

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 386 OF 2021

DISTRICT:- JALGAON

Chandrashekhar S/o Reghunath Chopdar,
Age 64 years, Occ. Pensioner (Retired clerk)
R/o Adarsh Nagar, Plot No. 98-B,
Amalner, Tq. Amalner,
District Jalgaon

APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Nashik Division, Nashik,
Tq. & Dist. Nashik.
3. The Collector,
Collector office, Jalgaon,
Tq. & Dist. Jalgaon.

.. RESPONDENTS.

APPEARANCE : Shri Harish S. Bali, learned counsel for
the applicant.

: Smt. M.S. Patni, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 02.05.2023

O R D E R

Heard Shri Harish S. Bali, learned counsel for the
applicant and Smt. M.S. Patni, learned Presenting Officer for
the respondent authorities.

2. The applicant has filed the present Original Application seeking quashment of the order dated 16.8.2018 passed by respondent No. 3 i.e. the Collector, Jalgaon and the order dated 27.1.2021 passed by respondent No. 2 i.e. the Divisional Commissioner, Nashik.

3. The applicant had prayed for regularization of his suspension period from 20.7.1998 to 14.7.2006 by filing a representation dated 5.4.2018 with the Collector, Jalgaon (respondent No. 3). Respondent No. 3 vide order dated 16.8.2018 rejected the request so made by the applicant. The applicant preferred an appeal against the said order to the Divisional Commissioner, Nashik. Vide order passed on 27.1.2021 the said appeal was dismissed by Divisional Commissioner (respondent No. 2).

4. Aggrieved by the aforesaid orders the applicant has preferred the present Original Application. During the period between 1991 and 2007 the applicant was working in the Tahsil office at Amalner in the clerical cadre. He was assigned with the work of salary of the employees and Kotwals. While applicant was discharging duties of the said post it was alleged that the applicant deducted certain amounts from the pay and allowances of the employees, but did not deposit the said

amount in the respective small savings accounts of the said employees and thereby misappropriated the said amount for his personal use. Crime was, therefore, registered against the applicant vide C.R. No. 132/1998 for the offence punishable under Section 409 of IPC. The applicant was arrested and remained in the Police Custody for more than 48 hours. Respondent No. 3, therefore, vide his order dated 17.8.1998 placed him under suspension. Investigation in the offence registered against the applicant was then in progress and in due course charge-sheet came to be filed against him. However, having considered that for decision of the criminal case the delay may occur, respondent No. 1 i.e. the State passed an order on 18th October, 2000, directing reinstatement of the applicant on the post of clerk subject to outcome of the criminal case and the departmental enquiry initiated against him. In spite of the order as aforesaid respondent No. 3 did not reinstate the applicant and continued his suspension.

5. In the meanwhile, the departmental enquiry was conducted against the applicant. Charge-sheet was issued in the departmental proceedings on 14.5.2001 and enquiry officer submitted his report on 30th November, 2005. Four charges were leveled against the applicant of which only one charge

(charge No. 3) to have been proved against the applicant. Respondent No. 3 thereafter reinstated the applicant w.e.f. 15.7.2006 and posted him as Clerk in Tahsil Office Dharangaon against newly created post. The criminal case against the applicant was decided on 2.4.2014. The applicant got acquitted of the offence punishable under Section 409 of IPC. Few months thereafter i.e. on 31.7.2014 the applicant retired on attaining the age of superannuation. On 13.8.2014 the applicant submitted an application and requested the respondents to regularize his suspension period from 20.7.1998 to 16.7.2006 as duty period. He also requested the respondents to exonerate him from the charges leveled against him in the departmental enquiry.

