

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.469 OF 2018

DISTRICT : NASHIK

Shri Nana Pandurang Sonar.)
Retired from Govt. Service as Clerk in the)
Office of Taluka Agricultural Officer,)
Tal.: Surgana, District : Nashik and R/at)
153, Hanumant Nagar, Lokhande Mala,)
Old Saikheda Road, Dasak Nashik Road,)
Nashik – 422 101.)...**Applicant**

Versus

1. The Divisional Joint Director of)
Agriculture, Nashik Division,)
Nashik.)
2. The State of Maharashtra.)
Through the Secretary)
(Agricultural), Animal Husbandry,)
Dairy Development, Agricultural)
Department & Fisheries Dept.,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Mr. Bhushan A. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

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

DATE : 02.03.2020

JUDGMENT

1. The Applicant has challenged the impugned order dated 07.02.2018 whereby his suspension period was treated as period spent on duty for pension purposes only, but pay and allowances were refused.

2. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

3. The Applicant was serving as Clerk in the Office of Taluka Agriculture Officer, Kalwan, District : Nashik. On 10.03.2010, he was arrested in Crime No.2/2010 for the offence under Section 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988. Consequently, by order dated 30.03.2010, he was suspended with deemed date of suspension i.e. 10.03.2010 under Rule 4(1) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979'). Later, the Departmental Enquiry was initiated against the Applicant. Besides, he was prosecuted in Special Case No.13/2020 by learned Special Judge, Nashik. In the meantime, by order dated 05.05.2012, the Applicant was reinstated in service as more than two years period was over from the date of suspension. He was acquitted in Criminal Case on 28.11.2016. In so far as D.E. is concerned, the Respondent No.1 viz. Divisional Joint Director of Agriculture, Nashik Division being disciplinary authority imposed punishment of Thapka (censure) under Rule 5(1) of 'Rules of 1979'.

4. By impugned order dated 07.02.2018, the Respondents regularized the suspension period from 10.03.2010 to 27.05.2012 as a duty period or for the purpose of pension only. However, the Respondent No.1 declined to grant pay and allowances to the Applicant of the period of suspension.

5. Now in O.A, the challenge is to the order of refusal of pay and allowances for the period of suspension on following grounds :-

(i) The Disciplinary Authority had not issued notice before passing the impugned order as contemplated under Rule 72(3) or (5) 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).

(ii) In disciplinary proceeding, the punishment imposed was of censure only and it being minor punishment, the order of refusal of pay and allowances for the period of suspension is unsustainable in law.

6. The present O.A. deserves to be disposed of on ground No.1 in view of admitted position of non-issuance of show cause notice by Disciplinary Authority before passing the impugned order. In so far as ground No.2 is concerned, it may not be considered at this stage, as matter is required to be remitted back to the Disciplinary Authority to take decision afresh on the point of pay and allowances during the period of suspension after giving show cause notice to the Applicant.

7. Material to note that the Applicant has specifically raised ground of non-issuance of notice in its pleading in Para Nos.6.10 and 6.35 of O.A. Now turning to the reply, there is no specific denial to the averment made in Para Nos.6.10 and 6.35. All that in reply, it is stated that the Applicant is not entitled to pay and allowances of the period of suspension. Even during the course of argument, when specific question was asked to the learned P.O, she could not satisfy the Tribunal that any such show cause notice was given to the Applicant. As such, it is explicit from the pleadings and record that the Disciplinary Authority had not issued show cause notice prior to issuance of impugned order.

8. At this juncture, it would be apposite to reproduce Rule 72(3) and 72(5) of 'Joining Time Rules of 1981', which is as follows :-

“72. Re-instatement of a Government servant after suspension and specific order of the competent regarding pay and allowances etc., and treatment of period as spent on duty.-

(1)

(2)

(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 provision 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 termination 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)

(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.”

9. It is thus explicit from Rule 72 that the Competent Authority is required to form its opinion as to whether the suspension was wholly unjustified or otherwise at the time of reinstatement of the Government servant in service. Besides, the Competent Authority is also required to determine the issue of pay and allowances for the period of suspension after giving notice to the concerned. In other words, the Disciplinary Authority is under obligation to hear the Applicant on the point of payment of allowances during the period of suspension. It is mandatory requirement and not mere formality. However, in the present case, no such show cause notice was issued to the Applicant before passing the

impugned order of refusal to pay allowances during the period of suspension. Therefore, the impugned order is not sustainable in law and on this point, the matter needs to be remitted back to the Disciplinary Authority.

10. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned order dated 07.02.2018 is unsustainable in law for non-compliance of Rule 72(5) of 'Joining Time Rules of 1981' and matter needs to be remitted back to the Disciplinary Authority. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 07.02.2018 is quashed and set aside.
- (C) The matter is remitted back to Respondent No.1 viz. The Divisional Joint Director of Agriculture, Nashik Division, Nashik is directed to give show cause notice to the Applicant about the issue of pay and allowances for the period of suspension and after considering his reply, shall pass appropriate order in accordance to Rules within two months from today.
- (D) If the Applicant is felt aggrieved by the decision, he may avail further recourse of law.
- (E) No order as to costs.

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

Mumbai
Date : 02.03.2020
Dictation taken by :
S.K. Wamanse.