

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 898 OF 2023

DISTRICT : JALNA

Madhukar S/o Laxman Dodake,)
Age : 65 years, Occup : Retired,)
(As Sectional Engineer))
R/o. Hou. No. 48, Mahada Colony, Old Jalna)
Tq. & Dist. Jalna.)

.... **APPLICANT**

V E R S U S

01. **The Divisional Commissioner,**)
Aurangabad Division, Aurangabad,)
Delhi Gate, Aurangabad, Pin-431001.)

02. **The Executive Engineer,**)
Irrigation Division Jalna, Near Moti Bag)
Talav, Old Jalna, Tq. & Dist. Jalna.)

... RESPONDENTS

APPEARANCE : Shri K.G. Salunke, Counsel for the Applicant.

: Smt. Resha Deshmukh, Presenting Officer for
respondent authorities.

: Shri Ajinkya Reddy, learned counsel for
respondent No. 2.

CORAM : **Shri Ashutosh N. Karmarkar, Member (J)**

RESERVED ON : **17.02.2025**

PRONOUNCED ON : **02.05.2025**

O R D E R

1. By filing the present Original Application, this applicant has prayed for quashing and setting aside impugned order dated 10.04.2023 issued by respondent No. 1 and also

prayed for directions to the respondent authorities to regularize the suspension period of the applicant from 10.03.2015 to 27.12.2016 and to hold him eligible for all pay and allowances including all service benefits, difference of pay, arrears towards suspension period etc.

2. Initially the applicant was appointed on 22.04.1983 as Junior Engineer. He was promoted as Sectional Engineer in the year 1988. In the year 2004, he was working at Ghansavangi, Tq. Ghansavangi, Dist. Jalna till 2009. The applicant was placed under suspension vide order dated 10.03.2015 alleging that there are some irregularities in the work of construction of percolation tank at Devgaon Tanda, Tq. Ghansavangi, Dist. Jalna. No Departmental Enquiry was initiated. After the period of three months was over, the applicant has filed representation for reinstatement. It was considered and the applicant was reinstated vide order dated 27.12.2016. The applicant was superannuated on 31.03.2017. At that time he was working at Tembhorni, Tq. and Dist. Jalna under Irrigation Sub-Division Jalna. Prior to retirement, the applicant has moved application dated 07.02.2017 for grant of increments, arrears towards period of suspension and other monetary benefits. The respondent No. 2 has sought opinion

from the office of Superintending Engineer, CADA, Aurangabad on 12.04.2017 on that issue. The applicant made several representations for getting pensionary benefits and regularization of suspension period. The respondent No. 2 has not forwarded the pension proposal of the applicant to Accountant General, Nagpur.

3. Respondent No. 1 vide letter dated 04.02.2021 has served copy of charge-sheet dated 09.01.2021 on the applicant. Respondent No. 1 was to conduct enquiry in respect of work held in the year 2014. The applicant has filed his reply to the charge sheet on 12.02.2021. The respondent No. 1 has not proceeded with Departmental Enquiry. So the applicant filed O.A. No. 338/2021 before this Tribunal. The said O.A. was allowed on 14.06.2022 and this Tribunal was pleased to quash and set aside impugned letter dated 04.02.2021 and charge sheet dated 09.01.2021 with direction to process pension papers immediately. The applicant has served copy of that judgment to all higher authorities on 29.07.2022 and requested to pay pensionary benefits. Respondent No. 1 while issuing order dated 08.09.2022 closed the Departmental Enquiry. On that basis the applicant has moved one application with request to regularize the suspension period and for getting pay and allowances. The

respondent No. 1 issued show cause notice dated 20.12.2022 to the applicant, thereby calling explanation as to why the suspension period of the applicant should only be regularized for the purpose of retirement and only subsistence allowances paid to the applicant shall be held sufficient. The said action was proposed under Rule 72 (5) and 72(7) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal), Rules 1981 (for short 'The Rules of 1981'). The applicant has filed reply to it on 15.02.2023.

Since respondent No. 1 and other respondents were not following the directions of the Tribunal, the applicant sent notice through Advocate on 13.04.2023. The respondent No. 1 passed impugned order dated 10.04.2023 whereby the suspension period of the applicant was regularized only for the purpose of retirement and it is not treated for entitlement to get other monetary benefits. Though the applicant has replied to show cause notice, it is mentioned that the applicant has failed to file reply to the show cause notice. It is also mentioned that the applicant is not exonerated on merits in Departmental Enquiry and as such the suspension is justifiable. The respondent No. 1 has failed to observe as to why the provisions of Rule 72(5) and 72(7) of the Rules of 1981 are applicable. So the

impugned order for not holding the applicant entitled for monetary benefits is illegal. Thus the applicant has prayed to allow the present Original Application.