6. On 30.3.2015 respondent No. 3 issued a show cause notice to the applicant requiring him to explain why punishment of 10% deduction from his pension for one year should not be imposed upon him. The applicant gave his reply to the said notice raising an objection that respondent No. 3 had no jurisdiction to issue such notice. Respondent No. 3 discarding the said objection passed an order on 15.6.2015 directing 10% deduction from his pension for one year. Against the said order the applicant preferred O.A. No. 122/2017 before

this Tribunal. Vide judgment and order dated 13.9.2017, the Tribunal partly allowed the said O.A., thereby setting aside the impugned order dated 15.6.2015 passed by respondent No. 3, as well as, order dated 8.2.2016 passed by the Divisional Commissioner in appeal. In the order dated 30.9.2017 this Tribunal remanded the matter back to the disciplinary authority to decide the point of imposing punishment, in view of the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 afresh by giving opportunity of hearing to the applicant. The order dated 25.6.2015 and 8.2.2016 were set aside by the Tribunal.

7. After remand of the matter, respondent No. 3 modified the punishment imposed upon the applicant. Respondent No. 3 imposed minor punishment of censure on the applicant. Request of the applicant to regularize the suspension period between 1998 to 2006 was however, not accepted and respondent No. 3 passed an order thereby holding the applicant entitled for 80% of the amount of pay and allowances which had been drawn by the applicant had he not been under suspension. The period of suspension was directed to be considered only for the purpose of pension. Aggrieved by the aforesaid order, the applicant preferred an appeal before the

Divisional Commissioner at Nashik. However, Divisional Commissioner maintained the order passed by the Collector. Aggrieved by both the aforesaid orders the applicant has preferred the present O.A.

8. Shri H.S. Bali, learned counsel appearing for the applicant submitted that the impugned orders are wholly unsustainable since are passed without considering the relevant provisions and without considering the circumstances which existed in the case of the applicant. Learned counsel submitted that in fact there was no reason for putting the applicant under suspension. Learned counsel submitted that even if it is accepted that since the applicant was behind the bar i.e. in Police Custody in the criminal case filed against him for more than 48 hours and, as such, was liable to be suspended from the duty, the respondents must have reviewed the said order periodically and must have reinstated the applicant subject to outcome of the criminal case against him within the reasonable period. Learned counsel submitted that, in fact such direction was given by respondent No. 2 for reinstatement of the applicant w.e.f. 18.10.2000, however, respondent No. 3 did not obey the said order and continued to keep the applicant under suspension. Learned counsel submitted that the statement of

charge in the departmental enquiry was served upon the applicant in 2001 i.e. after about two and half years of registration of crime against him. Learned counsel submitted that the departmental enquiry against the applicant ought to have been completed within the period of six months after the statement of charge was served upon the applicant. Learned counsel submitted that there are directions in this regard and Government Resolutions and Circulars have issued for completion of the departmental enquiry within the shortest possible period. Learned counsel submitted that the enquiry was however, continued for next 5 years and the enquiry officer submitted his report on 30.11.2005.

8. Learned counsel submitted that even after receiving the aforesaid report respondent No. 3 did not revoke the order of suspension against the applicant and it came to be revoked on 14.7.2006. Learned counsel submitted that the applicant thus remained under suspension for the period of about 8 years. Learned counsel submitted that having regard to the fact that in the criminal case the applicant was acquitted and further that in the departmental proceedings also he was exonerated from the main charges and for the proved charge the minor punishment was imposed upon him, in fact, respondents must

have regularized his entire period of suspension as the duty period and must have extended all consequential benefits flowing therefrom. Learned counsel submitted that both the authorities i.e. respondent Nos. 2 & 3 have grossly erred in not considering the request of the applicant. Learned counsel referred to and relied upon the judgment of this Tribunal in O.A. No. 235/2011. Learned counsel submitted that the identical facts existed in the aforesaid matter as are involved in the present O.A. Learned counsel in the circumstances, prayed for setting aside the impugned order and also prayed for direction against the respondents to treat the period of suspension of the applicant between 20.7.1998 and 14.7.2006 as duty period for all purposes.

10. The respondents have resisted the contentions raised in the Original Application and prayers made therein. Learned P.O. submitted that respondent No. 3 has duly considered the circumstances existed at the relevant time and has accordingly passed a reasoned order. He further submitted that in the impugned order, respondent No. 3 has assigned reasons justifying the suspension of the applicant during the aforesaid period and has passed a reasoned order holding the applicant entitled for 80% of the wages and allowances for the said period.

