

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 113 OF 2022
(Subject:-Suspension Period/Pay & Allowances)**

DISTRICT: - JALNA

Shri Vijay S/o Bhaurao Gaikwad,)
Age: 44 Years, Occu: Service as P.S.I. at)
Osmanpura Police Station, Aurangabad.)
R/o. Kasliwal Tarangan, Mitmita,)
Aurangabad.)
Mobile No. 8888838555.) **...APPLICANT**

V E R S U S

- 1. The State of Maharashtra ,**)
Through : The Secretary,)
Home Department, Mantralaya,)
Mumbai -32.)
- 2. The Special Inspector General of Police,**)
Aurangabad Range,)
Aurangabad.)
- 3. The Superintendent of Police,**)
Jalna.) **..RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, learned Advocate for
the applicant.
: Smt. Sanjivani K. Deshmukh-Ghate,
learned Presenting Officer for the
respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **16.12.2022.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking direction against the respondent No. 3 to regularize the suspension period undergone by the applicant and challenging the impugned order dated 26.03.2020 (Annex. 'A-3') issued by the respondent No.3 to the extent whereby the regularization of suspension period was deferred till finalization of criminal case and/or departmental enquiry.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant was initially appointed as a Police Constable in the year 2000. Thereafter on 15.10.2013, the applicant was directly appointed to the post of Police Sub-Inspector. After having completed training, he was posted in the office of Superintendent of Police, Osmanabad. Thereafter on 22.06.2016 he was transferred to the office of respondent No.3 i.e. the Superintendent of Police, Jalna and was posted at Badnapur Police Station. After that on 09.04.2018 he was transferred to Gondi Police Station.

(ii) It is submitted that while posted at Gondi Police Station, false Crime No. 83/2019 was registered against the applicant for the offences punishable under Section 7 and 7 (A) of the Prevention of Corruption Act, 1988 on 02.03.2019 on the allegations that he demanded bribe from the complainant with the help of one person for illegally allowing the transportation of sand. In view of the registration of the said crime, the respondent No.3 issued suspension order dated 02.03.2019 (Annex. 'A-3'), thereby suspending the applicant from the post of Police Sub-Inspector w.e.f. 02.03.2019. The Original Application No. 1091/2019 filed by the applicant challenging the said suspension order came to be decided by order dated 18.12.2019 (Annex. 'A-2') by way of giving direction to the respondent No.3 to decide representations of the applicant dated 30.07.2019 and 10.12.2019 in view of provisions of G.R. dated 14.10.2011 and 09.07.2019.

(iii) Thereafter, the respondent No.3 by order dated 26.03.2020 (Annex. 'A-3') revoked the suspension of the applicant and posted him at Police Control Room, Jalna but deferring the decision of regularization of suspension period

till finalization of the criminal case and departmental enquiry. This part of the said order dated 26.03.2020 is also challenged in the Original Application. In this regard, it is contended that the applicant is exonerated from the departmental enquiry by order dated 25.05.2021 (Annex. 'A-4') and charge sheet in criminal case is not yet filed. The criminal case may take years together to finalize. Deferring on decision of regularization of suspension is not proper and is liable to be quashed and set aside.

(iv) It is contended that the respondent No.3 meanwhile served the memorandum of charges dated 17.06.2019 on the applicant proposing departmental enquiry against the applicant. Enquiry Officer was appointed, who after completion of enquiry submitted the report to the respondent No.3. Ultimately, the respondent No.3 by issuing final order dated 25.05.2021 (Annex. 'A-4') exonerated the applicant in the departmental enquiry.

(v) It is submitted that after receipt of final order in departmental enquiry, the applicant submitted representation dated 19.07.2021 (Annex. 'A-5') to the respondent No.3 seeking regularization of suspension period/treating

suspension period as duty period and to release all the monetary benefits from 2019 onwards. When the charge sheet in criminal case or departmental enquiry was not filed against the applicant within the period of 90 days from the order of suspension dated 02.03.2019, the applicant was entitled immediately thereafter for reinstatement and full pay and allowances.

