

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.273 OF 2022

DISTRICT : THANE

Shri Bhimraj Rohidas Ghadge,)
Age 56 years, Occ. Police Inspector,)
R/at 1004, A Type, B-Wing, Wadhwa Meadows,)
Bhoirwadi, Khadakpada, Kalyan (W),)
District Thane 421301)..Applicant

Versus

1. The State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai 400032)
2. The Director General of Police,)
Shahid Bhagat Singh Marg, Mumbai-1)
3. The Commissioner of Police,)
Near Kalwa Bridge, Thane 400601)..Respondents

Shri S.B. Talekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 2nd November, 2023

PRONOUNCED ON: 22nd November, 2023

J U D G M E N T

1. The applicant working as Police Inspector under Respondent no.2 challenges the communication dated 16.2.2023 whereby he was informed that period of suspension from 23.8.2015 to 28.11.2018 cannot be regularized in view of the proposed appeal to be filed against the judgment of the Sessions Court acquitting the applicant. He prays that the suspension period from 23.8.2015 to 28.11.2018 be treated as duty period for all purposes in view of the fact that the applicant was discharged from criminal case as well as the fact that charges are not proved in the Departmental Enquiry (DE).

2. The applicant submits that he was working as Police Inspector in Bazar Gate Police Station, Thane at the relevant time. By order dated 26.8.2015 he was suspended w.e.f. 23.8.2015. He filed OA No.400 of 2018 in this Tribunal challenging the suspension order dated 26.8.2015 which was disposed off by order dated 30.11.2018 as the suspension was revoked by order dated 28.11.2018. After his reinstatement the suspension period of 3 years, 3 months and 5 days i.e. from 23.8.2015 to 28.11.2018 was not treated as duty period. He made seven representations to the Director General of Police and Commissioner of Police, Thane to regularize the period of suspension as duty period. However, no reply was given to the representations.

3. The applicant is currently posted as Police Inspector in Vigilance Squad in Tribal Research and Training Institute, Thane. He filed **OA No.402 of 2022** in this Tribunal for regularizing the suspension period. The said OA was disposed off by order dated 25.11.2022 with directions to the respondents to decide the representation within six weeks. Thereafter

he filed **CA No.12 of 2023 in OA No.402 of 2022** wherein following order was passed on 3.3.2023:

“3. It is informed by Ld. PO that Commissioner of Police, Thane, who is the competent authority, has decided the representation dated 19.7.2022 of the applicant for regularization of suspension period as directed by this Tribunal by order dated 25.11.2022 and have taken decision by their order dated 9.1.2023 that suspension period of the applicant cannot be regularized until the court cases against the crime are decided.

4. Hence, the order dated 25.11.2022 of this Tribunal is complied with. Now, nothing survives in this CA and the same is disposed off.

4. After filing contempt application he was informed on 16.2.2023 about decision taken on the representation and the said order is challenged in this OA. The reason given for not treating period of suspension as duty period was because no decision was taken whether to go in appeal against the order of District Court, Kalyan. He states that neither decision has been taken to go in appeal against said acquittal nor his period has been regularized.

5. The above matter was decided by this Tribunal by its judgment and order dated 7.7.2023 and the same was dismissed. The applicant challenged the said order dated 7.7.2023 by filing W.P. No.10142 of 2023 in the Hon'ble Bombay High Court which was remanded back to the Tribunal by order dated 13.9.2023 to take a necessary decision.

