

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.763 OF 2024

**DISTRICT : SOLAPUR
SUB : Pay & Allowances**

Mr. Sanjay Dharma Jadhav)
Age: 50 years (DOB: 08.05.1972),)
Occ.: Working as ASI at Karmala)
Police Station], Dist: Solapur)
R/at: Shivneri Nagar-Part No. 2,)
Behind Laxmi Nagar, Balegaon,)
Tal. North Solapur, Dist: Solapur.).....Applicant

VERSUS

1. The State of Maharashtra, Through the)
Secretary, Home Department,)
Mantralaya Mumbai.)
2. The Director General of Police, M.S.,)
Colaba, Mumbai.)
3. The Special Inspector General of Police,)
Kolhapur Range, Kolhapur.
4. The Superintendent of Police, Solapur)
Solapur Rural, Dist: Solapur.)... Respondents

Shri K. R. Jagdale, learned Advocate for the Applicant.
Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Hon'ble Vice-Chairman

Reserved on : 20.01.2025

Pronounced on : 22.01.2025

JUDGEMENT

Heard Shri K. R. Jagdale, learned Advocate for the Applicant and
Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. The Applicant was appointed as 'Police Constable' on 20.03.1993. When he was attached to Mohol Police Station, he was served with a charge-sheet by which departmental enquiry commenced against him. By order dated 15.10.2012, punishment of removal from service was imposed on him by the Disciplinary Authority i.e. Respondent No.4. In appeal, the Respondent No.3 modified the punishment and imposed punishment of compulsory retirement by order dated 20.03.2013. The Applicant then filed revision against the order dated 20.03.2013 before the Respondent No.2 who rejected it by order dated 04.03.2014. Thereafter, the Applicant preferred an application as per Rule 18 of the Bombay Police (Punishment and Appeal) Rules 1956 before the Respondent No.1 on 04.03.2014. By order dated 16.12.2015, the Respondent No.1 scaled down the punishment as follows :-

“यावास्तव अपिलार्थी श्री. संजय धर्मा जाधव, पोलिस नाईक यांना विशेष पोलिस महानिरीक्षक, कोल्हापुर परिक्षेत्र, कोल्हापुर यांनी अपिलामध्ये दिलेली “ सक्तीने सेवानिवृत्त ” ही शिक्षा रद्द करून त्याऐवजी “ पोलिस शिपाई पदाच्या मुळ वेतनावर २ वर्षे ठेवणे ” ही शिक्षा देण्याचा निर्णय मा. राज्यमंत्री गृह (ग्रामीण) पठा अपिलीय प्राधिकारी यांनी दिला आहे.

उपरोक्त अपिलार्थी यांना ज्या पारखेपासून 'सक्तीने सेवानिवृत्त' करण्यात आले. त्या दिनांकापासून त्यांना सेवेत पुनःस्थापित: करण्यात येईपर्यंतच्या त्यांचा सेवाबाहय कालावधी कसा समजण्यात यावा. याबाबत स्वतंत्र आदेश काढण्यात येईल. पथापि या संदर्भातील विनंती अर्ज अपिलार्थीने ते सेवेत पुनःस्थापित झाल्यानंतर विहीत मार्गाने एक महिन्यात शासनास सादर करणे आवश्यक आहे.”

3. Thereafter on 05.12.2022, the impugned order was passed, the 'Operative Part' of which reads as under:-

“ अ) पोना/१३५/ संजय धर्मा जाधव हे सेवाबाहय कालावधीकरीता सेवेत असताना जेवढे वेतन व भत्ते मिळण्यास हकदार झाले असत त्याच्या ५० टक्के वेतन व भत्ते त्यांना देण्यात यावे. मात्र याबाबतची थकबाकी ते ज्या पारखेला पुनःस्थापित झाले त्या पारखेच्या लगतच्या तीन वर्षांपुरतीच राहिल.

