

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.524 OF 2020

DISTRICT : THANE

1. Shri Sanjay Sarjerao Sapkal.)
Age : 40 Yrs., Occu.: Service,)
R/at Sarawati Bhavan Building,)
2nd Floor, Room No.1, Tisgaon Road,)
Near Shivsena Shakha Kolshewadi,)
Kalyan (E) – 421306.)
2. Shri Nilesh Shrava Vanjari.)
Age : 37 Yrs., Occu.: Service,)
R/at Alishan Residency, 'A' Wing,)
1st Floor, Flat No.101, Khadakpada,)
Wayle Nagar, Kalyan (W) – 421 301.)
3. Shri Sunil Anant Gujar.)
Age : 44 Yrs., Occu.: Service,)
R/at House No.249, Kalyan Murbad)
Road, At & Post : Rayte,)
Tal.: Kalyan, District : Thane.)...**Applicant**

Versus

1. The Commissioner of Police.)
Thane.)
2. The Dy. Commissioner of Police.)
Crime Branch, Thane City, Thane.)...**Respondents**

Mr. R.G. Panchal, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 08.10.2021

JUDGMENT

1. The Applicants have challenged the order dated 20.12.2019 passed by Respondent No.2 – Deputy Commissioner of Police, Crime Branch, Thane whereby the Applicants were informed that the decision about his suspension period from 09.11.2015 to 23.04.2019 will be taken after the decision of criminal case, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicants are Police Personnel and by order dated 09.11.2015, they were suspended invoking Rule 3 of Maharashtra Police (Punishment and Appeal) Rules, 1956 (hereinafter referred to as 'Rules of 1956' for brevity) in view of registration of Crime No.27/2015 under Sections 380, 384 read with 34 of Indian Penal Code. They were subjected to departmental enquiry and by order dated 27.03.2019, the punishment of reduction to lower scale for three years was imposed. Later, by order dated 23.04.2019, the Applicants were reinstated in service without taking a decision about treatment to period of suspension. The Applicants, therefore, filed O.A.No.20/2019 for direction to Respondents to regularize their suspension period which was disposed of by order dated 20.11.2019 with liberty to the Applicant to make representation to Respondent No.2 for the same. The Applicants thereafter made representation on 09.12.2019 requesting to treat their suspension period as a duty period. However, by impugned order dated 20.12.2019, the Respondent No.2 informed to the Applicants that the decision will be taken only after conclusion of criminal case subjudice in the court of law.

3. Heard Shri R.G. Panchal, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

4. Indeed, at the time of reinstatement of the Applicants itself, the competent authority was required to decide the treatment about the

period of suspension one way or other in terms of Rule 72 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). As a matter of fact, the Applicants were already subjected to punishment in D.E. by order dated 27.03.2019. Whereas, the reinstatement order has been passed on 23.04.2019. This being the position, at the time of reinstatement of the Applicants, the D.E. was already completed though appeal was subjudice. Therefore, the competent authority was required to form an opinion as to whether suspension was only unjustified or otherwise while regularizing the period of suspension, but without taking such step in law, the Applicants were simply reinstated by order dated 23.04.2019. Apart, even thereafter O.A.No.1019/2019 was filed which was disposed of with liberty to the Applicants to make representation. On the representation, the Respondent No.2 simply informed to the Applicants that since criminal case is pending, the decision about the treatment to suspension period will be taken later on. Indeed, the competent authority having regard to the facts and circumstances of the case as well as outcome of departmental enquiry is required to form opinion as to whether suspension was justified or otherwise and there was no need to wait for the decision in criminal case.

5. Here, it would be apposite to reproduce Rule 72(3), (4) and (6) of 'Rules of 1981', which are as under :-

“72 (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 provisions 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) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

(6) Where suspension is revoked pending finalization of the disciplinary or court proceedings, any order passed under sub-rule (1), before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or (5), as the case may be.”

6. It is thus explicit particularly from Rule 72(6) of ‘Rules of 1981’ that suspension can be revoked pending finalization of the disciplinary or Court proceedings and any such order passed can be reviewed by the competent authority on its own motion after the conclusion of the proceedings by the competent authority. In other words, there is no need to wait for the decision in criminal case. In this behalf, the learned Advocate for the Applicant referred to the Judgment passed by this Tribunal in **O.A.No.1298/2010 (Innus H. Attar Vs. State of Maharashtra) decided on 07.03.2011** where in similar situation, directions were given decide the nature of suspension without waiting for the decision in criminal case.

7. Whereas, in the present case, the departmental enquiry against the Applicants is already concluded and they are subjected to punishment. As such, reading Rule 72(3) along with 72(6) of ‘Rules of 1981’, it is not necessary to wait for the decision of criminal case, since law specifically provides for review of any such decision after final conclusion of D.E. or criminal case.

8. For the aforesaid reasons, the impugned order dated 22.12.2019 declining to decide the treatment to suspension period till the decision of criminal case is unjustified in law. The competent authority is required

to decide the nature of period of suspension in the light of Rule 72 of 'Rules of 1981' in accordance to law. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned communication dated 20.12.2019 is quashed and set aside.
- (C) The competent authority is directed to decide the nature of period of suspension in accordance to law within a period of two months from today.
- (D) No order as to costs.

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

Mumbai

Date : 08.10.2021

Dictation taken by :

S.K. Wamanse.

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