6. The following offences were registered against the applicant and current status is as follows:

अ.क्र	बाजारपेठ पोलीस ठाणे गुन्हा रजि.नं.	सध्यास्थिती
१.	गु.रजि.नं. ४८/२०१५ ला.लु.प्र.का. १९८८ कलम ७,१३(१) (ड) सह १३(२) व भा.दं.वि.सं. कलम ३४ प्रमाणे	मा. न्यायालयाने दिनांक २१.११.२०२२ रोजी न्यायनिर्णयान्वये दोषमुक्त केले आहे. सदर प्रकरणी दोषारोपपत्र पाठविण्याची नव्याने परवागनी मिळणेबाबत या कार्यालयाकडील क्र.पोटाआ/वाचक/४७३/०२२ दिनांक २७.१२.२०२२ अन्वये मा. पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांना अहवाल सादर केला आहे.
२.	गु.रजि.नं.२४५/२०१५ भा.दं.वि.कलम ३८४, ३८५, ३८६ प्रमाणे	मा. न्यायालयाने दिनांक ०३.९.२०२२ रोजी न्यायनिर्णयान्वये निर्दोष मुक्तता केली आहे. अर्जदार यांचे बाजुने दिनांक ०३.०९.२०२२ रोजी दिलेल्या निकाला विरोधात बाजारपेठ पोलीस ठाण्याकडून मा. अतिरिक्त जिल्हा व सत्र न्यायालय, कल्याण येथे अपील क्र.१२७/२०२२ अन्वये दाखल असून सध्या न्यायप्रविष्ट आहे.
३.	गु.रजि.नं.२४८/२०१५ भा.दं.वि.कलम ३८५, ३८६ प्रमाणे	मा. न्यायालयाने दिनांक ०३.९.२०२२ रोजी न्यायनिर्णयान्वये निर्दोष मुक्तता केली आहे. अर्जदार यांचे बाजुने दिनांक ०३.०९.२०२२ रोजी दिलेल्या निकाला विरोधात बाजारपेठ पोलीस ठाण्याकडून मा. अतिरिक्त जिल्हा व सत्र न्यायालय, कल्याण येथे अपील क्र.२८/२०२३ अन्वये दाखल असून सध्या न्यायप्रविष्ट आहे.
४.	गु.रजि.नं.२५२/२०१५ भा.दं.वि.कलम ३८५, ३८६ प्रमाणे	मा. न्यायालयाने दिनांक २९.९.२०२२ रोजी न्यायनिर्णयान्वये निर्दोष मुक्तता केली आहे. अर्जदार यांचे बाजुने दिनांक २९.०९.२०२२ रोजी दिलेल्या निकाला विरोधात बाजारपेठ पोलीस ठाण्याकडून मा. अतिरिक्त जिल्हा व सत्र न्यायालय, कल्याण येथे अपील क्र.२७/२०२३ अन्वये दाखल असून सध्या न्यायप्रविष्ट आहे.
५.	गु.रजि.नं.१२५/२०१५ भा.दं.वि.३०७, ३४१, ५०४, ३४ भा.ह.का.क.३(१)२५ प्रमाणे	मा. न्यायालयाने दिनांक २८.९.२०२२ रोजी न्यायनिर्णयान्वये निर्दोष मुक्तता केली आहे. अर्जदार यांचे बाजुने दिनांक २८.०९.२०२२ रोजी दिलेल्या निकाला विरोधात बाजारपेठ पोलीस ठाण्याकडून मा. अतिरिक्त जिल्हा व सत्र न्यायालय, कल्याण येथे अपील क्र.३७६/२०१९ अन्वये दाखल असून सध्या न्यायप्रविष्ट आहे.

7. Ld. Advocate for the applicant states that suspension order dated 26.8.2015 was on the basis of registration of offence under the Prevention of Corruption Act and FIR No.25/2018 was filed. The applicant was reinstated on 28.11.2018 by respondent no.3.

8. Ld. Advocate for the applicant submits that in the 5 offences registered against the applicant he was either discharged or acquitted. He states that in case at Sr. No.2 DE has been initiated and enquiry officer has already submitted his report to the disciplinary authority exonerating the applicant. The report of the enquiry officer has been submitted to the Government for final decision on 12.6.2019 and is pending with the Government for 4 years. He pointed out that applicant is retiring on 31.4.2024.

9. Ld. Advocate for the applicant pointed out that refusal to regularize the suspension period between 23.8.2015 and 28.11.2018 is bad in law and the reasons for the said refusal have not been mentioned. He further pointed out that suspension of the applicant was in respect of a particular offence for which he has been discharged on 23.11.2022 and against which no appeal has been filed or is proposed. He stated that pendency of appeal in some other cases cannot be a ground for refusal to regularize suspension period. He stated that applicant has a clean record of 27 years and therefore prays for regularization.

10. He relies on the judgment of the Hon'ble Supreme Court in **Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr**, Civil Appeal No.958 of 2010 decided on 16.12.2015 regarding regularization of suspension period. He relies on the judgment of the Hon'ble Supreme Court in **Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner**,

New Delhi & Ors., (1978) 1 SCC 405. The order which is challenged cannot be improved by filing additional affidavit or otherwise.

11. Per contra Ld. PO opposes the submissions and he relied on the affidavit in reply dated 13.4.2023 filed by Surendra Jagannath Shirsat, Assistant Commissioner of Police (Admn.), Thane City on behalf of respondents no.1 & 3. He refers to Rule 72 of MCS (Joining Time, Foreign Service.....) Rules, 1981 that after reinstatement in service the period will be considered under Rule 72(3) and also Rule 72(6) define that suspension cannot be revoked pending finalization of the disciplinary or Court proceedings and any such order can be reviewed by the competent authority. He submits that the DE proceedings is kept 'dormant' by the respondent no.2 and intimated to the applicant. The final decision is pending as two criminal cases are in judicial proceedings. He also pointed out that appeal has been filed in cases at Sr. No.2 to 5.

12. I have considered the submissions of both the sides. It is seen that applicant has been exonerated in all 5 cases mentioned above. The suspension order dated 26.8.2015 is based on offence at Sr. No.1. In the said case the applicant has been exonerated. No appeal has been filed in the said case. Moreover, it is to be noted that although an appeal has been filed in cases at Sr. No.2 to 5, no stay has been granted.

13. Looking into the totality of the circumstances and the fact that applicant has been acquitted in the case on the basis of which he was suspended, I pass the following order:

ORDER

(A) The Original Application is allowed.

(B) The impugned order dated 16.2.2023 issued by the respondents is hereby quashed and set aside and the respondents are directed to regularize the period of suspension from 23.8.2015 to 28.11.2018 as duty period for all purposes and grant all the consequential service benefits. This exercise should be completed within a period of one month from today.

(C) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
22.11.2023

Dictation taken by: S.G. Jawalkar.