(vi) It is further submitted that as per order dated 18.08.2021, the applicant was transferred to Beed, where he joined on 24.08.2021. On request application made by the applicant to the Director General of Police, Mumbai, the applicant came to be transferred to Aurangabad City. As per order dated 04.01.2022 issued by the Commissioner of Police, Aurangabad, the applicant is posted in Osmanpura Police Station, Aurangabad. Since then he is working there.

(vii) It is further submitted that the representation dated 19.07.2021 (Annex. 'A-5') submitted by the applicant seeking regularization of suspension period to the respondent No.3 is still not decided. In view of the decision of the Hon'ble Apex Court passed in **Civil Appeal No. 1912/2015** in the matter of **Ajaykumar Chaudhari Vs. Union of India** dated

16.02.2015, the suspension cannot be continued beyond the period of 90 days in case charge sheet is not filed within the period of 90 days from the date of suspension order. In this regard, G.R. dated 09.07.2019 (Annex. 'A-8') is issued by the Government of Maharashtra. In the circumstances as above, the applicant has filed this Original Application.

3. Affidavit in reply is filed on behalf of the respondent by one Sanjay Murlidhar Vyas working as Home Deputy Superintendent of Police, Jalna. Thereby he denied all the adverse contentions raised in the Original Application.

(i) It is submitted that the suspension order dated 02.03.2019 was issued by the respondent No.3 in view of the registration of Crime No. 83/2019 under Section 7, 7(A) of the Prevention of Corruption Act, 1988. The said suspension order dated 02.03.2019 is revoked by order dated 26.03.2020. The representations dated 30.07.2019 and 10.12.2019 submitted by the applicant to the respondent No. 3 are being decided within stipulated time as per order of this Tribunal dated 18.12.2019 passed in O.A.No. 1091/2019. Departmental enquiry was also initiated against the applicant, but he was exonerated as the charges were not

proved. Criminal case is yet to be decided. The regularization of suspension period can be considered under Section 72 (6) of Maharashtra Civil Services (Joining time, Foreign services and Payments During Suspension, Dismissal and Removal) Rules, 1981 only after finalization of criminal case. The applicant is misinterpreting the provisions regarding regularization of suspension period. There is no provision of regularization of suspension period before final conclusion of criminal or departmental proceedings. Hence the application is devoid of merit and is liable to be dismissed.

4. The applicant filed affidavit in rejoinder denying the adverse contentions raised in the affidavit in reply and reiterating the contentions raised in the Original Application.

5. I have heard at length the arguments advanced by Shri K.B. Jadhav, learned Advocate for the applicant on one hand and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer representing the respondent on other hand.

6. After having considered the pleadings and documents on record and rival submissions, it is evident that the applicant is seeking regularization of his suspension period from 02.03.2019 to 26.03.2020. Undisputedly the applicant

was put under suspension by order dated 02.03.2019 (Annex. 'A-1') by the respondent No.3 i.e. the Superintendent of Police, Jalna. The said suspension order was issued in view of the registration of Crime No. 83/2019 under Section 7, 7(A) of the Prevention of Corruption Act, 1988 on 02.03.2019 at Gondi Police Station on the allegations of demand and acceptance of bribe for helping illegal transport of sand. Admittedly, till date charge sheet in respect of the said crime is not yet filed. However, the departmental enquiry was initiated against the applicant meanwhile, by serving memorandum of charges dated 17.06.2019. Initiation of the said departmental enquiry is also after the lapse of 90 days from the date of order of suspension dated 02.03.2019. Subsequently the suspension order came to be revoked by order dated 26.03.2020 (Annex. 'A-3') by the respondent No.3 after taking review.

7. In view of the abovesaid undisputed facts, the learned Advocate for the applicant submitted that in view of the failure of filing of memorandum of charge sheet in the departmental enquiry and charge sheet in criminal prosecution within the period of 90 days from the date of suspension, there is deemed revocation w.e.f. the period of three months from 02.03.2019. To substantiate the said

submissions, learned Advocate for the applicant placed reliance on the decision of the Hon'ble Apex Court in the matter of **Ajaykumar Chaudhari Vs. Union of India** in Civil Appeal No. 1912/2015 dated 16.02.2015 (Annex. 'A-7'). In paragraph No. 14 it is observed as under:-

“14. We, therefore, directed that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its officers within or outside the State so as to serve any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the

imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interest of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

8. He further placed reliance on the G.R. dated 09.07.2019 (Annex. 'A-8') issued by the G.A.D., Government of Maharashtra based on the above said citation of the Hon'ble Apex Court in **Ajaykumar Chaudhari Vs. Union of India** case. The relevant portion of the said G.R. is as under:-

“ निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबल समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरू करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता/खबरदारी घेण्यात यावी.”

