

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 116 OF 2018  
(Subject:-Minor Punishment/Suspension Period)**

**DISTRICT: - LATUR**

**Sanjay s/o Marutirao Deokate,** )  
Age-49 years, Occu. Service )  
as Police Naik at Police Headquarter, )  
Latur, Gokuldham Colony, )  
Beside Bidwe Engineering College, )  
Barshi Road, Latur. )...**APPLICANT**

**V E R S U S**

- 1. The Director General of Police,** )  
Maharashtra State, Mumbai. )
- 2. The Spl. Inspector General of Police,** )  
Nanded Region, Nanded. )
- 3. The Superintendent of Police,** )  
Office of the Superintendent of Police, )  
Latur, Dist. Latur. )..**RESPONDENTS**

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**APPEARANCE** : Shri S.D. Joshi, learned Advocate for  
the applicant.  
: Shri B.S. Deokar, learned Presenting  
Officer for the respondents.

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

**DATE** : **27.02.2023.**  
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**ORDER**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned order dated 29.08.2017 (part of Annexure 'A1' collectively) passed by the respondent No. 1 i.e. the Director General of Police, thereby modifying the punishment order dated 07.02.2014 (part of Annexure 'A-1' collectively) passed by the respondent No.3 i.e. the Superintendent of Police, Latur which was confirmed in the departmental appeal by the respondent No.2 vide order dated 05.03.2015 (part of Annexure 'A-1' collectively) to that of stoppage of one increment and maintaining the treatment of suspension period as suspension period only and seeking direction to respondent Nos. 1 to 3 to release the regular annual increment to the applicant in time and to treat the suspension period from 17.08.2012 to 07.02.2014 as duty period for all the purposes.

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

(i) The applicant undergone the recruitment process for the post of Police Constable undertaken in the year 1989. Thereby by order dated 12.02.1990 issued by the

Superintendent of Police, Parbhani he came to be appointed as Police Constable. In the year 1999, the Revenue District of Parbhani bifurcated into Hingoli and the services of the applicant came to be allotted to the office of Deputy Superintendent of Police, Hingoli. While working as Police Constable his work and performance throughout was excellent. In the year 2005 he came to be promoted as Police Naik. While working on the post of Police Naik, he was transferred to Latur District in the year 2008 in Traffic Branch.

(ii) While posted in Traffic Branch in District Latur during Ganpati Festival of 2011, the applicant was busy in doing work of Police Bandobast. He was working under the then Superintendent of Police, Mr. B.G. Gaikar. When the S.P. was taking the stock of the law and order situation by way of supervision, he had used and addressed the applicant in the most un-parliamentary language in front of the crowd/public. Due to that the applicant was rendered in a disturbed state of mind. Under the circumstances, the applicant tendered his resignation to the respondent No.3. However, at the advice of well-wishers, he withdrew the same. He was also consoled by the S.P. himself. Thereafter, the then S.P., Shri B.G. Gaikwar

got transferred to another district but within a short time he was again transferred to Latur.

(iii) After the transfer of Superintendent of Police, Shri B.G. Gaikwar to Latur District, he started harassing the applicant in one and other way on very petty and trifle things. On 26.09.2011 while discharging duty in Traffic Branch, the applicant penalized one auto -rickshaw driver and imposed fine of Rs.100/-. The said incident was distorted to his disadvantage that the applicant demanded extraneous consideration from the said auto-rickshaw driver.

(iv) In such circumstances, the applicant made representation dated 15.10.2011 (Annexure 'A-2') to the respondent No.2 i.e. the Special Inspector General of Police, Nanded ventilating his grievances and seeking justice. No sooner the office of S.P. learnt about the said representation made by the applicant, the respondent No.3 i.e. the S.P. Latur by order dated 04.06.2012, transferred the applicant from Latur Traffic Control to Kasar-Shrishi Police Station though he was not due for transfer. The applicant challenged the said order before this Tribunal by filing the Original Application No. 479/2012. This Tribunal by order dated 28.06.2012 was pleased to stay the said order.

(v) After the said interim order was served upon the respective respondents in the said matter, the P.I. of M.I.D.C. Police Station, Latur filed an application before the Taluka Magistrate under Section 107 of Cr.P.C. by leveling false allegations against the applicant that the applicant created scene by going to official residence of S.P., Latur. In that respect Crime No. 54/2021 u/sec.323, 504, 506 r/w 34 came to be registered against the applicant.

