

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.769 OF 2017**

**DISTRICT : SOLAPUR**

Shri Shaikh Rashid Shaikh Munir. )  
Occu. : Retired Govt. Officer, )  
B-608, Karnik Nagar, Solapur – 413 605. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Secretary (Forest), )  
Revenue & Forest Department, )  
Mantralaya, Mumbai – 400 032. )...**Respondent**

**Mr. C.T. Chandratre, Advocate for Applicant.**

**Ms. S.P. Manchekar, Chief Presenting Officer for Respondent.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 16.07.2019**

**JUDGMENT**

1. The challenge pertains to the impugned orders dated 09.01.2013 and 26.08.2015 and to treat suspension period as well as period from dismissal to reinstatement as a duty period for all purposes.

2. Briefly stated facts giving rise to this application are as under :-

The Applicant is retired Government servant. In the year 1991, while he was serving as Sub-Divisional Forest Officer at Beed, he was placed under suspension w.e.f.14.03.1991 in view of registration of offence against him. He was prosecuted in Criminal Case No.1 of 1992 for the offences under Sections 420, 468, 471, 472 of Indian Penal Code read with Sections 26 and 42 of Indian Forest Act. However, he was acquitted by the learned Magistrate, Beed on 08.04.1993. The Judgment of acquittal was confirmed by Hon'ble High Court in Criminal Appeal No.222/1993 decided on 21.06.2005 preferred by State. In view of acquittal in Criminal Case, he was reinstated in service w.e.f.14.10.1993. Later, departmental enquiry (D.E.) was initiated by issuing charge-sheet on 23.03.1999. D.E. was concluded and the Applicant was dismissed from service by order dated 15.02.2008. Being aggrieved by it, the Applicant has preferred appeal which was partly allowed by order dated 28.08.2009. In appeal, the order of dismissal from service was set aside and in its place, the punishment of withholding of one increment for two years without cumulative effect was imposed. Despite the order in appeal, the Applicant was not reinstated in service within reasonable time. The Applicant, therefore, filed O.A.735 of 2009 wherein directions were issued on 23.02.2010 to reinstate the Applicant within two weeks. Later, the Applicant was reinstated in service on 02.06.2010. Thereafter, the Applicant has filed representation to treat suspension period from 14.03.1991 to 14.10.1993 as well as the period from dismissal to reinstatement in service i.e. from 15.02.2008 to 02.06.2010 as duty period. However, the disciplinary authority by order dated 09.01.2013 treated the suspension period from 14.03.1991 to 14.10.1993 as 'suspension period' except for pension purpose and granted pay and allowances to the extent of 75%. As regard period from 15.02.2008 to 02.06.2010, it was treated 'no duty period' except for the purpose of pension and the pay and allowances were granted to the extent of 90%. These orders were passed under Rule 72(1) and Rule 70(4) of Maharashtra

Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as "Joining Time Rules 1981" for brevity). The Applicant has preferred appeal against order dated 09.01.2013. The said appeal was decided on 26.08.2015 maintaining the order of disciplinary authority treating suspension period as 'suspension period' but granted pay and allowances to the extent of 95% instead of 75%. Whereas the order to treat the period from 15.02.2008 to 02.06.2010 regarding 'no duty period', the order of disciplinary authority was maintained. It is on this background, the Applicant has filed the present O.A. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

3. The Respondent No.1 opposed the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondent sought to justify the impugned order contending that in view of punishment of withholding of one increment for two years without cumulative effect, the orders passed for treating the period of suspension as 'suspension period' as well as to treat the period from dismissal to reinstatement as 'no duty period' cannot be faulted with and the same are in consonance with 'Joining Time Rules 1981'.

