

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.690 OF 2024

DISTRICT : Thane

Sub.:- Suspension Period

Shri Sachin Bhaskar Patil.)
Age : 35 Yrs, Occu.: Police Constable at)
Thane Rural, R/at : At Sontakke,)
Post : Angaon, Tal.: Bhiwandi,)
District : Thane.)...**Applicant**

Versus

1. The Joint Commissioner of Police,)
Navi Mumbai, CBD Belapur,)
Sector 10, Opp. Reserve Bank,)
Navi Mumbai – 400 614.)
2. The Deputy Commissioner of Police)
Navi Mumbai, CBD Belapur,)
Sector 10, Opp. Reserve Bank,)
Navi Mumbai – 400 614.)...**Respondents**

Shri K.R. Jagdale, Advocate for Applicant.

Shri D.R. Patil, Presenting Officer for Respondents.

CORAM : Shri M.A. Lovekar, Vice-Chairman

DATE : 12.03.2025

JUDGMENT

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri D.R. Patil, learned Presenting Officer for the Respondents.

2. Undisputed facts are as follows. On 27.05.2013, when the Applicant was attached to Police Headquarters, Navi Mumbai, Crime No.93/2013 was registered against him at Shahapur Police Station, District Thane under Sections 420 and 406 of Indian Penal Code. On 29.05.2013, Crime No.252/2013 was registered against him at Kalwa Police Station under Sections 420 and 376 of IPC. He was arrested on 29.05.2013. By order dated 04.06.2013, he was placed under suspension w.e.f. 29.05.2013. Departmental Enquiry was initiated against him. The Enquiry Officer held the charges against him to be proved and proposed punishment of dismissal from service. Criminal Case arising out of Crime No.252/2013 registered at Kalwa Police Station ended in acquittal on 17.03.2017. By order dated 29.05.2019, the Disciplinary Authority imposed the punishment of withholding of one increment without cumulative effect, on the Applicant by referring *inter-alia* to order of acquittal dated 17.03.2017. The Criminal Case arising out of Crime No.93/2013 registered at Shahapur Police Station also ended in acquittal by Judgment dated 18.01.2023. These orders of acquittal attained finality for want of challenge. In the meantime, by order dated 06.03.2017, the Applicant was reinstated. On 27.04.2023, a Show Cause Notice was issued to the Applicant as to why period of his suspension from 29.05.2013 to 06.03.2017 be not treated 'As such'. The Applicant submitted his Reply dated 12.05.2023 to the Show Cause Notice. Thereafter, by the impugned order dated 07.07.2023, period of suspension of the Applicant was directed to be treated 'As such'. Hence, this Original Application.

3. Stand of the Respondents' is that while passing the impugned order, discretion vested in the Authority under Rule 72 of 'The Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981' was properly exercised regard being had to all the attendant circumstances.

4. It is undisputed fact that the order of suspension of the Applicant was passed on account of registration of crimes against him, in both the Criminal Cases, the Applicant was acquitted and for want of challenge, these orders of acquittal have attained finality. In the Departmental Enquiry, punishment of withholding of one increment without cumulative effect was imposed on the Applicant and the Applicant has undergone the same.

5. According to Advocate Shri K.R. Jagdale, minor punishment was imposed on the Applicant which he has undergone and hence, treating the period of his suspension 'As such' would amount to imposing one more punishment. On the other hand, contention of the learned PO is that the punishment imposed on the Applicant was a major punishment. The punishment in question was imposed as per Rule 3(2)(v) of the Bombay Police (Punishments and Appeals) Rules, 1956. Under the 'Rules of 1956', unlike Rule 5 of the MCS (Discipline & Appeals) Rules, 1979, the punishments are not classified, as 'Minor' and 'Major'. The Applicant has relied on the following Judgments of this Tribunal.

- (i) Judgment dated 20.02.2024 in OA No.543/2022 (Mr. Manohar V. Pate Vs. State of Maharashtra & Anr.);
- (ii) Judgment dated 15.04.2024 in OA No.75/2021 (Deepak H. Medakkar Vs. State of Maharashtra & 2 Ors.) (Nagpur Bench);
- (iii) Judgment dated 30.04.2019 in OA No.886/2017 (Suresh H. Sakharwade Vs. State of Maharashtra)(Nagpur Bench);
- (iv) Judgment dated 02.01.2023 in OA No.795/2021 (Smt. Kamal U. Nirbhavane Vs. State of Maharashtra) (Principal Bench);
- (v) Judgment dated 16.07.2019 in OA No.769/2017 (Shaikh R.S. Munir Vs. State of Maharashtra)(Principal Bench)

Aforesaid Judgments at Serial Nos.(i) to (iii) are clearly distinguishable on facts. In the Judgment at Serial No.4 also, the Tribunal, on facts, found that suspension of the Applicant was wholly unjustified and hence, period of his suspension was to be treated as 'duty period'. In Judgment at Serial No.5, it was held on facts that after order of reinstatement of the Applicant was passed, it should have been implemented promptly which the Respondents did not do. In these facts, it was held.-

"In fact, it was the Respondent's duty to implement the order dated 28.08.2009 and to reinstate the Applicant within reasonable time in which it failed. This shows the callousness and lethargy on the part of concerned for which the Applicant cannot be penalized by treating the entire period as 'no duty period'. The period of no duty was extended due to sheer, negligence and apathy on the part of Competent Authority. In any case, once the order of reinstatement is passed in appeal on 28.08.2009, it ought to have been implemented within reasonable time and at any rate, the period of one month would have been a reasonable period for issuance of formal orders of reinstatement in service. This being the position, the impugned order to treat entire period from 15.02.2008 to 02.06.2010 as 'no duty period' in its entirety is not sustainable. The Applicant ought to have been reinstated upto 28.09.2009 i.e. within one month from order passed by Appellate Authority on 28.08.2009. In the result, at the most, no duty period could have been restricted to 15.02.2008 to 28.09.2009. To this extent, the said order needs to be interfered with."

6. The Respondents, on the other hand, have relied on the Judgment of this Tribunal dated 16.09.2021 in OA No.04/2020 (Umesh K. Shinde Vs. Inspector General of Registration & Controller of Stamps)(Principal Bench). In this case, it is held that the test would be whether the suspension was 'wholly unjustified'. On facts, it was found that the suspension could not be said to be 'wholly unjustified' as punishment of warning was ultimately imposed on the Applicant. In Vasant K. Kamble Vs. State of Maharashtra & Anr. : [2003 (4) Mh.L.J. 606]; the Hon'ble Bombay High Court has held.-

"What was required to be seen was whether in the opinion of the competent authority, the action of suspension of the petitioner was 'wholly unjustified'. In other words, a negative test has to be applied for holding the person to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty."

7. In the impugned order it was stated that since punishment of withholding of one increment without cumulative effect was imposed, suspension of the Applicant could be said to be justified. Thus, a conclusion was arrived at that suspension of the Applicant could not be said to be 'wholly unjustified'. This finding does not suffer from any infirmity. It may be observed that the 2nd Criminal Case against the Applicant ended in acquittal only on 18.01.2023.

8. For the reasons discussed hereinabove, the OA deserves to be dismissed. It is accordingly dismissed with no order as to costs.

Sd/-
(M.A. Lovekar)
Vice-Chairman

Mumbai
Date : 12.03.2025
Dictation taken by :
S.K. Wamanse.

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