

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.719 OF 2019

DISTRICT : Mumbai

Shri Amol Ramdas Amane)
Aged 41 years, Occ : Service)
R/at 403, Jayraj Apartment, Ghartan)
Pada No.2, Dahisar (E), Mumbai 400068.)...**Applicant**

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
(Financial Reforms), Ministry of Finance,)
Mantralaya, Mumbai – 400 032.)
2. The Commissioner of Sales Tax,)
Department of Goods and Services Tax,)
State of Maharashtra, O/at Vikrikar)
Bhavan, Mazgaon, Mumbai.)...**Respondents**

Shri Sumant Despande, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.12.2020

JUDGMENT

The Applicant has challenged the order dated 22.12.2017, whereby his period of suspension from 05.09.2014 to 01.11.2017 was

treated as suspension period and the order passed by the appellate authority dated 28.02.2019 whether the order passed by the Disciplinary Authority dated 22.12.2017 was upheld.

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

(A) The Applicant was working as Sales Tax Inspector on the establishment of Respondent No.2. On 07.08.2014, he was arrested by Anti Corruption Bureau while accepting bribe and consequent to it Criminal Case No.57/2014 was registered against him under Section 7, 13(1) (d) r/w 13(2) of Prevention of Corruption Act, 1988. In sequel, he was suspended under Rule 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Applicant was prosecuted in Special Case No.17/2015 in which he was acquitted on 24.04.2017. Learned Special Judge in concluding part of judgment held that prosecution has failed to establish the guilt beyond reasonable doubt and acquitted the accused on the principle of benefit of doubt. In view of acquittal in Criminal Case, the Applicant was reinstated in service by order dated 01.11.2017. Simultaneously, D.E. was also initiated against him on the same facts in which he was held guilty and punishment of withholding of one increment for one year without cumulative effect was imposed by order dated 15.06.2019. The Applicant has challenged the order of punishment in appeal which is subjudice before the appellate authority. After reinstatement in service, the Respondent No.2 by order dated 22.12.2017 treated the period from 05.09.2014 to 01.11.2017 as a suspension period with observation that the suspension was not wholly unjustified. The said order was unsuccessfully challenged by the Applicant in appeal which came to be dismissed on 28.02.2019. These orders for treating the period from 05.09.2014 to 01.11.2017 as suspension period passed by the authorities under Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service, and

Payments during Suspension, Dismissal and Removal) Rules, 1981 (Hereinafter referred as Rules, 1981) are under challenge in the present O.A.

3. Heard Shri Sumant Deshpande, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

4. Learned Counsel for the Applicant made twofold submissions. First once, the Applicant is acquitted in Criminal Case, the period of suspension ought to have been treated as duty period for all purposes and secondly, the Disciplinary Authority did not provide opportunity of hearing before passing impugned order as mandated under Rule 72(5) of Rules 1981.

5. Learned P.O. initially sought to justify the impugned order but fairly concedes that before passing the impugned order prior notice was not given to the Applicant.

6. At this juncture, it would be apposite to reproduce Rule No.72(5) of Rule 1981 which is as under :-

*“ **72(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.”*

7. Thus, while passing the order about treatment to suspension period, the issuance of notice to the Government servant is mandatory. The competent authority is required to give notice to the Government servant of the quantum proposed about suspension period and after considering the representation only the order about pay and allowances for suspension period is required to be passed. However, in the present case, admittedly no such notice was given though it is condition precedent to comply the principles of natural justice. The Respondent No.2 lost sight of the mandatory requirement of law. The impugned order is, therefore, unsustainable in law and deserves to be quashed by giving liberty to Respondent No.2 to pass order afresh after giving notice to the Applicant as provided under Rule 72(5) of Rules 1981. The matter is, therefore, required to be remitted back without making any comment on other issues.

8. Material to note, in impugned order dated 22.12.2017 all that Competent Authority observed that suspension was not unjustified (निलंबन असमर्थनीय नदहते). Whereas, as per Rule 72(3) of Rules 1981, the Competent Authority was to form opinion as to whether suspension was wholly unjustified. There is no such opinion or finding so as to exclude the operation of Rule 72(5) of Rules 1981. The Competent Authority is required to apply negative test for holding the person to be entitled to all benefits for period of suspension. Whereas, in the present case, no such test is applied. This being the position, the Competent Authority is required to borne in mind this aspect also.

9. The totality of the aforesaid discussion leads me to sum up that the impugned order dated 22.12.2017 and 28.02.2019 are unsustainable in law for non issuance of prior notice. The matter is required to be remitted back to Respondent No.2. Hence, the following order :-

ORDER

- (A) Original Application is allowed partly.
- (B) Impugned orders dated 22.12.2017 and 28.02.2019 are quashed and set aside.
- (C) The matter is remitted back to the Respondent No.2 with direction to pass order afresh about suspension period after giving prior notice to the Applicant within two months from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 04.12.2020
Dictation taken by : Vaishali Mane
Uploaded on :
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