

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.714 OF 2018

DISTRICT : MUMBAI

Shri Rajendra M. Palande.)
Age : 46 Yrs., Occu.: Police Naik.)
R/at Flat No.205, Premnath CHS, Diva (E),)
District : Thane.)...**Applicant**

Versus

1. The Addl. Chief Secretary.)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Director General of Police.)
Shahid Bhagat Singh Marg, Colaba,)
Mumbai.)
3. The Commissioner of Police for Greater)
Mumbai.)
4. The Deputy Commissioner of Police.)
Zone 2, Bavala Compound, Byculla (E),)
Mumbai – 400 027.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 01.07.2019

JUDGMENT

1. The issue posed for consideration in the present Original Application is whether the order dated 17.01.2017 whereby the period of suspension from 24.12.2009 to 02.02.2012 is treated as suspension period by disciplinary authority is legal and valid.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was serving as Police Constable with Worli Police Station, Mumbai. He was served with charge-sheet on the allegation that he had forged certain documents by using Station Diary Extract and Seals of Police Station and also forged the signature of P.S.I. Yadav. He alleged did it to help accused viz. Kum. Heena Parmar against whom the offence of accident was registered for getting insurance claim. On completion of Departmental Enquiry (D.E.), the Respondent No.3 – Commissioner of Police by order dated 03.02.2012 dismissed the Applicant from service. Being aggrieved by it, the Applicant has preferred appeal before the Government which came to be decided by order dated 1st March, 2013. While deciding appeal, the Government modified the order of dismissal and substituted it by order of reduction to original pay scale for two years with cumulative effect. It was clarified that the order about suspension period will be issued separately. Thereafter, show cause notice was issued on 19.12.2016 as to why the period of suspension should not be treated as suspension period for all purposes. The Applicant submitted his reply on 17.12.2016 contending that in view of substitution of penalty in appeal, his suspension period be treated as duty period. However, the Respondent No.4 – Deputy Commissioner of Police by order dated 17.01.2017 treated entire suspension period as 'suspension period'. Being aggrieved by it, the Applicant had preferred an appeal before the Director General of Police – Respondent No.2. However, the DGP dismissed the appeal and confirmed the order of

treating the suspension period as 'suspension period'. The Applicant has challenged this order in the present O.A.

3. Shri K.R. Jagdale, learned Advocate for the Applicant sought to contend that the impugned order treating suspension period as 'suspension period' does not disclose reasons, and therefore, the order is not tenable in law. He further urged that the punishment of reduction to original time scale for two years imposed against the Applicant is minor punishment, and therefore, the refusal to treat suspension period as 'duty period' is unsustainable in law. To bolster-up this contention, he sought to place reliance on the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.563/1993 (S.P. Naik Vs. The Board of Trustees, Mormugao Port Trust & Ors.)***.

4. Whereas, the learned CPO countered that having regard to the serious charges levelled against the Applicant, the order of treating the suspension period as 'suspension period' is just and legal. She has also pointed out that before passing order, a show cause of notice was issued to the Applicant and on consideration of reply submitted by the Applicant, the impugned order has been issued. As regard reasons, the learned CPO submitted that the Respondent No.3 has considered the seriousness of the charges while passing the impugned order, as reflected in the order itself, and therefore, the order cannot be faulted with.

5. Now, the question comes whether the order passed by Respondent No.4 – Deputy Commissioner of Police treating period from 24.12.2009 to 02.02.2012 as 'suspension period' under Maharashtra Civil Services (Joining Time, Foreign Service and payment during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Joining Time Rules 1981' for brevity) is legal and valid.

6. The perusal of order dated 03.02.2012 issued by Commissioner of Police reveals that there were four charges against the Applicant. In Worli Police

Station, a Crime No.264/2009 was registered under Section 279, 338, 304(A) of Indian Penal Code against one Heena Parmar. The Applicant allegedly prepared false and forge documents by using seal of Police Station and forged the signature of PSI Yadav on the said documents and delivered it to the accused Heena Parmar for getting insurance claim. He allegedly did it to help accused Heena Parmar for her financial benefit and thereby committed serious misconduct. This is the substances of the charges in D.E. Consequently, on completion of D.E, by order dated 03.02.2012, the Applicant was dismissed from service. He preferred an appeal before the Government wherein the punishment of dismissal was modified and in place of dismissal from service, the punishment of reduction to original time scale for two years was imposed by order dated 1st March, 2013. Material to note that the perusal of order dated 01.03.2013 reveals that during the hearing of appeal, the Applicant had admitted the charges but prayed for leniency on the ground that he had not derived personal or financial benefit. The Appellate Authority also noted that in service record, there were five minor penalties against the Applicant but he was not subjected to any major punishment during his service. The Appellate Authority, therefore, concluded that the misconduct committed by the Applicant is grave and serious but the punishment of dismissal from service was harsh and disproportionate. With these reasoning, the Appellate Authority set aside the order of dismissal and imposed punishment of reduction to original time scale for two years with cumulative effect. The Applicant has not challenged the punishment order. The said order has attained finality.

