

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 122 OF 2017

DISTRICT : MUMBAI

Shri Satyawan Hari Sarawanakar,)
Working as A.S.I in the office of Addl. C.P)
Protection and Security Branch,)
Viju Kotak Marg, Fort, Mumbai 400 001.)
Add : 14, 1001, Amrutsiddhi Complex,)
Titwala [E], Tal-Kalyan, Dist-Thane)...**Applicant**

Versus

1. Additional Commissioner of Police,)
Protection and Security Branch,)
Viju Kotak Marg, Fort,)
Mumbai 400 001.)
2. Deputy Commissioner of Police,)
Zone-IX, Hill Road, Bandra [W],)
Mumbai 400 050.)...**Respondents**

Shri C.T Chandratre, learned advocate for the Applicant.

Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

CORAM : Shri Justice A.H Joshi (Chairman)

RESERVED ON : 15.11.2017

PRONOUNCED ON : 17.11.2017

ORDER

1. Heard Shri C.T Chandratre, learned advocate for the Applicant and Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

2. Applicant was suspended by order dated 16.10.1995 w.e.f 13.10.1995, on account of detention in Police custody in Crime No. 413/1995.

3. Applicant was treated as uninvolved as no evidence was found against him, and he was communicated the same by letter dated 24.11.1998.

4. Applicant's suspension was revoked by order dated 3.3.2000.

5. Applicant was served with show cause notice dated 20.12.2013, calling him to show cause as to why the suspension period should not be treated as suspension.

6. Admittedly, applicant did not reply to the show cause notice. However, his representations and in particular representation dated 19.3.2013 averring and reiterating that he was falsely involved in the case, wrongly arrested and was honourably acquitted may be taken into account while considering the treatment of period of suspension and claiming benefits in accordance with law, was pending.

7. By impugned order dated 8.1.2015 the competent authority has ordered that applicant's period of suspension be treated as suspension rather not spent on duty.

8. Applicant has averred in the Original Application facts and grounds of challenge in para nos 6.6, 6.8, 6.11 and ground (b).

9. Above referred averments have been dealt with in the reply filed by the Respondents in a very casual and cursory manner. Reply to para 6.8 and ground (b) are evasive and have to be construed as admission of applicant's pleadings.

10. From the material which is placed on record, it is conclusive that the suspension on account of arrest and detention in police custody, in all circumstances be and is liable to be treated as suspension. However, the entire duration of suspension cannot be treated as suspension, because no fault can be attributable to the applicant for having remained under suspension, particularly in the background that applicant was found to be innocent and not at all involved in the case.

11. A Government servant cannot be held responsible to suffer civil consequences when no fault is attributable to him.

12. Moreover, nothing prevented the competent authority to review the suspension at their own end. Had that been done, one may have argued for the competent authority that the period between the date of suspension and the date of review may be treated as suspension. Whenever the competent authority is indolent and negligent any plea to treat the suspension unjustly continued for very long duration could never be treated as suspension.

13. Considering that applicant was under suspension for an inordinate long duration, i.e. from 1995 to 2000, applicant's entire

period of suspension deserves to be treated as on duty. Whenever the authorities fail to take review of suspension suo moto and punctually, an employee's interest ought never be prejudiced towards acts of negligence on the part of the authorities.

14. This Tribunal is conscious towards the fact that ordinarily actual days of arrest and detention could be considered as period of suspension. However, in the present case, it is clear from the order dated 3.3.2000 revoking suspension that on 13.10.1995, applicant was suspended before noon, while on 18.11.1995, at the time of filing of charge sheet, he was discharged for want of evidence.

15. Thus, it was proved ex-facie on that date, i.e. on 18.11.1995 that applicant's arrest as well as suspension was wholly unjustified.

16. In the result, applicant's arrest needs to be totally ignored so also applicant's suspension needs to be ignored as a special and exceptional case.

17. Same rule has to be applied to applicant's second suspension dated 8.2.1996, which order of revocation dated 3.3.2000 itself regards was formal suspension.

18. In the result, impugned order is quashed and set aside. This Tribunal further directs that entire period of suspension be treated as period spent on duty. Applicant shall be entitled to all benefits such as pay and allowances, so also one and all consequential benefits.

19. Compliance of this order be done in any case within four months from the date of receipt of this order.

(A.H Joshi, J.)
Chairman

Place : Mumbai
Date : 17.11.2017
Dictation taken by : A.K. Nair.

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