

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO. 521 OF 2019

DISTRICT: PUNE

Shri Gorakh Kishan Gaikwad)
Age 62 years, Retired as Sales Tax Inspector from GST)
Vimantal Road, Yerwada, Pune-6.)
R/at C/o. Sunil M. Kale, Bhairav Nagar, Galli No.12,)
Dhanori, Pune -18.) **....Applicant**

Versus

The Commissioner of Sales Tax, (M.S.), Mumbai)
O/at. Vikrikar Bhavan, Mazgaon, Mumbai 400 010.) **...Respondent**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER (J)

DATE : 10.03.2021

J U D G M E N T

The Applicant has challenged the order dated 25.10.2018 whereby his suspension period from 03.12.2013 to 31.05.2015 was treated as suspension period invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Following are the undisputed facts giving rise to this Original Application :-

(A) While the Applicant was serving as Sales Tax Inspector at Pune, the offences under Section 498-A, 306 read with 34 of Indian Penal Code (IPC) was registered vide Crime No.123/2013 against him, wife

and son in MIDC, Police Station, Latur and he was in police custody for more than 48 hours.

(B) Consequent to it, the Applicant was suspended by order dated 03.12.2013 invoking Rule 4(1)(a) read with 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules 1979' for brevity) as deemed suspension as well as in contemplation of Departmental Enquiry (DE).

(C) D.E. was initiated against the Applicant by issuance of charge sheet dated 22.12.2014 for major punishment under Rule 8 of 'Rules 1979'.

(D) Simultaneously, the Applicant was prosecuted for the offences registered against him in Sessions Case No.39/2014 in Sessions Court, Latur.

(E) During the pendency of D.E. as well as Criminal Case, the Applicant stands retired on 31.05.2015 on attaining the age of superannuation.

(F) In D.E., by order dated 02.11.2016, punishment for reduction of 6% pension permanently was imposed in terms of Rule 27 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules 1982').

(G) In Sessions Case No.39/2014, the Applicant came to be acquitted by judgment dated 23.02.2018.

(H) The Respondent – the Commissioner of Sales Tax issued show cause notice dated 28.08.2018 as to why the period of suspension from 03.12.2013 to 31.05.2015 should not be treated as suspension period.

(I) The Applicant submitted reply on 14.09.2018 *inter-alia* contending that since he is acquitted in Criminal Case, the

suspension could not be termed justified and prayed for full pay and allowances by treating the said period as a duty period.

(J) The Appeal filed against punishment imposed in D.E. stands dismissed and the order of punishment had attained finality.

3. It is on the above background, the Respondent by order dated 25.10.2018 in view of punishment in D.E. having regard to the observation by the Sessions Court of acquitting the Applicant by benefit of doubt invoking Rule 72(3)(5) of Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 (Hereinafter referred as Rules, 1981) held that the suspension was justified and accordingly treated the period of suspension as suspension period which is under challenge in the present O.A.

4. Shri A.V.Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned order on the following grounds:-

(I) In view of the acquittal of the Applicant by Sessions Court which had attained finality, the Respondent cannot sit over the judgment of Criminal Court and suspension could not have been held justified so as to deprive of full pay and allowances for the period of suspension.

(II) Offences registered against the Applicant under Section 498-A, 306 read with 34 of IPC pertains to private life of the Applicant and it has nothing to do with official duties so as to treat the suspension period justified. In other words, there was no such justification for the suspension itself.

(III) The D.E. was initiated for the same charge which was subject matter of Criminal Case, and therefore, initiation of DE itself was illegal.

(IV) The punishment of reduction of 6% pension permanently cannot be treated as major punishment, and therefore, suspension period should have been treated as a duty period.

5. Per contra, Smt. Archana B. K., learned Presenting Officer sought to justify the impugned order contending that after following due procedure, the Respondent held that the suspension was justified, and therefore, impugned order needs no interference. She has further pointed out that in Criminal Case, the Applicant was acquitted by giving benefit of doubt and it is not a case of clean or honourable acquittal so as to give clean chit to the Applicant. She has further pointed out that the charges framed in D.E. were different then the charges in Criminal Case and in view of punishment in D.E., the suspension could not be held ordered without justification. In other words, suspension was justified in view of the punishment in D.E.

6. In view of the submission advanced, the question posed whether the impugned order treating the period of suspension suffers from any legal infirmity and the answer is emphatic negative for the reasons to follow.

