

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

REVIEW APPLICATION NO.6 OF 2017

IN

O.A.NO.105 OF 2016 WITH O.A.NO.106 OF 2016 WITH O.A.NO.107 OF 2016

O.A.NO.105 OF 2016

Shri Ramdas Krishna Potle,)
General Stamps Office,)
Old Customs House, Fort,)
Mumbai 400 023.)
Address for service of notice :)
1/26, Spring Mill Chawl, G.D. Ambedkar Marg,)
Naigaum, Mumbai 400 014.) .. Applicant

VERSUS

1) The Superintendent of Stamps,)
Nagar Bhavan, Fort, Mumbai 400 023)
2) Additional Controller of Stamps,)
Mumbai, having his office at Old Customs House,)
Fort, Mumbai 400 023.)
3) Inspector General of Registration,)
And Stamp Controller, Maharashtra State,)
Pune.) ..Respondents

WITH

O.A.NO.106 OF 2016

Shri Subhash Kashinath Patil,)
General Stamps Office,)
Old Customs House, Fort,)
Mumbai 400 023.)
Address for service of notice :)
1/26, Kashinath Patil House,)
Ekser, Talaphakadi Road,)
Borivali (W), Mumbai 92) .. Applicant

VERSUS

The Superintendent of Stamps & 2 Ors.)
..Respondents

WITH**O.A.No.107 of 2016**

Shri Hemant Dhondu Sawant,)
 General Stamps Office,)
 Old Customs House, Fort, Mumbai 23.)
 Address of Service of Notice :)
 1/26, Spring Mill Chawl, G.D. Ambedkar Marg,)
 Naigaum, Mumbai 400 014) **..Applicant**

VERSUS

The Superintendent of Stamps & 2 Ors.)
..Respondents.

Shri M.D. Giri, the learned Advocate for the Applicant.

Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

DATE : 15.02.2018.

J U D G M E N T

1. Heard Shri M.D. Giri, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

2. Present Review Application is filed by applicant for seeking review of the order passed by this Tribunal in O.A.Nos.105 to 107 of 2016, dated 03.02.2017, and consequential order for recall of dismissal of the Original Applications and hearing the Original Applications in accordance with law.

3. According to the learned Advocate for the Applicant, the case proceeds in the following admitted background:-

- (a) Applicant in O.A.No.106 of 2016 was suspended by order dated 10.12.2003, in contemplation of disciplinary proceedings.
- (b) Suspension was ordered because disciplinary proceedings were contemplated and not on account of FIR or a criminal charge or due to arrest.
- (c) Applicant was exonerated from the charge by the Enquiry Officer by his findings recorded on 31.12.2005.
- (d) The matter was ordered to be enquired de-novo.
- (e) After reopening and de-novo enquiry, findings were recorded by the Enquiry Officer on 03.08.2009, holding that the charges are not proved.
- (f) After the applicant was again exonerated, no further action such as review etc. of the decision taken by the Enquiry Officer was taken by the respondents.
- (g) Suspension was withdrawn by order dated 04.09.2015 in view of the order exonerating the Applicants, and Applicants were granted all benefits except those towards regularization of period of suspension.
- (h) Now it is a matter of fact and record that in the second enquiry Applicant has been exonerated is older than 9 years.
- (i) Though the charge-sheet is filed in the criminal case, trial has not yet commenced.
- (j) In the common order dated 15.1.2007 passed by this Tribunal in OAs No.509, 527 & 537 of 2006 (Shri Hemant Dhondu Sawant & Ors. Vs. The Superintendent of Stamps, Mumbai), the then Hon'ble Chairman (Hon'ble Shri Justice A.B. Naik) ordered in para 25 as follows:

"25. The regularisation of suspension allowance shall be undertaken only after they are acquitted or exonerated from the criminal case **OR** departmental enquiry, which may be ordered by the disciplinary authority. The enquiry so directed to be completed as expeditiously as possible."

(Quoted from page 71 of OA No.107 of 2016)

- (k) While disposing OAs No.105 to 107 of 2016 by order dated 03.02.2017, by this Tribunal, the then Hon'ble Member (J) (Hon'ble Shri R.B. Malik) observed in paragraph No.4 at page 5 of the judgment as follows:-

"It is very clear therefrom that the directions were that the regularization of the Suspension Allowance would be made only after the Applicants were acquitted or exonerated whatever the case may be."

(Quoted from page 14, of the paper book of R.A.)

4. The findings of the learned Member(J) in the order dated 03.02.2017 of this Tribunal that the order for regularization of suspension has to wait until the applicant is "acquitted", is sought to be reviewed. The ground put forward for review is that the order passed in O.A.No.509 of 2006 did not comprehend or mandate the acquittal in criminal case as a condition precedent for regularization of suspension.

