

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 912/2022 (S.B.)**

Bhaurao s/o Wamanrao Mohade,
Aged about 50 years,
Occ. Service, R/o Plot No.15,
Vaishnavi Layout, Opp. Emerald Colony,
Akoli (Kh), Near Gita Nagar,
Akola, City Akola, District-Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Secretary,
Home Affairs Department,
Madam Cama road,
Mantralaya, Mumbai – 32.
- 2) The Superintendent of Police,
Akola, District Akola.

Respondents

Shri M.M.Sawang, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 11th April 2023.

JUDGMENT

Judgment is reserved on 28th March, 2023.

Judgment is pronounced on 11th April, 2023.

Heard Shri M.M.Sawang, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the respondents.

2. On 20.02.2007 the applicant was attached to Wadegaon Police outpost under Balapur Police Station. He was holding the post of Police Constable. He and three others were served with a charge sheet. He was placed under suspension. Allegation against the applicant was that on 20.02.2007, in his presence, at Wadegaon Police outpost verbal exchange was taking place between one Munna Dongre, a person with criminal background, and Sarpanch of said village and this led to Munna Dongre repeatedly stabbing the Sarpanch by knife and attempting to commit his murder. It was alleged that the applicant and co-delinquents did not attempt to prevent the incident and also let Munna Dongre escape. In departmental enquiry charge against the applicant was held to be proved. A show cause notice was issued to him on 06.02.2013 proposing punishment. He submitted a reply. By order dated 19.09.2013 punishment of deduction of amount equivalent to one increment from monthly salary for a period of one year was imposed on him. In appeal, preferred by the applicant by order dated 24.04.2015 (Annexure A-2) punishment as above imposed by the Disciplinary Authority was scaled down to strict warning / censure. By order dated

28.10.2015 period of suspension of the applicant from 22.02.2007 to 25.01.2008 was directed to be treated as duty period but only for the purpose of pension under Rule 72(7) of the M.C.S. [Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal] Rules, 1981. The applicant made a representation being aggrieved thereby. Said representation was rejected by Special Inspector General, Amravati region. This was communicated to the applicant by letter dated 16.04.2016 (Annexure A-1). It is the grievance of the applicant that in view of order of strict warning / censure passed by Appellate Authority period of his suspension ought to have been treated as duty period for all purposes. Hence, this O.A.

3. Stand of respondent no.2 is that the impugned order was in conformity with Rule 72(7) of Rules of 1981 and hence no interference is warranted.

4. In his rejoinder the applicant has averred as follows. He had filed O.A.No.694/2017 in which, by order dated 11.01.2019 (Annexure R-1) Special Inspector General of Police, Amravati region was directed to pass necessary orders on the representation of the applicant dated 16.01.2016 within four weeks from the date of the order. Said authority was further directed to give an opportunity of hearing to the applicant

while passing the order. By communication dated 11.03.2019 (Annexure A-2) C.P.O. was informed by the respondent department that by order dated 28.10.2015 suspension period of the applicant was directed to be treated as duty period but only for the purpose of pension and this was communicated to the applicant and thus grievance raised by the applicant in representation dated 13.01.2016 was already considered before that. By order dated 15.01.2021 (Annexure R-3) C.P.No.42/2019 in O.A.No.694/2017 was disposed of by observing that representation of the applicant was already decided and if he was aggrieved by the decision on his representation he could file separate O.A..

These details will not have any bearing on the merits of the matter.

5. The issue is whether the impugned order is in conformity with Rule 72(7) of Rules of 1981. Rule 72(7) reads as under-

(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.

Rule 72(7) refers to Rule 72(5) which reads as under-

(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.

Rule 72(5), inter alia refers to Rule 72(3) which reads as under-

(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 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.

It is the contention of the applicant that the impugned order is not sustainable because the Appellate Authority had passed an order imposing punishment of strict warning / censure. In support of this contention reliance is placed on order dated 03.08.2020 (Annexure A-5) passed by this Tribunal in O.A.No.289/2020. In this order it is observed-

Aggrieved with the above observation, applicant approached this Tribunal. The Id. Counsel for the applicant has relied upon circular issued by Additional D.G. (Administration), Mumbai dated 28.10.2007 (Annexure-A7, P.B., Pg. No.45); where it has been clearly explained that if after suspension such minor punishment like "Censure" are given then it is difficult to regularize the suspension period as suspension period.

Relevant part of Circular dated 28.10.2007 reads as under-

असे निदर्शनास आले आहे की, काही पोलीस अधिकारी व कर्मचारी यांचे विरुद्धची कसुरी गंभीर स्वरूपाची नसतांना व प्रथमदर्शनी पुराव्यावरून प्रकरण सेवेतून काढून टाकणे अथवा बडतर्फ करण्याजोगे नसतांना सक्षम प्राधिका-यांनी त्यांना निलंबित

केलेले आहे मात्र विभागीय चौकशीमध्ये अशा कसुरदानांना " दंड " किंवा " सक्त ताकिद " अशी सौम्य स्वरूपाची शिक्षा देण्यात आली आहे. अशा प्रकरणी कसुरदार पोलीस अधिकारी व कर्मचारी यांचा निलंबन काळ नियमित करण्यास फारच अडचणी निर्माण होत आहेत. विभागीय चौकशीमध्ये " सक्त ताकिद " किंवा " दंड " अशा स्वरूपाची शिक्षा दिल्याने सहाजिकच कसुरीतील त्यांचे निलंबन महाराष्ट्र नागरी सेवा(पदग्रहण अवधी, स्वीयेत्तर सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे यांच्या काळातील प्रदाने) नियम १९८१ च्या नियम ७२(३) मधील तरतुदीनुसार समर्थनिय ठरत नाही. परिणामी, कसुरदार अधिकारी / कर्मचारी यांचा निलंबनकाळ हा सर्व प्रयोजनार्थ कर्तव्यकाळ म्हणून नियमित करावा लागतो.

The aforequoted Circular clearly shows that it ought to have been concluded that suspension of the applicant was wholly unjustified and thus, the applicant was entitled to full pay and allowances for the period of suspension subject to the provision of sub-rule (8) of Rule 72. Hence, the order.

ORDER

1. The O.A. is allowed.
2. The impugned order dated 28.10.2015 (at page 36) is quashed and set aside.
3. Period of suspension of the applicant from 22.02.2007 to 25.01.2008 shall be treated as duty period for all purposes and benefits payable by virtue of this

determination shall be released within two months from
today.

4. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 11/04/2023
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 11/04/2023.
and pronounced on