9. It is also a fact that in the departmental enquiry initiated against the applicant by the respondent No.3, final order dated 25.05.2021 (Annex. 'A-4') came to be passed. Thereby the applicant is exonerated of the charges leveled against the applicant. The charges in the said departmental enquiry are regarding faulty investigation of crime no.

83/2019 registered against section 379 of Indian Penal Code r/w section 3 & 4 of Mines Act. Crime No. 83/2019 registered against the applicant at Gondri Police Station under Section 7 and 7(A) of Prevention of Corruption Act is different, but the said case is arising out of after registration of crime No.83/2019 as discussed above. The applicant, however has been exonerated with the said departmental enquiry.

10. In the facts and circumstances, the applicant has submitted representation dated 19.07.2021 (Annex. 'A-5') to the respondent No.3 seeking regularization of suspension period from 02.03.2019 to 26.03.2020. This representation was made in view of revocation of suspension order dated 26.03.2020 (Annex. 'A-3'), whereby the regularization of suspension period was deferred till finalization of criminal case pending against the applicant under Prevention of Corruption Act and the departmental enquiry. Deferring decision on this aspect is also challenged in the Original Application apart from seeking regularization of suspension period.

11. From the facts on record, prima facie it would be evident that though the suspension is revoked by order dated 26.03.2020 (Annex. 'A-3'), it deemed to have been revoked on

or about 02.06.2019 for the reasons already discussed herein above mainly failure of filing charge sheet in criminal case or memorandum of charge sheet in the departmental enquiry within specified period.

12. In the facts and circumstances as above, the provision which comes into play is Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981. The said provision deals with re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty. It is as follows:-

“ 72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty. :- (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make a specific order –

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-

instatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 68, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not suspended, subject to adjustment in respect of subsistence allowance already paid.

(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 recorded in writing, that the Government servant shall be paid 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.

(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, as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the of the disciplinary or court proceedings, any order passed under sun-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 sub-rule (5), as the case be.

(7) *In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose.*

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note.- The order of the competent authority under preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

- (a) extraordinary leave in excess of three months in the case of temporary Government servant: and*
- (b) leave of any kind in excess of five years in the case of permanent Government servant.*

(8) *The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.*

(9) *The amount determined under the proviso to sub-rule (3) or under sun-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 68.”*

13. As observed earlier this is a case of deemed revocation of suspension in view of that the applicant shall certainly be entitled for full pay and allowances from the date of deemed

date of revocation of suspension. Moreover, the applicant is also exonerated from the departmental enquiry. In these circumstances, impugned portion of revocation order of suspension dated 26.03.2020 (Annex. 'A-3') is also not legal and proper. In the facts and circumstances it is bound to consider the representation dated 19.07.2021 (Annex. 'A-5') made by the applicant seeking regularization of suspension period by appropriately interpreting Rule 72 of M.C.S. (Joining Time, Foreign Services and Payments During Suspension, Dismissal and Removal) Rules, 1981 as discussed above and take decision within specified period and communicate it to the applicant. In the circumstances, deferring of decision on regularization incorporated in revocation of suspension order dated 26.03.2020 (Annex. 'A-3') is not legal and proper and is liable to be set aside. In view of the same, I proceed to pass the following order:-

ORDER

The Original Application is partly allowed is following terms:-

- (A) The impugned order dated 26.03.2020 (Annex. 'A-3') issued by the respondent No.3 to the extent of

informing/observing that the decision of the suspension period of the applicant shall be taken after the judgment of the criminal case and final decision of the departmental enquiry is quashed and set aside.

- (B) The respondent No. 3 is directed to consider the representation of the applicant dated 19.07.2021 (Annex. 'A-5') seeking regularization of suspension period strictly in accordance with law and in view of observations made in the body of the judgment within the period of two months from the date of this order and communicate its decision to the applicant within next 15 days.
- (C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date : 16.12.2022
SAS O.A.113/2022