(vi) After registration of false crime against the applicant on 11.08.2012 as above, the respondent No. 3 i.e. the Superintendent of Police, Latur placed the applicant under suspension by order dated 11/13.08.2012. Thereafter, the applicant tendered application dated 05.06.2012 seeking voluntary retirement. The said application came to be rejected by order dated 05.09.2012 (part of Annexure 'A-5' collectively). The abovesaid suspension order was followed by the charge sheet dated 25.09.2012 (Annexure 'A-6'). In the said charge sheet very trifling allegations are leveled against the applicant. Most of the charges leveled in the departmental enquiry were identical to that of the charges under the criminal case registered against the applicant. In order to file reply to the said charge sheet, the applicant sought

information under Right to Information Act. The office of respondent No.3 supplied the said information under communication dated 12/25/.10.2012 (Annexure 'A-7').

(vii) Thereafter, the office of respondent No.3 under its communication dated 20.07.2013 (Annexure 'A-8') issued show cause notice in respect of dismissal from services to the applicant stating therein that all the charges leveled against him were said to have been proved by the Enquiry Officer under his report dated 20.02.2013. The applicant tendered his reply to the said show cause notice of dismissal dated 20.07.2013 on 26.07.2016, thereby denying all the charges leveled against him. Thereafter, the office of respondent No. 3 imposed punishment of stoppage of three annual increments and treating suspension period as suspension period only by issuing order dated 07.02.2014 (part of Annexure 'A-9').

(viii) It is submitted that after issuance of charge sheet, no steps were taken toward the completion of the enquiry expeditiously. No action was taken for the period of 10 long months. During that period, the criminal trial against the applicant was also under way. The said criminal case was heard finally at the end of January, 2014 and closed for

orders. Sensing order of acquittal in the said criminal trial, departmental enquiry was started harshly and punishment was imposed upon the applicant by order dated 07.02.2014 as stated earlier. Thereafter, the applicant came to be acquitted from the criminal case by the Court of J.M. F.C. vide it's order dated 07.03.2014 (Annexure 'A-9'). The said order is not challenged further and therefore it has attained finality.

(ix) Meanwhile being aggrieved by the punishment order dated 07.02.2014 in departmental enquiry, the applicant preferred departmental appeal before the respondent No.2. However, the office of respondent No.2 without taking into consideration the grounds in appeal, conferred the punishment under it's order dated 05.03.2015 (part of Annexure 'A-1 collectively' ).

(x) Feeling aggrieved by the rejection of said appeal order, the applicant preferred second appeal before the respondent No. 1 on 13.04.2015 (Annexure 'A-10'). The respondent No. 1 appreciated the harshness of the punishment imposed upon the applicant as compared to the charges leveled against him and thereby the punishment is reduced to stoppage of one increment from three annual increments imposed by the

respondent No.3 and confirmed by the respondent No.2. Nothing has been stated about the treatment of the suspension period in the said order. It remained as it is.

(xi) After receipt of impugned order dated 29.08.2017 (part of Annexure 'A-1' collectively), the applicant made representation dated 18.10.2017 pointing out that no order is passed about treatment of suspension period from 17.08.2012 to 07.02.2014. No step has been taken in respect of the same till filing of this Original Application.

(xii) In the circumstances as above, it is the contention of the applicant that the applicant has been acquitted in criminal case. The charges leveled in the departmental enquiry against the applicant were based on the said criminal case. In view of the same, as per the settled law, the acquittal of the applicant from the criminal case has the effect of his exoneration of the departmental enquiry to the extent of similar charges. Show cause notice of dismissal of the applicant would show the grudge against the applicant by the S.P. Latur. The punishment order was outcome of malafide attitude of the respondent No.3 i.e. the S.P. Latur. In spite of this criminal prosecution and departmental enquiry based on



it, the applicant has clean record throughout. Hence, this application.

3. The Original Application is resisted by filing affidavit in reply on behalf of respondent Nos. 1 to 3 by one Ganesh Ramchandra Kindre working as Sub Divisional Police Officer, AUSA, District Latur, thereby he denied the adverse contentions raised in the Original Application.

(i) At the outset it is submitted that as per service record of the applicant, he has 9 minor punishments including the present punishment at his discredit. It is specifically submitted that the charges leveled against the applicant in the departmental enquiry have been proved on the basis of the theory of preponderance of probabilities. The applicant has alleged mala fide against the then S.P. Latur Shri B.G. Gaikwar, but he has not impleaded him as necessary party in the Original Application. Moreover, the respondent No.1 while passing the impugned order dated 29.08.2017 (part of Annexure 'A-1') had struck the balance of justice by modifying the punishment imposed by the respondent No. 3 and confirmed by the respondent No.2 by reducing punishment to stoppage of one increment from stoppage of three

increments. The said decision taken by the respondent No.1 is just, proper and legal.