5. In answer to submission of learned Advocate for the Applicant, the learned P.O. has addressed that because criminal case is pending the suspension period is not regularized. It is further urged that till criminal case is pending, it is not imperative that the period of suspension must be regularized. Regularization of suspension period if at all to be done, it can be done after conclusion of criminal case.

6. Learned P.O. for the Respondents was called :-

- (a) To answer the queries as to what are grounds in existence for which suspension has to be continued, when the suspension was ordered on account of disciplinary proceedings being in contemplation and despite the fact that admittedly disciplinary enquiry has been closed by exonerating the delinquent, and was not ordered due to arrest or filing of FIR.
- (b) To read the order passed by this Tribunal quoted in clause (h) of paragraph 3 foregoing from the copy of judgment and state as to whether it is possible to argue that this Tribunal has recorded a finding or order that suspension cannot be revoked or set aside particularly in the background that suspension was not ordered because of lodgment of FIR / criminal case, and until criminal case is concluded.

7. Learned P.O. for the Respondents has reiterated the submission recorded in foregoing paragraph No.5, but did not answer or address on specific queries.
8. The relevant text contained in paragraph which is un-numbered, paragraph 4 of the suspension order dated 10.12.2013 reads as follows:-
- “उपरोक्त परिस्थितीतील निम्नस्वाक्षरी व्यक्ती महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या नियम ४ च्या पोट-नियम (एक) अन्वये प्रदान केलेल्या शक्तीचा वापर करून याद्वारे उक्त श्री. हेमंत दगडू सावंत (पर्यपेक्षक) यांना या आदेशाच्या दिनांकापासून तात्काळ निलंबित करित आहेत.”
- (Quoted from page 15 of paper book of O.A.)
9. In the background that it is nobody's case that applicant was suspended due to filing of FIR or due to the prosecution, continuation of suspension or refusal to revoke suspension on account of pendency of criminal case is totally unjustified.
10. After considering facts recorded hereinbefore and the submissions of both sides, it is evident and conclusive that applicant's suspension was ordered barely due to contemplated disciplinary proceedings.
11. Moreover, the belief that the suspension cannot be revoked or set aside because of the observations contained in the judgment of this Tribunal quoted in foregoing paragraph 4(j) is based upon lack of advertence to the word “OR” appearing in the said order, text whereof is quoted in Clause (j) of paragraph 4 hereinbefore which is also seen at paragraph 71 of paper book of O.A.No.107 of 2016..
12. Once the disciplinary proceedings are concluded and applicant is exonerated, there is no legal impediment in regularizing the period of suspension rather there is no power under law to continue the suspension or to refuse to regularize the period of suspension.
13. Moreover, in any eventuality a belated decision to treat period of suspension as “suspension” ought not be taken.

14. Hence, Applicant has become successful in demonstrating that there is an error apparent on the face of record in the judgment delivered by this Tribunal while dismissing the applicant's Original Application No.107 of 2016, by the judgment and order dated 03.02.2017. In the result order dated 03.02.2017 passed in O.A.No.107 of 2016 is hereby recalled.

15. This Tribunal had dismissed OAs No.105 and 106 of 2016 for the same reasons which is quoted in paragraph 4(f). Unfortunately, for those applicants (O.A.No.105/16 Shri Ramdas Krishna Potle and O.A.No.106/16 Shri Subhash Kashinath Patil) a review has not been filed.

16. This Tribunal cannot over look the fact that before filing of those Original Applications their request for discharge was already granted by the Learned Sessions Judge and such order of discharge is not shown to have been altered or set aside.

17. In this background since the order dated 3.2.2017 passed in O.A.No.107 of 2016 is being set aside, this Tribunal considers it necessary to suo motu recalls the order dated 3.2.2017 passed in Original Application Nos.105 to 107 of 2016.

18. Learned P.O. for the Respondents was called to address as to factual aspect narrated in foregoing paragraph No.16. Learned P.O. concedes that those are the facts, though opposes the review in absence of application.

19. The Applicants in O.A.Nos.105 & 106/2016 have been met with grave injustice while dismissing their Original Applications and error which has resulted in the injustice is ex facie manifest. Such grave injustice ought never be perpetuated.

20. Hence, the common order under review deserves to be called and all three Original Applications deserve to be allowed with further direction to treat the period of suspension as period spent on duty with all consequences. Hence following order is passed.

21.

ORDER

- (A) Review Application is allowed. Order passed in O.A.Nos.105, 106 & 107 of 2016 passed on 03.02.2017 dismissing Original Applications is recalled.
- (B) All three Original Applications No.105, 106 and 107 of 2016 are partly allowed. The respondents are directed to regularize the period of suspension by treating it as duty period carrying full salary and allowances admissible in law and continuity of service etc.
- (C) Prayers which are not dealt with and adjudicated are kept open.
- (D) In the circumstances the parties are directed to bear their own costs.

**Sd/-
(A.H. Joshi, J.)
Chairman**

prk