4. Respondent No. 1 has filed his affidavit in reply (page No. 72 of paper book). According to him, the applicant is working as Sectional Engineer in Minor Irrigation Local Sector, Sub-Division, Ghansavangi, Dist. Jalna. He was held responsible for doing improper work and misappropriation of Rs. 8,46,213/- in the work of Percolation Tank in village Devgaon Tanda No. 2 Taluka Ghansavangi, Dist. Jalna. He was suspended by Divisional Commissioner on 10.03.2015. FIR No. 520/2013 was filed against the applicant on 29.11.2013 at Kadim Jalna Police Station. The applicant was reinstated in service on 27.12.2016. As per the direction of Planning Department, Mantralaya Mumbai dated 01.10.2020, the Departmental Enquiry was initiated against the applicant. The Departmental Enquiry was closed as per the order of this Tribunal dated 14.06.2022. The suspension period is regularized for retirement purpose. It is held that subsistence allowances paid to the applicant during that period is sufficient in view of Rule 72(5) and 72 (7) of the Rules of 1981. The suspension of the applicant was due to misappropriation. His Departmental Enquiry was not closed on

merits. The decision pertaining to FIR No. 520/2013 is still pending. Thus the respondent No. 1 has prayed to dismiss the present Original Application.

5. Respondent No. 2 has filed his affidavit in reply (page No. 82 of paper book). According to him F.I.R. No. 520/2013 was also filed against the applicant on 29.11.2013 at Kadim Jalna Police Station and it is still pending. So the applicant is not entitled for pensionary benefits. According to him, the applicant is suppressing this fact. The applicant has not made any submission regarding pendency of this proceeding. The applicant is given provisional pension. The applicant has withdrawn GPF amount and amount towards GIS. The applicant was reinstated on 27.12.2016 on condition of conducting Departmental Enquiry as permitted by Planning department. This respondent was not party respondent to O.A. No. 338/2021. Departmental Enquiry against the applicant was not closed on merits. So he is not entitled for reliefs as claimed in the present Original Application.

6. I have heard Shri K.G. Salunke, learned counsel for the applicant, Smt. Resha Deshmukh, learned Presenting Officer for the respondents and Shri Ajinkya Reddy, learned counsel for

respondent No. 2. All the parties have submitted as per their respective contentions.

7. Learned counsel for the applicant has submitted that after passing of judgment in O.A. No. 338/2021, the applicant has forwarded letter dated 29.07.2022 requested to pass order pertaining to pension and other pensionary benefits. The respondent No. 1 has closed Departmental Enquiry on the basis of judgment delivered by this Tribunal in O.A. No. 338/2021. The applicant has forwarded application for regularization of his suspension period. Rather than to regularize the suspension period of the applicant, the respondents have issued notice dated 20.12.2022 and the applicant was called upon to explain as to why the suspension period should not be considered only for the purpose of pensionary benefits. He was also called upon as to why the said suspension period should not be restricted only for the purpose of payment towards subsistence allowances. It is submitted that though the explanation was given by the applicant, the impugned order passed mentioning that the applicant is not exonerated on merits and on the other ground that no reply was filed by the applicant to the show cause notice. Actually, reply to show cause notice was filed by the applicant. According to learned counsel for the applicant, since

Departmental Enquiry was quashed by this Tribunal, the applicant cannot be said to be responsible. In support of his submission, learned counsel for the applicant has relied on the decision of Hon'ble High Court of Karnataka at Bengaluru in a case of **Chairman, Central Board of Direct Taxes, New Delhi & Ors. Vs. Smt. K. Chandrika in W.P. No. 4730/2022 (S-CAT)**.

On the other hand, learned Presenting Officer has submitted that as one FIR was pending against the applicant, the suspension period of the applicant was not regularized. According to learned P.O., if the competent authority is of the opinion that suspension is to be wholly unjustified, then the applicant can be said to be entitled for full pay and allowances. She has relied on the decision of Hon'ble Supreme Court in a case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and Ors., AIR 1997 Supreme Court 1434**.