(ii) It is further submitted that the treatment of suspension period as such is not punishment at all as it has not been issued as punishment. The treatment of suspension period is governed by Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 which gives discretion to the competent authority to treat it "As such", if it found that the suspension ordered of the employee pending enquiry was fully justified as it resulted in imposing a penalty.

(iii) It is admitted that the applicant is acquitted in a criminal case. However, the allegation incorporated in the said criminal case did not find place in the memorandum of charge sheet issued in the departmental enquiry against the applicant. In view of the same criminal case and departmental enquiry are different and the applicant is not entitled for any benefit of acquittal order in criminal case and departmental enquiry prosecution. In the circumstances, there is no merit in the Original Application and the same is liable to be dismissed.

4. After having considered rival pleadings, documents and submissions advanced on behalf of both the parties, it is evident that the applicant faced departmental enquiry in view of memorandum of charge sheet dated 25.09.2012 (Annexure 'A-6') being served on him at or around the same time when initial proceeding under Rule Section 107 of Cr.PC. were initiated against the applicant by Police Inspector of M.I.D.C. Police Station as reflected in Annexure 'A-4'. Moreover, Crime No. 54/2012 u/Sec. 323, 504, 506 r/w 34 also came to be registered against him in respect of which the regular criminal case No. 696/2012 was filed against the applicant in which case the applicant was accused and by order and judgment of the Judicial Magistrate First Class, Court No.6 at Latur dated 07.03.2014 (Annexure 'A-9'), the applicant was acquitted.

5. The alleged incident referred to in criminal case No. 696/2012 is dated 11.08.2012 on which date the applicant alleged to have visited official residence of S.P. Latur. The applicant wanted to see the S.P. Latur and he behaved in disorderly manner with the guard deputed at the said official bungalow. He allegedly pushed main gate and entered in the precinct of the bungalow. He used/uttered filthy words to S.P.

Latur threatening him. In the departmental enquiry, the said incident is one of the incidents of misconduct along with other incidents of misconduct. In view of the same, it is evident that the misconduct alleged in the memorandum of departmental enquiry is not totally based on the criminal prosecution lodged against the applicant. The canvas of departmental enquiry is broader/larger than the criminal case. The applicant is acquitted in the criminal prosecution bearing Cr.P.C. No. 696/2012 by judgment and order dated 07.03.2014 (Annexure 'A-9').

6. Upon perusal of the departmental enquiry report it is evident that during the course of enquiry, the applicant said to have admitted the charges levelled against him in the memorandum of charges and sought leniency. After receipt of enquiry report, the Disciplinary Authority i.e. the respondent No.3- the Superintendent of Police, Latur served final show cause notice dated 20.07.12013 (Annexure 'A-8') upon the applicant calling upon him to show cause as to why punishment of dismissal from service should not be imposed upon him. The applicant tendered his reply to the same on 26.07.2013. After receipt of reply from the applicant, punishment of stoppage of annual increments for three years

was imposed upon the applicant as per order dated 07.02.2014 (Annexure 'A-1' collectively) issued by the respondent No. 3.

7. In the departmental appeal filed by the applicant the said punishment was confirmed as the Appellate Authority i.e. the respondent No.2 by order dated 05.03.2015 (part of Annexure 'A-1' collectively) dismissed the said appeal.

8. The applicant preferred second appeal/revision against the said order before the respondent No.1. The respondent No.1 reduced punishment to the extent of stoppage of increment for one year by impugned order dated 29.08.2017 (part of Annexure 'A-1' collectively).

9. This impugned punishment imposed upon the applicant finally by respondent No.1 is minor punishment as it is without cumulative effect. The punishment was reduced observing/considering that the punishment imposed by the respondent No.3 and confirmed by respondent No.2 to the effect of stoppage of annual increments for three years was disproportionate to misconduct alleged against the applicant. It was expected that the applicant should not have approached the Media for ventilating his grievances and

should have ventilated his grievances by approaching his superiors.

10. After having taken overall view of the matter, in our considered opinion, the grievance of the applicant has already been dealt with by the respondent No.1 by taking leniency and due care while passing impugned punishment order dated 29.08.2017 (part of Annexure 'A-1' collectively) reducing it to stoppage of annual increment for one year. It is pertinent to note that the applicant during course of the departmental enquiry said to have admitted his alleged misconduct. In such circumstances, when harsh decision was taken by the respondent No.3 while imposing punishment of stoppage of annual increments for three years, the same is reduced to stoppage of annual increment for one year, which would not require further interference.

