

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 845 of 2019 (S.B.)**

Shri Prashant Dnyaneshwar Hiwarkar,
Aged about: 32 years, Occu: Service,
R/o Post. Navegaon (Sadhu), Tah: Umrer, Distt: Nagpur.

Applicant.

Versus

- (1) The State of Maharashtra through,
Secretary Department of Revenue and Forest,
Mantralaya, Mumbai- 32.
- (2) The Chief Conservator of Forest and field Director,
Pench Tiger Reserve, Nagpur.
- (3) The Range Forest Officer, West Pench Range, Koltimara.

Respondents.

S/Shri G.G. Bade, P.P. Khaparde, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 07/05/2024.

J U D G M E N T

Heard Shri G.G. Bade, learned counsel for the applicant
and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Forest Guard
in the year 2004. The applicant joined on the said post on 27/09/2004
at West Melghat Paratwada. The applicant was transferred to Pench

Forest Range Office, Ghat Pendhari. The applicant came to be suspended as per the order dated 22/07/2013. The said suspension order was revoked by respondent no.2 as per the order dated 06/01/2014. The applicant joined on the said post on 23/01/2014 at Karandala (Umrer). The departmental enquiry was initiated against the applicant. In the departmental enquiry, the charge nos.1 (a) and 2 are not proved. Only charge nos.1 (b) and 3 are proved. The applicant was punished by respondent no.2 by order dated 19/05/2015. The respondents have imposed the minor punishment of withholding one increment for one year and also treated suspension period as such. Therefore, the applicant approached to this Tribunal for the following reliefs –

“(7) (i) regularized the suspension period of applicant from 22/07/2013 to 06/01/2014 and thereby pleased to hold the suspension period as duty period and to quash order dated 19/05/2015 issued by the respondent No. 2.”

3. Heard Shri V.A. Kulkarni, learned P.O. for the respondents. The reply is not filed by the respondents.

4. During the course of submission, the learned counsel for the applicant has submitted that the applicant has challenged part of the impugned order dated 19/05/2015. As per his submission, once the minor punishment is imposed, then suspension period cannot be treated as suspension period. In support of his submission pointed out

the Judgment of the M.A.T., Principal Bench at Mumbai in O.A. No. 769/2017, decided on 16/07/2019.

5. The learned P.O. has submitted that the applicant has challenged only part of the order. Therefore the order dated 19/05/2015 cannot be quashed and set aside as prayed in the O.A. At last submitted that the O.A. is liable to be dismissed.

6. The learned counsel for the applicant has submitted that the applicant is not challenging the punishment of withholding one increment. The Judgment relied by the learned counsel for the applicant shows that the suspension period cannot be treated as suspension period where the government servant is subjected to minor punishment of withholding of increment. Therefore, the impugned order is liable to be quashed and set aside. The observation in O.A.No.769/2017 in para-13 is reproduced below –

*“ (13) Thirdly, in view of the ratio laid down by Hon'ble High Court in **S.P. Naik's** case (cited supra), the order of treating the suspension period as 'suspension period' where the Government servant is subjected to minor punishment of withholding of increment is not sustainable. In Para No.9, the Hon'ble High Court held as follows :-*

"9. However, there is considerable force in the contention of the petitioner that in view of imposition of minor penalty, the period of suspension should have been treated as 'on duty'. The Mormugao Port Employees (Classification, Control and Appeal) Regulations, 1964 provide for major and minor penalties. With-

holding of increments falls under the category of minor penalty. Regulation 9 deals with nature of penalties. Regulation 11 deals with imposition of major penalties and Regulation 12 deals with the procedure of imposing minor penalties. The penalty of withholding of increments or promotion falling under Regulation 9(ii) is treated as minor penalty under Regulation 12. When minor penalty is imposed, period of suspension is not to be treated as not on duty. In fact, as per Schedule under the said Regulations, 1964, in case of Officers holding Class I post and above, the Appellate Authority for the imposition of penalty is Central Government. The Government of India, in decision dated 3-12-1985, reported under F.R. 54-B of the Fundamental Rules under heading 'Administrative Instructions', at item No. 3 at page 260 of Swamy's Fundamental Rules, Part-I, Twelfth Edition, has dealt with this issue. In this decision, the Government of India took into consideration the guidelines and instructions on the subject that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Government of India has ruled that when an inquiry has been held for imposition of a major penalty and finally minor penalty is awarded, the suspension should be considered unjustified and in terms of F.R. 54-B the employee should be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B. The same principle has to be applied in the case under consideration. Thus, in our opinion, the petitioner is entitled to full pay and allowances for the period of suspension and the order of the Disciplinary Authority, treating the said period as not on duty is required to be set aside."

As such, the present matter is squarely governed by the Judgment of Hon'ble High Court.

7. The M.A.T., Principal Bench, Mumbai relying on the Judgment of the Hon'ble Bombay High Court in the case of ***S.P. Naik Vs. Board of Trustees, Mormugaon Port Trust, Goa & Ano., 1999 (3) Mh.L.J., 351*** has held that when the minor punishment is imposed, then suspension period cannot be treated as such. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The part of the impugned order dated 19/05/2015 treating the suspension period from 22/07/2013 to 06/01/2014 treating as suspension period is hereby quashed and set aside.

(iii) No order as to costs.

Dated :- 07/05/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 07/05/2024.*