Learned counsel for respondent No. 2 has submitted that he has made party, as order at page No. 44 is not complied with. In support of his submissions, learned counsel for respondent No. 2 has placed reliance on the decision of this Tribunal in **O.A. No. 237/2021 (Shri Kakasaheb Keshavrao Thote Vs. The State of Maharashtra & Ors.)** and the decision of Hon'ble High Court of Bombay Bench at Aurangabad in a case of **Vitthal**

Mahadeorao Pachghare Vs. Additional Commissioner, Amravati Division, Amravati and Anr., AIR Online 2018 Bom 1412.

8. It is undisputed fact that the applicant was posted at Ghansavangi, Tq. Ghansavangi, Dist. Jalna from 2004 to 2009. Admittedly, the applicant was placed under suspension vide order dated 10.03.2015. It is also admitted that the applicant was reinstated as per order dated 27.12.2016. It is also admitted that the applicant was superannuated on 31.03.2017. The respondents have not specifically disputed that the charge-sheet dated 09.01.2021 issued to the applicant and it was served on 04.02.2021. It is also not specifically denied that the applicant has given reply to the charge-sheet dated 09.01.2021. It is also admitted fact that the applicant filed O.A. No. 338/2021 challenging the letter dated 04.02.2021 regarding service of charge-sheet. Admittedly, the said O.A. was allowed and this Tribunal was pleased to quash and set aside the covering letter dated 04.02.2021 of the respondents thereby Departmental Enquiry was initiated against the applicant and statement of charge dated 09.01.2021 was issued in that regard.

9. On the basis of rival contentions of the parties, it is to be seen as to whether the contention in the impugned order that

the suspension of the applicant is justifiable, as the applicant is not exonerated on merit, is just, proper and legal? It is also to be seen as to whether the another reason of failure to file reply by the applicant in impugned order disentitling the applicant for pay and allowances during the suspension period was just, proper and legal?

10. The applicant has placed on record a copy of letter dated 29.07.2022 (page No. 45 of paper book) by which he has informed the Soil and Water Conservation Department, Maharashtra State, Mantralaya, Mumbai that Departmental Enquiry, which was initiated against him, is quashed. He has prayed for taking necessary steps for making available regular pension and other pay and allowances. The applicant has also filed another letter dated 22.08.2022 issued by the Desk Officer, Maharashtra State to the Regional Water Conservation Officer, Aurangabad for taking steps of making available retiral benefits to the applicant. It appears from the order passed by the Divisional Commissioner, Aurangabad dated 08.09.2022 that in view of the judgment of this Tribunal in O.A. No. 338/2021, Departmental Enquiry initiated against the applicant has been closed. It also appears from the documents on record that the applicant has submitted applications to the respondents for

making available regular pension and other monetary benefits. In spite of letter of the Desk Officer for taking steps regarding monetary benefits on the basis of judgment of this Tribunal in O.A. No. 338/2021, the applicant was called upon vide notice dated 20.12.2022 to explain as to why his suspension period from 10.03.2015 to 27.12.2016 should not be treated only for the purpose of pensionable service. Secondly, he was called upon to explain as to why the said period should not be restricted only for the purpose of payment of subsistence allowances.

It has to be noted that respondent No. 1 has mentioned in this show cause notice that the applicant is not exonerated on merit and his suspension is justifiable. For that purpose learned Presenting Officer has referred Rule 72(3) of the Rules of 1981. But the respondent No. 1 has not mentioned in the order of reinstatement of the applicant dated 27.12.2016 that the suspension was justifiable. It appears that the applicant was reinstated in pending enquiry. Even for more than three years after superannuation of the applicant no charge-sheet in Departmental Enquiry was served on the applicant. After service of charge-sheet in February 2021, the present applicant has filed O.A. No. 338/2021 for quashing and setting aside Departmental Enquiry and it was allowed by this Tribunal on 14.06.2022. It is

necessary to reproduce observations of this Tribunal in the said O.A. No. 338/2021 particularly in para No. 13, which is as under:-

“13. In the present case also the applicant was suspended on 10.3.2015, however, the memorandum of charge was not served upon him till the date of his retirement and it came to be served upon him after about 03 years of his retirement. In the present case also the memorandum of charge is in respect of the misconduct allegedly committed by the applicant during the period from 10.6.2004 to 31.12.2009. The misconduct is admittedly of the period 04 years before serving of memorandum of charge against him. It is further evident that the charge is not in respect of or with an intention or for the purpose of imposing any reduction in the retiral benefits payable to the applicant. In the circumstances, the departmental enquiry initiated against the applicant and the memorandum of charge served upon him after his retirement alleging misconduct pertaining to the event which took place more than four years before, are liable to be quashed and set aside.”

