar, learned Chief Presenting Officer submits that Government had taken decision to wait till the decision of criminal case pending against the Applicant. In this behalf, she referred file noting of the department. However, admittedly, no such final order has been passed and communicated to the Applicant. Indeed, if any such decision is taken then it ought to have been communicated to the Applicant so that he could avail further remedy available in law. Needless to mention, the file noting cannot be equated to the decision of Government unless the order to that effect is passed and communicated to the concerned. Whether Government can keep final decision in D.E. on hold till the decision of criminal case is not the subject matter of this O.A. since till date no such final order is passed and communicated to the Applicant.

8. In view of above, the O.A. deserves to be disposed of with suitable directions :-

(A) The Original Application is disposed of with direction to Respondent No.1 to take final decision on report submitted by Enquiry Officer on 29.01.2018 as it deems appropriate and it should be communicated to the Applicant within a month from today.

(B) If the Applicant felt aggrieved by the decision, he may avail further legal remedy in accordance to law.

9. No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai

Date: 31.03.2023

Dictation taken by: Vaishali Santosh Mane

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