Learned P.O. submitted that the order passed by respondent No. 3, as well as, respondent No. 2 are just, legal and proper and require no interference. Learned P.O. in the circumstances prayed for dismissal of the O.A.

10. I have duly considered the submissions advanced on behalf of the applicant, as well as, respondents. I have also gone through the documents placed on record. The applicant was prosecuted for offence under Section 409 of the IPC, but got acquitted from it. The departmental enquiry was also initiated out of the same incident and in the departmental enquiry also the main charge leveled against the applicant that of misappropriation of the amount could not be proved. The only charge which came to be proved against the applicant was negligence in performing the duties and having considered the nature of the misconduct proved against the applicant, he has been imposed with the minor punishment of censure.

11. Considering the aforesaid two facts that in the criminal prosecution the applicant got the acquittal and departmental enquiry ended in imposition of a minor penalty against the applicant, the impugned orders apparently appear unsustainable. It cannot be ignored that the period of suspension is too long i.e. approximately of 8 years. The

respondents have in the impugned orders held the applicant entitled for the subsistence allowance at the tune of 80% of the salary and the allowances payable to him during the relevant period. It is thus, evident that for the entire said period of about 8 years i.e. 96 months the applicant is subjected to suffer loss of 20% of his salary and allowances each month. It is evident that it's huge monetary loss for the applicant that too for misconduct for which he has been given a minor punishment of censure. Respondent Nos. 2 & 3 have not given any explanation as to when respondent No. 1 had directed respondent No. 3 to reinstate the applicant vide order dated 18.10.2000, why the said order was not implemented. Respondent Nos. 2 & 3 have not explained the circumstances requiring the continuance of the suspension of the applicant in spite of the order from respondent No. 1.

13. Applicant was suspended w.e.f. 20.7.1998, however, the statement of charge came to be issued in the departmental enquiry in the year 2001, the respondents thus took inordinate period of 3 years in serving the statement of charge on the applicant. It is more serious that the enquiry was not completed within the reasonable period and took about four and half years thereafter. The report of the enquiry officer was

submitted on 30.11.2005. Ordinarily departmental enquiries are to be completed within the period of six months. Even if it is accepted that it should be completed within the reasonable period, the reasonable period also cannot be extended beyond two years. Had the applicant been reinstated perhaps the time taken in completing the enquiry would have lost its significance. When the applicant was under suspension departmental enquiry should not have been conducted in such lethargic manner that it took the period of about 7 years to complete. Moreover, in the said departmental enquiry as per the report of the enquiry officer main charges could not be proved and the only charge which has been proved against the applicant indicates some negligence on the part of the applicant. Having considered the entire facts as aforesaid, it appears to me that to deprive the applicant from his 20% monthly emoluments that too for the prolonged period of 8 years would be unjust, unfair and improper. Respondent Nos. 2 and 3 both have grossly erred in taking such view and accordingly in passing such unjust and harsh order. In fact, to reinstate the applicant in service pursuant to the order issued by respondent No. 1 on 18.10.2000 would have been the just and fair decision. The suspension of the applicant beyond the said period is unwarranted. The respondents have not come out

with any such case that the departmental proceedings were protracted by the applicant. In the circumstances, period from 19th October, 2000 onwards till the date of reinstatement of the applicant i.e. 16.7.2006 deserves to be regularized as the period on duty. The impugned order, therefore, needs to be modified to that extent. In the result, the following order is passed: -

ORDER

- (i) Order dated 16.8.2018 passed by respondent No. 3, which has been confirmed by respondent No. 2 vide his order dated 27.1.2021 is modified as under :-

“The period of suspension undergone by the applicant between 19th October, 2000 till 16th July, 2006 is directed to be regularized as the ‘period on duty’ and the applicant is held entitled for all the service benefits of the said period. Respondent Nos. 2 and 3 are directed to work out the same and to pay arrears accordingly to the applicant within the period of 3 months from the date of this order”.

- (ii) The Original Application stands allowed in the aforesaid terms.
- (iii) There shall be no order as to costs.

VICE CHAIRMAN