This Tribunal has also referred Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 while deciding the O.A. No. 338/2021. It is settled that the Departmental Enquiry is initiated by serving charge-sheet on the delinquent. It is apparent from the discussion in the judgment in O.A. No. 338/2021 that memorandum of charge sheet was served upon the applicant after his retirement pertaining to events took place before more than 04 years. The said order in O.A. No. 338/2021 came to be passed after hearing both the sides. It is not the case of respondents that they have challenged the said order. So the contentions of the respondents in the impugned letter that the

applicant was not exonerated on merit, are irrelevant and improper. Respondents should have taken steps for regularization of suspension period of applicant for the reasons stated in foregoing paragraphs.

11. The respondent No. 1 has also mentioned in the impugned order dated 10.04.2023 that the suspension period of the applicant was regularized only for the purpose of retiral benefits and it was restricted to the extent of payment of subsistence allowances and permissible pay. The respondent No. 1 has given reason for passing such order that the applicant has not filed his explanation to the show cause notice dated 20.12.2022. Learned counsel for the applicant has invited my attention to the explanation dated 15.02.2023 (page No. 54 of paper book), which was submitted by the applicant in the office of respondent No. 1. Learned counsel has submitted that since the seal of office is not visible on this copy, he has placed on record another copy of said explanation, which shows that the explanation to show cause notice was given by the applicant on 15.02.2023 and it was received by the concerned Clerk of office of respondent No. 1 on 16.02.2023. Reference of date of show cause notice dated 20.12.2022 is also appearing in the said explanation. Though the explanation to show cause notice was

given by the applicant within stipulated period as mentioned in the said show cause notice, respondent No. 1 has avoided to take note of it while passing impugned order dated 10.04.2023. So it cannot be said that there is force in the said reasoning while passing impugned order. Since it is already discussed that the observations of respondent No. 1 in the impugned order that the applicant is not exonerated on merit is irrelevant and improper, the respondents will have to proceed to take steps for making available pensionary benefits to the applicant as directed by this Tribunal in O.A. No. 338/2021 also.

12. Respondent No. 2 has tried to rely on the decision in a case of **Vitthal Mahadeorao Pachghare** (cited supra). The facts in that case appear to be different. In that matter, criminal offence for which employee was prosecuted, was not pertaining to his office work but arose out of his domestic relation in the family and subsequently he was acquitted. He was also exonerated in D.E.

The facts in a case of **Krishnakant Raghunath Bibhavnekar** (cited supra) referred by learned P.O. are also different. In that matter the Government servant, who was prosecuted for commission of defalcation of public funds and fabrication of the records, was acquitted.

13. Respondent No. 2 has tried to rely on the decision of this Tribunal in **O.A. No. 237/2021 (Shri Kakasaheb Keshavrao Thote Vs. The State of Maharashtra & Ors.)**. The facts in that matter also appear to be different. It was held in the said matter that the respondents have rightly withheld the pension and gratuity amount. So the citation referred by respondent No. 2 also can be distinguished on facts.

14. Learned Presenting Officer during the course of arguments has submitted that FIR No. 520/2013 is also pending against the applicant at Kadim Jalna Police Station. Respondent No. 2 has tried to contend in his affidavit in reply that the applicant has concealed this fact. If the respondent No. 2 has specifically contended about the said fact, they should have brought on record document in support of it, but they have not done. There is reference in that respect in the charge-sheet. It is mentioned while recording charge No. 2 that it was non-cognizable offence No. 520/2013. So in such matter there cannot be cognizance, unless certain procedure is followed. The respondents have not brought on record any material in this connection.

15. In view of the discussions in foregoing paragraphs, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The Original Application is allowed.
- (ii) Impugned order dated 10.04.2023 is hereby quashed and set aside.
- (iii) The respondents shall take steps for regularization of suspension period of the applicant in view of conclusion drawn by this judgment and to pay all monetary benefits / pensionary benefits to the applicant in accordance with law within a period of three months from the date of receipt of this order.
- (iv) There shall be no order as to costs.

(Ashutosh N. Karmarkar)
Member (J)

PLACE : Aurangabad
DATE : 02.05.2025

KPB S.B. O.A. No. 898 of 2023 ANK Regularization of Suspension Period