7. At the very outset, material to note that the suspension was not ordered only because detention of the Applicant in custody for more than 48 hours but in addition to it, it was also in contemplation of D.E.. There is a specific mention in suspension order dated 03.12.2013 that the Applicant was suspended invoking Rule 4 (1)(a) as well as Rule 4(2)(a) under 'Rules 1979'. Therefore, only because the Applicant later came to be acquitted in Criminal Case that *ipso-facto* will not render the suspension illegal. Indeed, perusal of judgment of Criminal Case explicitly reveals that the learned Sessions Judge acquitted the Applicant by invoking principle of benefit of doubt. In Para No.25 of the judgment, the learned Judge has repeatedly observed that prosecution has failed to prove the guilt of Applicant

beyond shadow of doubt. Needless to mention that in criminal jurisprudence, accused is presumed to be innocent unless the charges are proved beyond reasonable doubt. Whenever there is doubt in mind of the Judge about acceptability of prosecution case to the hilt, the accused gets benefit of doubt. As such, the accused always gets benefit of some discrepancies in the evidence. Suffice to say, the Applicant was acquitted invoking principle of benefit of doubt.

8. One need to go to the entire judgment to find out whether the prosecution case was totally unreliable or acquittal was because of some benefit of doubt. Suffice to say, in present case, having gone through the judgment of Criminal Case since acquittal is due to benefit of doubt, the submission advanced by learned Counsel for the Applicant that because of ultimate acquittal, the Applicant is entitled to full pay and allowances holds no water.

9. The submission advanced by learned Counsel for the Applicant that once the Applicant is acquitted in Criminal Case, he is entitled to treat suspension period as duty period, is against settled position of law. In this behalf, the Hon'ble Bombay High Court in **2003(4) MhLj 606 (Vasant Krushnaji Kamble vs The State Of Maharashtra)** held that acquittal of petitioner in Criminal Court did not *ipso-facto* entitle him to the benefit of salary under Rule 72 of 'Rules 1981' and what was required to be seen whether opinion of the Competent Authority for action of suspension was wholly unjustified. In the present case, having regard to facts and circumstances, the Competent Authority has categorically opined that suspension was justified. Suffice to say, where acquittal *ipso-facto* will not entitle the Applicant to treat the suspension period as duty period for the benefit of pay and allowances.

10. Apart, as stated earlier, the suspension was not solely due to registration of crime against the Applicant but in addition to it, the suspension was also ordered in contemplation of D.E. in which the Applicant was ultimately found guilty and punishment of permanent reduction of 6% pension was imposed which was upheld in appeal. The O.A. filed against sentence in D.E. was dismissed on the point of limitation by the Tribunal. As such, this is not a case where the Applicant is fully exonerated in Criminal Case and D.E. so as to contend that suspension ordered in past was not justifiable. Indeed, in view of the punishment in D.E., the decision taken by the authority to suspend the Applicant stands reinforced.

11. The submission advanced by learned Counsel for the Applicant that punishment of permanent reduction of 6% pension is minor penalty and in case of minor penalty, suspension cannot be justified, is totally misconceived. Minor penalties and major penalties are defined in Rule 5 of 'Rules 1979'. True, the punishment of permanent reduction of pension does not specifically categorised as minor penalty or major penalty. It may be noted that it admittedly does not fall within minor penalties defined in Rule 5(1)(i to vi) of 'Rules 1979'. Apart material to note that the D.E. was initiated during the service period of Applicant and it was continued after retirement. He retired on 31.05.2015 and punishment in D.E. was imposed on 02.11.2016. There is a specific mention in impugned order that the punishment of permanent reduction of 6% pension was passed in view of Rule 27 of 'Rules 1982'. Since the Applicant had already retired, there was no question of imposing major penalty of compulsory retirement, removal from service or dismissal. The punishment of permanent reduction of 6% pension is definitely severe and cannot be termed as minor penalty so as to treat the period of suspension as duty period.

12. Rule 72 of 'Rule 1981' provides the procedure to be adopted by the Competent Authority while regularising the period of suspension on his reinstatement in service or passing final order to that effect in

case of retired employee. In this behalf, Rule 72(3) of 'Rules 1981' is material which *inter-alia* mandates that the Competent Authority is required to form its opinion as to whether suspension was wholly unjustified. As such, negative test is required to be applied for holding the person to be entitled to all the benefits of period of suspension. In this context, significant to note that the Competent Authority while passing impugned order has categorically held that the Applicant's suspension was justified. This opinion is based upon the consideration of effect of judgment of acquittal as well as sentence imposed upon the Applicant in D.E.

