

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 970/2022(S.B.)**

Deepak S/o Ramkrishna Koli,
Aged 53 years, Occ. Service,
R/o Khamgaon Road, Sundarkhed,
Dist. Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai – 32.
- 2) The Director General of Police,
Having its Office, Near Regal Theater,
Kolaba, Mumbai.

Respondents

Shri S.P.Palshikar, Ld. Counsel for the applicant.
Shri A.M.Ghogre, Ld. P.O. for the respondents.

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

Dated: - 28th March 2023.

JUDGMENT

Judgment is reserved on 21th March, 2023.

Judgment is pronounced on 28th March, 2023.

Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri A.M.Ghogre, learned P.O. for the respondents.

2. In contemplation of initiation of departmental inquiry the applicant was placed under suspension. On conclusion of departmental inquiry, by order dated 10.04.2019 (Annexure A-1) punishment of removal from service was imposed on the applicant by respondent no.2. The applicant was holding the post of Police Inspector. In this inquiry probationer Police Sub-Inspector Vijay Chavhan and Police Constable Narendra Singh were the co-delinquents. The applicant filed appeal against the order dated 10.04.2019 before the Hon'ble Home Minister (Rural), Government of Maharashtra. The appeal was partly allowed by order dated 29.08.2019 (Annexure A-3). Punishment was reduced to reduction in pay to the basic pay of the post for three years. This order was not implemented at once. Respondent no.3 passed an order on 23.10.2020 (Annexure A-5) technically reinstating the applicant because he was placed under suspension in another case. Order dated 23.10.2020 was served on the applicant on 13.11.2020 as reflected in Annexure A-11. According to the applicant, the order passed by the Appellate Authority scaling down the punishment shall relate back to the date of imposition of punishment of removal from service i.e.

10.04.2019 (Annexure A-1) and since the delay in implementation order of the Appellate Authority is squarely attributable to the respondent department, he would be entitled to get full pay and allowances from 10.04.2019 to 13.11.2020.

3. It is the contention of the applicant that by applying principle of parity the relief prayed for by him deserves to be granted. To support these contentions the applicant has relied on the judgment passed at Principal Seat of this Tribunal in O.A.No.956/2021 on 25.8.2022 (Annexure A-15). Said O.A. was filed by one of the co-delinquents i.e. P.S.I. Vijay Chavhan. It is the contention of learned P.O. that case of P.S.I. Vijay Chavhan is distinguishable on facts.

4. While dealing with facts and submission it was observed in O.A.No.956/2021-

5. In the present case, the Appellate Authority passed order on 29.08.2019 setting aside the order of removal from service and consequent to it, the Applicant ought to have been reinstated in service within reasonable time. However, no such steps were taken. On the contrary, the D.G.P. requested the Government to reconsider its decision of setting aside the punishment of removal from service but the Government rejected it by order dated 09.03.2020. Notably by the said order, the directions were given to D.G.P. to act upon the order passed by the

Appellate Authority dated 29.08.2019 and to submit the compliance report. However, no further steps were taken by the office of D.G.P. for immediate reinstatement of the Applicant. The Applicant waited for long time and then made representation on 19.08.2020 for reinstatement in service (Page No.23 of PB). There is acknowledgment of the office of D.G.P. on the said representation. As such, the office of D.G.P. was expected to take cognizance of the said representation and to pass further order immediately or within reasonable time for reinstating the Applicant in service but here again no further steps were taken and belatedly the order for reinstatement was passed on 04.02.2021. The Applicant accordingly joined on 09.03.2021.

6. The submission advanced by learned Counsel for the Applicant that his client is entitled to full Pay and Allowances from the date of order of Appellate Authority i.e. from 19.08.2019 till 08.03.2021 is not acceptable. True, the D.G.P. was required to take necessary steps in terms of the order passed by the Appellate Authority within reasonable time but that would not ipso-facto entitle the Applicant to claim full Pay and Allowance from the date of order of Appellate Authority. One also needs to see the attempts made by the Applicant for joining. The Applicant made representation for the first time on 19.08.2020. By the said representation, the Applicant thus brought to the notice of D.G.P. that he is kept out of service for more than

one year and requested for immediate reinstatement so that he could get Pay and Allowances from the date of joining at least on receipt of representation. The D.G.P. ought to have taken necessary steps without loss of time for passing orders for reinstatement of the Applicant. However, here again there was inaction and inordinate delay on the part of D.G.P. in issuance of reinstatement order. It is thus explicit that the delay and inaction is on the part of D.G.P. for getting the Applicant reinstated in service. In such situation, the Applicant cannot be penalized by not paying Pay and Allowances for out of duty period. Where employee is kept out of duty for no fault on his part, the employer is bound to pay full Pay and Allowances.

7. The Applicant by representation dated 19.08.2020 clearly exhibited his willingness and readiness to resume the work but thereafter also no steps were taken within reasonable time. The office of D.G.P. was aware about the order of Appellate Authority. Thus, this is not a case where D.G.P. was not, aware about the order of Appellate Authority whereby the directions were given to reinstate the Applicant. In any event at least within the period of one month from the receipt of representation dated 19.08.2020, necessary orders of reinstatement of the Applicant ought to have been issued so that there should have been no loss of Pay and Allowances. In other words, at least from 19.09.2020, the Applicant ought to have been

reinstated in service since there was no fault on his part. Therefore, in my considered opinion, the Applicant is entitled to full Pay and Allowances for the period from 19.09.2020 to 08.03.2021. He was kept out of service due to sheer inaction and negligence on the part of office of the D.G.P. in getting the Applicant reinstated in service.

It is not the case of the applicant that at any point of time after the punishment was scaled down by the Appellate Authority he had made any representation for allowing him to join as was done by the co-delinquent P.S.I. Vijay Chavhan. It may be reiterated that in the case of P.S.I. Vijay Chavhan the date of representation made by him was taken to be the basis for grant of relief. The applicant did not make any such representation.

5. On 17.12.2019 the applicant submitted an application (Annexure A-8) calling upon information under the R.T.I. Act pertaining to appeal filed by him and correspondence made by the respondent department in that behalf. By communication dated 09.01.2020 (Annexure A-9) he was informed that the information sought by him could not be furnished because the proceeding to which it related was still going on. By order dated 20.10.2020 (Annexure A-10) the Appellate Authority under the R.T.I. Act held that since the proceeding was pending information

relating to the same could be supplied as and when the proceeding was concluded. Steps taken by the applicant under the R.T.I. Act cannot be perceived to be an attempt to resume duties. Therefore, ground of parity with P.S.I. Vijay Chavhan will not be available. P.S.I. Vijay Chavhan accepted order passed by the Appellate Authority. The applicant, on the other hand has filed O.A.No.418/2021 challenging orders dated 29.08.2019 and corrigendum dated 31.10.2019 passed by the Appellate Authority i.e. respondent no.1. For all these reasons the O.A. deserves to be dismissed. It is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 28/03/2023
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 : 28/03/2023.
and pronounced on