4. Shri C.T. Chandratre, learned Advocate for the Applicant urged that in the facts and circumstances of the case, in view of imposition of minor penalty of withholding one increment for two years without cumulative effect, the Respondent ought to have treated suspension period as 'duty period'. In this behalf, he placed reliance on the Judgment of Hon'ble Bombay High Court in **1999 (3) Mh.L.J. 351 (S.P. Naik Vs. Board of Trustees, Mormugao Port Trust, Goa & Anr.)**. He has further pointed out that in case of co-delinquent Shri Vispute, his period of suspension has been treated as 'duty period' for all purposes but the Applicant is subjected to discrimination.

As regard the period from 15.02.2008 to 02.06.2010, he has pointed out that though the Applicant was ordered to be reinstated by order dated 28.08.2009 in appeal, the Applicant was kept away from service and it is only after the direction given by the Tribunal in O.A.735/2009, the Applicant was reinstated in service belatedly. On this line of submission, he urged that the period from 25.02.2008 to 02.06.2010 ought to have been treated as 'duty period'.

5. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer submits that the Applicant is not exonerated from the charges but on the contrary, he was subjected to punishment, and therefore, the impugned orders cannot be faulted with. In this behalf, the learned CPO sought to place reliance on the Judgment passed by this Tribunal in ***O.A.714 of 2018 (Rajendra M. Palande Vs. The Addl. Chief Secretary & Ors.) decided on 01.07.2019.***

6. Firstly, let us see whether the impugned order for treating the period from 14.03.1991 to 14.10.1993 as 'suspension period' is legal and valid.

7. True, the Applicant was not completely exonerated in the enquiry but he was subjected to punishment of stoppage of one increment for two years without cumulative effect and the same has got finality. However, the other circumstances are also required to be taken into consideration.

8. The Applicant was suspended w.e.f.14.03.1991 in view of registration of crime against him. However, he was acquitted in criminal case by Judgment dated 08.04.1993. It would be material to note that the Learned Magistrate, 1<sup>st</sup> Class, Beed has accorded honourable acquittal with a specific observation that the Applicant as well as one of the accused viz. Ramesh Vispute are entitled for honourable acquittal. He observed as follows :

“As such, the accused persons deserve for acquittal and especially the accused numbers 2 and 3 being the Government employees against whom no direct nexus being established are entitled for the honourable acquittal exonerating from all the charges levelled against them.”

The order of acquittal has been confirmed by Hon'ble High Court in Criminal Appeal No.222 of 2019 by Judgment dated 21.07.2005. In view of acquittal in Criminal Case, the Applicant was reinstated on 14.10.1993. However, thereafter, belatedly, D.E. was initiated on 23.03.1999 that is after six years from reinstatement in service and nine years from the alleged misconduct. The completion of D.E. took inordinate delay of nine years. The Applicant was dismissed by final order dated 15.02.2008. As such, there is substantial inordinate delay in initiation of D.E. as well as for its completion. In appeal, by order dated 28.08.2009, the order of dismissal was set aside and substituted with punishment of withholding of one increment for two years without cumulative effect for two years. However, the Applicant was not reinstated within reasonable time and he was constrained to file O.A.735 of 2009 wherein directions were given on 23.02.2010 to reinstate the Applicant within two weeks from the date of order. Even after this order also, there was no immediate action and the Applicant was belatedly reinstated on 02.06.2010.

9. As per Rule 72 of 'Joining Time Rules 1981' after reinstatement of Government servant in service, the Competent Authority is required to pass order about the suspension period undergone by the Government servant. Under Rule 72(3) of 'Joining Time Rules 1981', the authority competent is required to consider whether the suspension was "wholly unjustified" or justified. If in the opinion of Competent Authority the suspension was wholly unjustified, in that event, the Government servant shall be entitled to full Pay and Allowances for the period of suspension. Thus, what was required to be

seen whether in the opinion of Competent Authority, the action of suspension of Applicant 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.

