

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.4 OF 2020

DISTRICT : NASHIK

Shri Umesh Keshavrao Shinde,)
Age 54 years, Joint District Registrar, Class-I,)
Buldhana on being transferred from Joint Sub)
Registrar, Kalyan No.4, District Thane)
R/o Aman Apartment, Gaikwad Nagar, Behind)
Maha Marg Bus Stand, Nashik-2)..Applicant

Versus

The Inspector General of Registration and)
Controller of Stamps, Old Council Hall, Pune-1)..Respondent

Shri A.V. Bandiwadekar – Advocate for the Applicant
Smt. Archana B.K. – Presenting Officer for the Respondent

CORAM : Shri A.P. Kurhekar, Member (J)
DATE : 16th September, 2021

J U D G M E N T

1. The applicant has challenged the order dated 30.8.2018 only to the extent of denial of full pay and allowances for suspension period invoking the jurisdiction under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this OA are as under:

While applicant was serving as Joint Sub-Registrar, Thane-4 he came to be suspended by order dated 28.7.2009 in contemplation of Departmental Enquiry (DE) as well as in view of registration of crime for the offences punishable under Section 409, 420, 467, 468, 471 r/w 34 of IPC. In DE contemplated against him the punishment of withholding two increments without cumulative effect was imposed by order dated 10.5.2018. Disciplinary Authority accepted the report of Enquiry Officer holding the applicant guilty for 6 charges leveled against him.

Being aggrieved by the order of punishment the applicant has filed appeal before Government which came to be decided by order dated 20.6.2018 and appeal was partly allowed. The punishment of withholding increments was set aside but warning was given to the applicant. The said order passed by appellate authority had attained finality.

Later respondents issued show cause notice dated 18.8.2018 calling explanation of the applicant as to why his suspension period should not be treated as such and he will not be entitled for more pay and allowances than already paid to him. The applicant has submitted reply stating that the punishment is set aside in appeal and secondly in criminal case he is discharged by the Court. He therefore claimed full pay and allowances for the period of suspension undergone by him. However, respondents by impugned order dated 30.8.2018 declined full pay and allowances for the period of suspension.

3. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondent.

4. The small issue posed for consideration is whether impugned order denying full pay and allowances for the period of suspension needs any interference and the answer is in negative.

5. As stated above facts about the imposition of punishment and order of appellate authority cancelling the order of punishment is not in dispute. Appellate authority set aside the order of punishment but issued warning. This order passed by the appellate authority has admittedly attained finality. Apart there is no denying that in criminal case applicant has been discharged from charges leveled against him.

6. Now turning to the impugned order dated 30.8.2018, Ld. Advocate for the applicant has pointed out that the respondents had already treated period of suspension from 28.7.2009 to 13.12.2011 as service period but as regards full pay and allowances, respondents declined to give relief to the applicant. According to him once the period of suspension is treated as duty period there was no justification to deny the benefits of full pay and allowances for the period of suspension. He further submits that it is only in case where Government servant is responsible for delay in termination of proceedings conducted against him, in that event only there is discretion to the competent authority to curtail full pay and allowances for the period of suspension. In my considered opinion the submission advanced is misconceived and fallacious.

7. In terms of Rule 72 of MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as "Rules of 1981" for the sake of brevity) at the time of reinstatement of a Government servant in service the competent authority has to form opinion as to whether suspension was wholly unjustified or otherwise. If suspension is found wholly unjustified, then naturally a Government servant would be entitled to full pay and

allowances subject to limitation in Rules of 1981. In present case competent authority has categorically recorded finding in the impugned order that the suspension was justified. While doing so, competent authority has considered the order passed by the appellate authority whereby warning was given to the applicant. True, by the impugned order respondents had treated the period of suspension as service period, but that itself would not entitle the applicant to full pay and allowances for the period undergone in suspension particularly when suspension is held justified. As such this is not a case where suspension order held wholly unjustified where a Government servant can claim consequent service benefits. Suffice to say only because the period of suspension is treated as service period that ipso facto would not entitle the applicant to claim full pay and allowances. The test would be whether suspension is justified or otherwise. Where suspension is held justified the question of giving full pay and allowances would not arise.

8. The applicant had already received subsistence allowance during the period of suspension and he was held not entitled to additional allowances. Meaning thereby he was not held entitled to full pay and allowances as if he was exonerated in DE.

9. True, applicant has been discharged in criminal case but in DE initially punishment for withholding two increments were imposed but later in appeal it was set aside and substituted by punishment of warning. In other words there is no exoneration from the charges leveled against the applicant.

10. Reliance placed by the Ld. Advocate for the applicant on the judgment of the Hon'ble Supreme Court in **1996(1) SLR 33 The State of Punjab and Others Vs. Shambhu Nath Singla & Ors.** and the decision of the Hon'ble High Court in **Writ Petition No.2780 of 2013 State of**

Maharashtra Vs. Shri Appasaheb Rudrappa Hatti & Anr. dated 25.7.2013 is misplaced. In *Shambhu Nath Singla* (supra) the suspension was on account of criminal prosecution only in which petitioner was discharged and reinstated in service. It is in that context the Hon'ble Supreme Court held that once petitioner is discharged from criminal case he is entitled to full pay and allowances. The distinguishing feature is that in that case there was no departmental proceeding alike the present case. Therefore this decision is of no assistance to him. Whereas in *Appasaheb Rudrappa Hatti* (supra) the competent authority has recorded finding that suspension was not justified but deducted 10% of pay and allowances by granting 90% salary and other allowances. Therefore, it is in that context Hon'ble High Court held that once suspension was not justified consequently a Government servant would be entitled to full pay and allowances. Whereas in the present case it is not so since the suspension of the applicant is held justified and secondly the applicant is also subjected to punishment of strict warning by the appellate authority which has attained finality.

11. Totality of aforesaid discussion and effect of Rule 72 of the Rules of 1981 leads me to conclude that challenge to the impugned order is devoid of merit and OA is liable to be dismissed.

ORDER

Original Application is dismissed with no orders as to cost.

Sd/-

(A.P. Kurhekar)
Member (J)
16.9.2021

Dictation taken by: S.G. Jawalkar.