13. Now turning to the charges in D.E., perusal of charge sheet reveals that charge No.1 was for misrepresentation and furnishing false medical certificate and thereby committed misconduct. Though the Applicant was in police custody as well as in magisterial custody from 01.04.2013 to 09.04.2013, he suppressed it and on the contrary made an application to the department for grant of leave for the said period on the basis of medical certificate. Besides another charge i.e. Charge No.3 was for furnishing false certificate for grant of commuted leave of the subsequent period which was also held proved. The Charge Nos.1 and 2 were held proved. Resultantly, the submission advanced by learned Counsel for the Applicant that charges framed in D.E. were subject matter of Criminal Case is totally incorrect rather misleading.

14. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to drive support from the decision rendered by this Tribunal in **O.A.No.769/2017 (Shri Shaikh Rashid Shaikh Munir V/s State of Maharashtra)**, decided on 16.07.2019 in that case there was no such opinion from the competent authority that suspension was justified and on that ground O.A. was allowed by the direction to treat the suspension period as duty period amongst other grounds. This decision is obviously is of no help to the Applicant since there is specific finding of the competent authority that suspension was

justified. He further made reference of the judgment of this Tribunal in **O.A.No.162/2016 (Mohammad Arif Mohammad Ibrahim Sayyed V/s State of Maharashtra & 3 Ors)** decided on 21.09.2016. In that case, suspension was only on account of contemplated D.E. and at the end of inquiry minor penalty of withholding of one increment without any cumulative effect was imposed. On that background, in fact situation, the suspension period was ordered to be treated as duty period. Whereas, in present case, it is not so since suspension is on account of registration of criminal offences as well as severe punishment is imposed in D.E.

15. He further made reference of **2017 (1) Mj.L.J 103 (Hrshikesh Vasantao Kumbhar V/s Zilla Parishad, Sangli & Ors)** to drive home point that where misconduct has nothing to do with the discharge of official duties, the suspension is illegal. Perusal of judgment reveals that there was only complaint of a girl against a Government servant that he would marry her but later did not marry and got married to another girl. The petitioner therein was suspended without waiting further report of Enquiry Committee established to inquire into complaint of sexual harassment at work place. Thus, it was suspension purely on the basis of complaint made by a girl. It is in that context, the Hon'ble High Court held that it was private dispute and suspension order was quashed. It appears that there was no registration of crime in police station and only on the basis of complaint of a girl, suspension was ordered. Whereas in present case, serious offences under Section 498-A, 306 read with 34 of I.P.C. has been registered. Apart, the Applicant is subjected to severe punishment in D.E.

16. The reliance on **(2001) ILLJ 109 Bom (Bhaurao Jairam Kadam V/s Nanded Zilla Parishad & Ors)** decided on 19th July, 2000 and the decision rendered by this Tribunal in **O.A.637/2008 (Shri Subhash Keshav Kotekar V/s State of Maharashtra & Ors)** decided on 15.04.2010 is also misplaced. In the first case (**Bhaurao**

Kadam's case), the petitioner therein was acquitted in Criminal Case which was arising from family dispute of the land. On acquittal, he was given full pay and allowances for the period of suspension. There was no D.E. Similarly, in second case (**Subhash Kotekar's** case), it was the case of minor penalty of censure, therefore, suspension period was treated as duty period. Obviously, both the decisions are of little assistance to the Applicant in the facts and circumstances of the present case.

17. Needless to mention that the decision given in one case *ipso-facto* does not apply to another case and one needs to ascertain the facts and then to apply principle of law expounded in the decisions. The ratio of any judgment must be understood in the background of the facts of that case. It is well settled that a case is a authority for what it actually decides and not what logically follows from it. Even close similarity between one case and another is not enough because even a single significant difference may alter the entire aspect. The decisions relied by the learned Counsel for the Applicant are totally distinguishable and have no application to the facts and circumstances of the present case as discussed above.

18. The totality of the aforesaid decision leads me to inevitable conclusion that the challenge to the impugned order is devoid of merit and O.A. deserves to be dismissed. Hence the following order:-

ORDER

Original Application is dismissed with no order as to costs.

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

