

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 B.R. Ghadge – Applicant-in-person

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

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 26th June, 2023

PRONOUNCED ON: 7th July, 2023

J U D G M E N T

1. Heard Shri B.R. Ghadge, Applicant-in-person and Shri A.J. Chougule, Learned Presenting Officer for the Respondents.

2. The applicant who is working as Police Inspector under Respondent no.2 is challenging 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).

Brief facts of the case:

3. 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challenging the suspension order dated 26.8.2015 which was disposed off by order dated 30.11.2018 as the suspension was revoked by order dated 28.11.2018.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.

4. 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.

5. 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.

6. He refers to the **judgment and order dated 1.2.2023 passed by this Tribunal in OA No.1294 of 2022 (S.B. Vadar Vs. The State of Maharashtra & Ors.)** wherein the matter was remitted back to the respondents to take decision. He further states that DE was initiated against him on 2.9.2015 on the basis of the report of preliminary enquiry

and DE started on 8.1.2018. The report of the enquiry officer was submitted to the Commissioner of Police, Thane on 10.5.2019. However, no further decision has been taken in the matter. He has obtained copy of report of the enquiry officer under RTI wherein it is stated that charges are not proved. He refers to the copy of noting obtained under RTI annexed to the OA at page 65-A. He refers to the findings of the enquiry officer, copy of which he obtained under RTI. He states that no further decision has been taken in the matter. He refers to para 2 & 3 of the circular dated 12.4.2008 of GAD at page 70 of OA. He also relies on the **judgment and order dated 8.10.2021 passed by this Tribunal in OA No.524 of 2020 (Shri Sanjay Sarjerao Sapkal Vs. The Commissioner of Police & Anr.)** wherein directions were given in para 6 to the competent authority to decide the nature of suspension in accordance with law within two months. He states that facts in **OA No.69/2020 decided on 11.5.2022** are similar to the present case and decision regarding the same was taken. He refers to the fact that retrospective suspension is illegal. He refers to para 5 of the **judgment and order dated 29.10.2020 passed by this Tribunal in OAs No.228/2019 & 241/2020**. He refers to para 16 & 18 of the **judgment and order dated 5.11.2015 passed by the Hon'ble High Court of Meghalaya at Shillong in W.P. (C) No.110 of 2015 The State of Meghalaya Vs. Shri MBK Reddy, IFS**. He therefore states that retrospective suspension itself was illegal and therefore should be quashed and set aside.

7. He further points out that he was not arrested and therefore he should not have been suspended. He states that no action was taken by ACB. He further states that he was not arrested and charge sheet was sent to the Court.

8. The applicant refers to Rule 72(6) of the MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules,

1981 that suspension can be revoked pending finalization of the disciplinary or court proceedings and any such order can be reviewed by the competent authority on its own motion after conclusion of the proceedings by the competent authority.

9. He relies on the **judgment and order dated 7.3.2011 passed by this Tribunal in OA No.1298 of 2010 (Innus H. Attar Vs. State of Maharashtra)** and the **judgment and order dated 8.10.2021 passed by this Tribunal in OA No.524 of 2020 (Shri Sanjay S. Sapkal & Ors. Vs. The Commissioner of Police & Anr.)**.

10. The applicant submits that the respondent no.3 without considering Rule 72(6) of MCS (Joining Time.....) Rules, 1981 rejected the representation dated 19.7.2022 by orders dated 9.1.2023 and 16.2.2023. The applicant therefore prays that the said period of suspension from 23.8.2015 to 28.11.2018 be regularized.

11. The applicant has referred to and relied on the following judgments:

(a) Judgment and order dated 11.10.2022 passed by the Hon'ble Supreme Court in Vijay Rajmohan Vs. State Represented by the Inspector of Police, CBI, ACB, Chennai, Tamil Nadu in Criminal Appeal of 2022 arising out of SLP (CRL) No.1568 of 2022.

(b) Judgment and order dated 16.12.2015 passed by the Hon'ble Supreme Court in Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr. in Civil Appeal No.958 of 2010.

(c) Judgment and order dated 5.11.2015 passed by the Hon'ble High Court of Meghalaya at Shillong in W.P. (C) No.110 of 2015 The State of Meghalaya Vs. Shri MBK Reddy, IFS.

