IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.851 OF 2019

DISTRICT : PUNE

Shri Ramesh Dagadu Hirve.)
Age : 64 Yrs., Retired as – Sales Tax)
Inspector and residing at 4/15, Akhil)
Co-op. Housing Society, Erandavane,)
Karve Road, Pune – 411 038.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai – 400 032.)

2. Special Commissioner of Sales Tax,)
M.S, 3rd Floor, GST Bhavan,)
Mazgaon, Mumbai – 400 010.)**...Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 07.10.2021

JUDGMENT

1. The Applicant has challenged order dated 28.01.2019, passed by Respondent No.2 – Special Commissioner of Sales Tax, Mumbai whereby suspension period from 03.06.2009 to 30.06.2013 was treated only for pension purpose granting 90% pay and allowances for the said period

invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Undisputed facts giving rise to the O.A. are as under:-

(i) The Applicant was serving as Sales Tax Inspector, Class – III employee on the establishment of Respondent No.2 - Special Commissioner of Sales Tax, Mumbai.

(ii) By order dated 03.06.2009 Government suspended him invoking Rule 4 (1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity), in view of registration of crime under the Prevention of Corruption Act.

(iii) The Applicant continued to be in suspension till his retirement on 30.06.2013.

(iv) Later in Special Case No.25/2009 he along with Accused No.1 Smt. Kavita Shejwal, Sales Tax Officer who allegedly demanded bribe was prosecuted. Applicant was Accused No.2 in criminal case.

(v) The learned Special Judge acquitted both of them by order dated 09.01.2015 with clear findings of no evidence against the Applicant.

(vi) Simultaneously, the departmental enquiry was also initiated against the Applicant but he was exonerated from all the charges.

(vii) Smt. Kavita Shejwal, who was Accused No.1 in criminal case and was reinstated in service w.e.f. 01.08.2010 and her suspension period from 03.06.2009 to 31.07.2010 was

treated as duty period for all service benefits with payment of 90% pay and allowances for the suspension period.

(viii) However in the matter of the Applicant, Respondent No.2 after giving notice to him by order dated 28.01.2019 treated suspension period from 03.06.2009 to 30.06.2013 only for purposes of pension granting 90% pay and allowances for the said period

3. It is on the above background the Applicant has challenged impugned order dated 28.01.2019.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the legality of the order dated 28.01.2019 on following grounds:-

(I) The Applicant has been acquitted in criminal case which is honorable acquittal / clear acquittal and also exonerated from the charge leveled against him in D.E. Therefore, the period of suspension ought to have been treated as duty period.

(II) The Applicant is subjected to discrimination, since in the matter of Co-delinquent and Co-accused namely Smt. Kavita Shejwal, Government by order dated 02.02.2018 treated suspension period from 03.06.2009 to 31.07.2010 as duty period for all purposes but the Applicant's suspension period is treated only for pension purposes.

(III) Co-accused and Co-delinquent namely Smt. Kavita Shejwal was reinstated in service w.e.f. 01.08.2010 but in the matter of the Applicant he was subjected to prolong suspension till his retirement on 30.06.2013, and therefore discrimination is obvious.

(IV) No specific finding is recorded by the competent authority that the suspension was justified while passing the impugned order.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned order inter-alia contending that in criminal case, the Applicant was acquitted giving benefit of doubt, and therefore, it is not a case of clean acquittal, in which event, suspension could have been held unjustified. As regard absence of formation of opinion of the competent authority in the impugned order that the suspension was justified, she tried to cover-up the issue contending that even if there is no such specific observation in the impugned order, it will have to be construed that the Government authority was of the opinion that the suspension was justified. On this line of submission, she prayed to dismiss the O.A.

6. In view of submissions advanced at the Bar, in the light of admitted factual position adverted to above, the question posed for consideration is whether the impugned order is legally sustainable in law and the answer is in emphatic negative.

7. At the very outset, it needs to be stated that 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), the competent authority was under obligation to form its opinion as to whether suspension was wholly unjustified while considering the issue of regularization of suspension period. As such, it is only in case where competent authority has formed opinion that in given case, the suspension was justified, in that event, only a Government servant can be denied consequential service benefits of suspension period. However, in the present case, admittedly, the competent authority in impugned order has not recorded any such findings that the suspension was justified. As stated above, what was required to be seen was whether in opinion of competent authority, the action of suspension of the Applicant was wholly unjustified. In other words, a negative text has to be applied for holding the person to be entitled to all the benefits of suspension period and that period should be

treated as if the delinquent was on duty. However, no such opinion has been formed by the competent authority and in straightway mechanically denied the benefit of service period by treating suspension period only for pension purpose and granting 90% pay and allowances. In effect, thus, it was not treated as duty period which has caused serious prejudice to the Applicant.