10. However, the perusal of order dated 09.01.2013 does not reveal any such finding or observation that the suspension period was justified. In fact, the Competent Authority was under obligation to see whether the suspension of the Applicant was wholly unjustified or justified considering the facts of the case. Surprisingly, not a single word is mentioned in this behalf in the impugned order dated 09.01.2013. All that it is stated that in view of punishment of imposition of withholding of increment, the period from 14.03.1991 till 14.10.1993 has been treated as ‘suspension period’ for all purposes except pension and pay and allowances was granted to the extent of 75% which was later extended to 95%. Suffice to say, there is no application of mind on the part of Competent Authority to see whether the suspension period was wholly unjustified. This is one of the aspect which render the impugned order unsustainable in law.

11. Secondly, the Applicant has been subjected to discrimination as in the matter of his colleague Shri Vispute, who was one of the delinquent with the Applicant, his period of suspension has been treated as ‘duty period’ for all purposes. The Respondent admits this fact in their reply in following words.

“It is true that there is no period of Shri Vispute was treated as duty for all purposes. But the departmental enquiry of R.F.O. Shri Vispute was conducted at the level of Conservator of Forest, Aurangabad Division and the Departmental Enquiry of the applicant was conducted at Govt. level. Hence, it is incorrect to inter-relate both matters.”

12. The ground that the case of Shri Vispute was handled at Divisional level and the Applicant's matter is conducted at State level can hardly be accepted. The allegations against both were common and such stand deserves to be rejected. As such, there is no denying that the Applicant has been subjected to discrimination which is violative of Article 14 of the Constitution of India.

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.

14. True, in O.A.714/2018 in fact situation, the order of Competent Authority treating the period of suspension as 'suspension period' was maintained and O.A. has been dismissed. In that case, the Applicant was serving as Police Naik was found indulged in forgery of Police Record so as to assist the accused against whom the offence was registered to get compensation from Insurance Company. As such, in fact situation, the suspension period was found justified and accordingly, the O.A. was dismissed. Whereas, the facts of the present case being clearly distinguishable, the impugned order to treat the period as 'suspension period' is unsustainable in law.

15. Now, question comes about the period from 15.02.2008 to 02.06.2010 for which the Applicant was out of service. In this respect, material to note that the order of dismissal was set aside by order dated 28.08.2009 in appeal. As such, the Applicant ought to have been reinstated in service within reasonable time and it was for the Department to implement its own order. However, the Department did not take any action and the Applicant was constrained to file O.A.735/2009 wherein directions were given on 23.02.2010 to reinstate the Applicant within two weeks. Despite this specific direction by the Tribunal, the Applicant had to wait for four months and belatedly, he was reinstated on 02.06.2010. Thus, there was negligence and inaction on the part of Respondents to reinstate the Applicant within reasonable time. No fault or blame can be attributed to the Applicant. In such situation, it would be unjust and illogical to treat his entire period as 'no duty period' for no fault on his part. 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.

16. The totality of aforesaid discussion leads me to conclude that the order to treat suspension period from 14.03.1991 to 14.10.1993 is not sustainable in law and deserves to be set aside. The said period needs to be treated as 'duty period' for all purposes. In so far as the period from dismissal to reinstatement i.e. no duty period is concerned, instead of 15.02.2008 to 02.06.2010, it should be restricted to 15.02.2008 to 28.09.2009. To this extent, the O.A. deserves to be allowed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 26.08.2015 treating the period from 14.03.1991 to 14.10.1993 as 'suspension period' for all purposes

is quashed and set aside. It be treated 'duty period' and he shall be paid full pay and allowances for the period of suspension.

- (C) In so far as the period from 15.02.2008 to 02.06.2010 i.e. the period from dismissal to reinstatement is concerned, it be restricted to 15.02.2008 to 28.09.2009 and in this period, the Applicant will be entitled to 90% pay and allowances for the said period.
- (D) Consequently, the period from 29.09.2009 to 02.06.2010 be treated as 'duty period' with all consequential service benefits.
- (E) Respondent is directed to extend the monetary benefits to the Applicant, in above terms, within two months from today.
- (F) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 16.07.2019

Dictation taken by :

S.K. Wamanse.

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