ब) पोना/१३५/ संजय धर्मा जाधव यांचा सेवाबाहय कालावधी उपरोक्त (अ) पसेच सेवानिवृत्ती वेतनाच्या प्रयोजनाव्यतिरिक्त अन्य कोणत्याही प्रयोजनार्थ कर्तव्यकाळ म्हणून न गणता सेवाबाहय कालावधी म्हणून गणण्यात यावा.”

Hence, this Original Application.

4. Stand of the Respondent No.4 is that the impugned order cannot be said to be suffering from any infirmity because though ultimately punishment imposed on the Applicant was considerably scaled-down, he was not exonerated and the charge laid against him was held to be proved.

5. Attention of the Tribunal was invited to order dated 16.12.2015 in which it was observed by the Reviewing Authority that there was no inherent motive which could be attached to conduct of the Applicant i.e. leaving for Pune without obtaining permission from his Superiors. This observation will not in any way help the Applicant because as observed earlier, he was not exonerated and his guilt for the charge was held to be established.

6. It was further argued by Advocate Shri K. R. Jagdale that ultimately, minor punishment came to be imposed on the Applicant and hence, the period of his suspension as well as out of service period ought to have been treated as duty period entitling him to full pay and allowances. In support of this submission, reliance is placed on **S.P. Naik V/s Board of Trustees, Mormugao Port Trust and another (1999) 4 BomCR 531**. In this case, the Hon'ble Bombay High Court had considered Mormugao Port Employees (Classification, Control and Appeal) Regulations, 1964. In the instant case, Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 will be relevant. The said Rule reads as under:-

“70. Regularisation of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside as a result of appeal or review and such Government servant is re-instated.”-(1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instate- ment shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of 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, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may be determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2), (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held the Government servant shall, subject to the provisions of sub-rules (6) and (7) be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice:

Provided that any payment under this sub-rule to a Government servant (other than a Government servant who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936)) shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority, or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a

period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

Note- The order of competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

(a) extraordinary leave in excess of three months in the case of a temporary Government servant; and

(b) leave of any kind in excess of five years in the case of a permanent Government servant.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 68.

(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the pay and allowances admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant."

7. Sub-rule (2) of Rule 70 of 'Rules of the 1981' takes into account the contingency wherein the employee is exonerated. This Rule, under such circumstances, provides for payment of full pay and allowances for the relevant period. Sub-rule (4) of Rule 70 of the 'Rules of the 1981' takes into account, contingencies which are not covered by sub-rule (2). This sub-rule states that the decision as to how out of service period is to be treated is to be taken by the Competent Authority.

In the instant case, while passing the impugned order, this discretion was exercised. There is nothing to conclude that said exercise was erroneous. In any case, having regard to narrow scope of powers of judicial review, I have come to the conclusion that the impugned order does not call for interference.

8. The Applicant has also relied on ***Brahma Chandra Gupta V/s Union of India, AIR 1984 SC 380***. This was a case in which the Applicant was initially acquitted and thereafter reinstated. His suspension was not held to be wholly justified. On facts, it was held that full amount of salary should have been paid to the Applicant on his reinstatement for the entire period. These facts are clearly distinguishable.

9. On the other hand, the Respondents have relied on ***Shankar Lal Soni (died) through LR's v/s The State of Chhattisgarh, through the Secretary, Department of Food & Civil Supplies & Ors., (2021) 0 Supreme (Chh) 272***. In this case, the petitioner was suspended on account of registration of a criminal case for offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. This was a case in which Rule 54 of Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 was considered. As discussed earlier, the instant case would be governed by Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981. A conjoint consideration of sub-rules(2) and (4) of Rule 70 of 'Rules of 1981' clearly leads to the conclusion that the impugned order does not suffer from any infirmity.

10. In the result, the Original Application is dismissed with no order as to costs.

Sd/-

**(M. A. Lovekar)
Vice-Chairman**