7. Now, turning to the suspension period, admittedly, a show cause notice was given to the Applicant before passing the order about suspension under Rule 72 of 'Joining Time Rules 1981' and on considering the reply submitted by the Applicant, the period from 24.12.2009 to 02.02.2012 has treated as 'suspension period'. Here, it would be apposite to refer the reply given by the Applicant to the Show Cause Notice. In reply dated 17.12.2016, all that Applicant stated that

as dismissal is set aside in appeal, he is entitled for treating the suspension period as 'duty period'. What is significant to note that there is nothing in the show cause notice denying the charges levelled against him. He was harping that he did not get any personal benefit from the alleged act, and therefore, requested to treat suspension period as 'duty period'. However, the Respondent No.3 in its order dated 17.01.2017 observed that the Applicant has submitted serious misconduct by committing forgery with the use of seal of Police Station and forging the signature of PSI Yadav. He opined that the said act of Applicant had maligned the reputation of Police Force and the Applicant has committed serious criminal offence. With this reasoning, the Respondent No.3 passed an order for treating the period from 24.12.2009 to 02.02.2012 as suspension period under Rule 72 of 'Joining Time Rules 1981'. The said order has been confirmed by Director General of Police in appeal.

8. As per Rule 72 of 'Joining Time Rules 1981' after reinstatement of Government servant in service, the Competent Authority is required to pass order about the suspension period undergone by the Government servant. Under Rule 72(3) of 'Joining Time Rules 1981', the authority competent is required to consider whether the suspension was wholly unjustified or justified. If in the opinion of Competent Authority the suspension was wholly unjustified, in that event, the Government servant shall be entitled to full Pay and Allowances for the period of suspension. Thus, what was required to be seen was whether in the opinion of Competent Authority, the action of suspension of Applicant was "wholly unjustified". In other words, a negative test has to be applied for holding the person to be entitled to all benefits of period of suspension.

9. In the present case, the Applicant was initially dismissed from service, but later, the order of dismissal was set aside and in its place, the order of reduction to original time scale for two years with cumulative effect was imposed. Thus, he was not exonerated from the charge levelled against him but only punishment

was modified in appeal. Furthermore, in appeal, the Applicant has categorically admitted the charges levelled against him. This being the position, it cannot be said that the suspension was not “wholly justified”. As such, on consideration of gravity of the charges levelled against the Applicant and his admission of guilt, the period of suspension was treated as justified and accordingly, it was treated as ‘suspension period’. Needless to mention that the applicant being Government servant was required to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty. However, he indulged in the serious misconduct and forged certain documents as well as signature of the then PSI Shri Yadav only to help accused Heena Parmar and for getting compensation from Insurance Company. Though there is no direct evidence of monetary benefits to the Applicant from Heena Parmar, it could be inferred that he must have done it for some monetary benefit. At any rate, such act of the Applicant of committing forgery is serious misconduct as well as invites criminal liability. Only because no Criminal Case was registered against the Applicant for the said incident, it does not lower the gravity of the charges.

10. The submission of learned Advocate that the impugned order is not reasoned order and there is non-application of mind has to be rejected. The perusal of order reveals that it noted the seriousness of charges and finding of Disciplinary Authority holding him guilty which has attained finality. It also noted that such act of Applicant had maligned the reputation of Police Department. As such, the impugned order is self-speaking and should not be interfered with.

11. In so far as the Judgment of Hon’ble High Court in Writ Petition No.563/1993 (cited supra) is concerned, it was a case of punishment withholding to annual increments for two years with cumulative effect. It is in that context, the Hon’ble High Court held that it is minor punishment, and therefore, the period of suspension should have been treated as on duty. The charge in the said case was of insubordination and arrogant behavior. As such, in fact situation, the

period of suspension was treated as duty period. Whereas, in the present case, initially, the Applicant was dismissed from service but in appeal, the sentence of dismissal was modified and punishment of reduction of original time scale for two years with cumulative effect was ordered. Besides, the charges levelled against the Applicant were of forgery and of grave misconduct and not of insubordination or arrogant behavior, unlike the situation in *S.P. Naik's* case (cited supra). Therefore, this Judgment, in my considered opinion, is of little assistance to the Applicant.

12. As such, when the applicant is found guilty for serious misconduct of criminal nature and the Competent Authority has taken conscious decision of treating period as 'suspension period' it would be deleterious to the discipline, if such person is granted Pay and Allowances of the suspension period by treating it as duty period. The impugned order, therefore, cannot be faulted with.

13. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned orders is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

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

Mumbai
Date : 01.07.2019
Dictation taken by :
S.K. Wamanse.