(d) Judgment and order dated 6.6.2022 passed by Aurangabad Bench of this Tribunal in OA No.561 of 2020 Namdeo D. Pawar Vs. The Chief Conservator of Forest, Aurangabad.

(e) Judgment and order dated 22.8.2022 passed by Nagpur Bench of this Tribunal in OA No.622 of 2021 Sanjay Kumar F. Gadge Vs. The State of Maharashtra & Ors.

(f) Judgment and order dated 7.7.2021 passed by Aurangabad Bench of this Tribunal in OA No.69 of 2020 Suresh G. Tandale Vs. The State of Maharashtra & Ors.

(g) Judgment and order dated 29.10.2020 passed by this Tribunal in OAs No.228/2019 & 241/2020 Pankaj A. Rathod Vs. The District Collector, Solapur & Sandip E. Gaikwad Vs. The District Collector, Solapur respectively.

12. Per contra Ld. PO opposes the OA. He relies on the affidavit dated 13.4.2023 filed by Surendra Jagannath Shirsat, Assistant Commissioner of Police (Admin.) Thane City and refers to para 12 of the affidavit, which reads as under:

“12. With reference to paragraph nos.6.13 to 6.14, I say and submit that as per order passed by the Hon’ble Sessions Judge, Kalyan dated 21.11.2022 the procedure for filing newly amended charge sheet is going on with the administrative report to the office of Respondent no.2. The facts are informed to the applicant vide letter dated 16.2.2023 it means the applicant is aware about the pending criminal case CR No.245/2015 u/s. 384, 385 and 386 of IPC and newly amended charge sheet in CR No.48/2015 u/s. 7, 13 of ACB Act, 1988.”

13. Ld. PO states that the DE proceedings against the applicant have been kept dormant by respondent no.2 and this has been intimated to the applicant. The final decision is pending as two criminal cases are in judicial proceedings. He states that the judgment and order dated 1.2.2023 in **S.B. Vadar** (supra) is not relevant as the final decision is pending on the pendency of two criminal cases. He states that as per official record 5 criminal cases are pending against the applicant viz. CR Nos.1148/2015, 245/2015, 248/2015, 252/2015 & 125/2015 at Bazarpeth Police Station.

14. In this case prayer of the applicant is for regularization of his suspension period. In this case it is important to refer to Rule 72 (3), (4) and (6) of the MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, 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 be 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.

(4) In case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(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.”

15. As per the directions of this Tribunal in OA No.402 of 2022 filed by the applicant and decided on 25.11.2022 the OA was disposed off with directions to the respondent no.2 to take decision about the claim of the applicant for regularization of suspension period. Accordingly the respondent has issued a reasoned order on 16.2.2023 stating the reasons why the said period of suspension cannot be regularized. As per Section 72(3) of the MCS (Joining Time.....) Rules, 1981 the competent authority to order reinstatement is authorized to take a decision regarding whether the period of suspension shall be treated as a period spent on duty for all purposes. In this case the respondent has taken a decision on 16.2.2023 by passing a reasoned order.

16. The judgments relied by the Applicant relate to retrospective suspension which is not the subject-matter of this OA. The facts of the case in these judgments are different and hence these judgments are not applicable to the present case.

17. In this case I would like to refer to the judgment of the Hon'ble Supreme Court in **(1996) 3 SCC 636 Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra & Ors.** wherein it is held that:

“4. Rules 72(3), 72 (5) and 72 (7) of the Rules give a discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the

suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service he would not be entitled to the consequential, he was reinstated into service, he would not be entitled to the consequential benefits, As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc.”

18. It is seen that respondent no.2 has passed a reasoned order on 16.2.2023 rejecting the applicant's prayer for regularizing the suspension period from 23.8.2015 to 28.11.2018. In view of this and in view of the ratio laid down by the Hon'ble Supreme Court in *K.R. Bibhavnekar* (supra), the OA deserved to be dismissed.

19. I find no reason to interfere with the impugned order dated 16.2.2023, informing that the period of suspension from 23.8.2015 to 28.11.2018 cannot be regularized. Hence, OA is dismissed. No orders as to cost.

Sd/-
(Medha Gadgil)
Member (A)
7.7.2023

Dictation taken by: S.G. Jawalkar.