8. Indisputably, in criminal case, the Applicant was acquitted by Judgment dated 09.01.2015. True, in the last concluding Para of the Judgment, the learned Sessions' Judge held that the prosecution has failed to prove its case beyond the reasonable doubt, and therefore, accused are entitled to the benefit of doubt. In so far as this phraseography used in the concluding Para of the Judgment is concerned, though it creates impression that the Applicant was given benefits of doubt, it is not so. The Government authority ought to have read the complete Judgment without picking-up solitary observation from the Judgment. In this behalf, the perusal of Judgment reveals that the learned Special Judge in Para No.20 has categorically held that there was absolutely no evidence that any point of time, the Applicant (Accused No.2) demanded bribe to the complainant. Apart, it has been specifically held that the Applicant was also not present in the Cabin at the time of alleged incidence accepting the bribe by Accused No.1. It is thus quite clear that there was no demand of bribe from the Applicant nor there was any iota of evidence suggesting his participation in the demand of bribe and its acceptance. In view of this categorical finding, it will have to be held as a clear acquittal in view of total absence of any incriminatory evidence. Suffice to say, the phraseography used that Accused are acquitted giving benefit of doubt, which is normally used by the Court should not come in the way of Applicant, since on merit, it was the case of clear and clean acquittal.

9. Apart, in D.E, admittedly, the Applicant has been exonerated from all the charges. As such, when there is a clear acquittal in criminal

prosecution and exoneration from all the charges in D.E, there would be no justification to say that the suspension was justified. Otherwise, it would amount to inflicting punishment denying him service benefits of suspension period, which is totally impermissible in law. The competent authority ought to have seen that there was no incriminatory evidence or any material whatsoever against the Applicant to deny him service benefits of the suspension period.

10. As such, mechanically, the impugned order has been passed without considering the Judgment of criminal case in its entirety and the effect of exoneration of the Applicant in D.E.

11. Apart, as rightly pointed out by the learned Advocate for the Applicant that in the matter of co-accused viz. Smt. Kavita Shejwal, who was Accused No.1 in criminal case and against whom there was direct allegation of demand of bribe and acceptance, surprisingly, while regularizing her suspension period, the Government by order dated 2nd February, 2018 treated suspension period from 03.06.2009 to 31.07.2010 as duty period for all purposes granting 90% pay and allowances for the said period. Thus, her entire suspension period though she was main accused in criminal case, her suspension period was treated as duty period for all purposes. Whereas, in the matter of Applicant against whom there was absolutely no iota of evidence in the criminal case and who has been exonerated in D.E, she was treated differently by treating suspension period from 03.06.2009 to 30.06.2013 only for pension purpose meaning thereby it was not treated as duty period for all purposes alike Smt. Kavita Shejwal. This is rather inexplicable and nothing but discrimination. The competent authority has completely glossed over this aspect. It is well settled that the persons similarly situated though ought to have been treated equally, the Respondents have applied different yardstick in the matter of Applicant though in fact, there was no such incriminating material against her, which is violative of Article 14 of the Constitution of India.

12. The objection raised by the learned P.O. that in absence of availing appeal remedy, the O.A. was not maintainable holds no water in the facts and circumstances of the present case. True, the impugned order is appealable order but without availing appeal against it, the Applicant has directly filed the present O.A. True, as per Section 20 of Administrative Tribunals Act, 1985, the Tribunal shall not ordinarily admit an application unless it is satisfied that the Applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. As such, the word used in Section 20 of Administrative Tribunals Act, 1985 is that ordinarily the Applicant should first avail of all other remedies available to him under the Rules. Here, material to note that the Applicant was under suspension from 03.06.2009 till 30.06.2013 i.e. up to retirement. Whereas, the impugned order has been passed on 28th January, 2019, which is quite belated. The Applicant already stands retired on 30.06.2013. Therefore, in such peculiar facts and circumstances of the case, it would be highly unjust and inappropriate to drive the Applicant to avail remedy of appeal first and then approach the Tribunal. It is more so, when the Applicant is found entitled for the same treatment which is given to Accused No.1 – Smt. Kavita Shejwal. Suffice to say, it would be futile, unjust rather oppressive to drive the Applicant to alternate remedy of filing appeal. Therefore, in the facts and circumstances of the case, the O.A. will have to be entertained and decided on its own merit.

13. Another significant aspect of the matter is that, in the matter of co-accused Smt. Kavita Shejwal, though she was main Accused against whom there were allegations of demand of bribe, she was reinstated in service w.e.f. 01.08.2010. Whereas, in the matter of Applicant who is Group 'C' employee, she was subjected to prolong suspension and ultimately, she retired on 03.06.2013. While reinstating Smt. Kavita Shejwal itself, appropriate steps of reinstatement of the Applicant ought to have been taken, so that she was not subjected to prolong suspension. Thus, in effect, the Applicant was unnecessarily subjected to prolong

suspension for a long period and after conclusion of criminal case as well as D.E, if no incriminatory evidence was found against him, it would be totally unjust to deny the service benefits of the suspension period to him.

14. The totality of aforesaid discussion leads me to sum-up that the impugned order denying the suspension period as duty period is totally unsustainable in law and the impugned order is clearly indefensible, which is liable to be modified to that extent. Hence, the following order.

O R D E R

(A) The Original Application is allowed.

(B) The suspension period of the Applicant from 03.06.2009 to 30.06.2013 be treated as duty period for all consequential service benefits and consequently, monetary benefits be released within two months from today.

(C) No order as to costs.

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

Mumbai
Date : 07.10.2021
Dictation taken by :
S.K. Wamanse.
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