11. No doubt the applicant has pleaded that he has been acquitted in regular criminal case No. 696/2012 as per the judgment and order dated 07.03.2014 (Annexure 'A-9'). The incident alleged in the said criminal prosecution is one of the incidents of misconduct alleged in the memorandum of charge sheet. In our considered opinion, the said acquittal order cannot have much bearing on the departmental enquiry

when other incidents of misconduct are alleged against the applicant. Even in case of identical charges in departmental enquiry and criminal prosecution, the departmental enquiry is not barred. The only thing is as to whether the impugned punishment of stoppage of annual increment for one year is disproportionate to the misconduct alleged against the applicant and whether the said punishment was imposed without following due process of law.

12. There is no grievance of the applicant that in the departmental enquiry initiated against him, he was not given fair opportunity of hearing. In fact while conducting the departmental enquiry when the stage came of giving evidence by delinquent, applicant said to have admitted the charges levelled against him. From the circumstances on record, no irresistible inference can be drawn, when he gave those admissions. In such circumstances, considering the totality of circumstances, in our opinion minor punishment of stoppage of annual increment for one year is proportionate to the misconduct alleged against the applicant. The said punishment is without cumulative effect. Hence it is not going to affect the applicant much monetarily. This huge amount to getting monetary benefit of increment belatedly.

Hence, this is not a fit case to interfere into this aspect of the matter.

13. The applicant has another grievance that after registration of criminal case against him on 11.08.2012, the respondent No.3 i.e. the Superintendent of Police, Latur put him under suspension as per order dated 11/13.08.2012 (part of Annexure 'A-5' collectively). He continued under suspension till 07.02.2014. In the punishment order dated 07.02.2014 (part of Annexure 'A-1' collectively) issued by the respondent No. 3 i.e. the S.P. Latur, the said suspension period was treated as suspension period. The said order was maintained in departmental appeal order dated 05.03.2015 as the departmental appeal was dismissed.

14. In the impugned order dated 29.08.2017 (part of Annexure 'A-1' collectively) there is no specific finding about the treatment of said suspension period. In view of that the applicant said to have made representation dated 18.10.2017 to the applicant No. 1 pointing out that no order is passed about treatment of suspension period from 17.08.2012 to 07.02.2014. The applicant did not hear anything from the respondent No.1 in respect of the same. Hence, he has raised the said grievance in this Original Application.



15. The provisions of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 deals with reinstatement of the Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty. The said Rule 72 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 reinstatement 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 reinstatement 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 been 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 representations, 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.

(5) In case 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 this notice.

(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.

(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 the proceeding proviso shall be absolute and no higher sanction shall be necessary for grant of –

- (a) extraordinary leave in excess of three years in the case of a 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-rules (2), (3) or (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 (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 68.”

16. Sub Rule 3,4 & 5 of Rule 72 are required to be considered in this case in order to consider claim of the applicant of pay and allowances by treating suspension period as duty period. The case should fall under Sub Rule 3 for claiming full pay and allowances. The Competent Authority for allowing that should be of opinion that suspension is wholly unjustified. No doubt in this case, the

applicant has been acquitted in a criminal case bearing Cr.P.C. No. 696/2012 by judgment and order dated 07.03.2014 (Annexure 'A-9'). However, as discussed earlier, the allegations in the criminal case were only part of allegations in disciplinary proceedings. The applicant has admitted the charges levelled against him in departmental enquiry. That admission was not under any duress. In such circumstances, in our considered opinion when the punishment was reduced in the facts and circumstances of the case, it would have been appropriate on the part of the authority to consider the treatment of suspension period for paying pay and allowances proportionately. In view of the same, in our considered opinion, this is a fit case to consider the suspension period of the applicant for extending him pay and allowances to the extent of 60%. That would suffice the purpose. In the circumstances, we proceed to pass the following order:-

**ORDER**

The Original Application is partly allowed in following terms:-

- (A) The prayer seeking to challenge impugned order dated 29.08.2017 (part of Annexure 'A-1')

collectively) passed by the respondent No.1 is rejected.

- (B) The respondents are directed to treat the suspension period of the applicant from 17.08.2012 to 07.02.2014 for extending him pay and allowances to the extent of 60% as per Rule 72 (5) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981
- (C) No order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place:- Aurangabad**  
**Date : 27.02.2023.**  
SAS O.A.116/2018