

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1313/2023 (S.B.)**

Dr. Abhijit S/o Shivajirao Patil,
Aged 41 years, Occ. Service,
R/o CG4, Amar Vihar, Near Automotive Square
Metro Station, Kamptee Road,
Nagpur – 440 026

Applicant.

Versus

- 1) The State of Maharashtra,
Through Its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai - 32.
- 2) The Commissioner of Police,
Nagpur, having its Office at Civil Lines,
Nagpur.

Respondents

Shri S.P.Palshikar, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 18th Nov., 2024.

Judgment is pronounced on 29th Nov., 2024.

Heard Shri S.P.Palshikar, Id. counsel for the applicant and
Shri M.I.Khan, Id. P.O. for the Respondents.

2. Undisputed facts are as follows. On 18.04.2019 when he was working as S.D.P.O., Phaltan, Dist. Satara Crime No. 136/2019 was registered against the applicant at Phaltan City Police Station under Sections 7 & 15 of the Prevention of Corruption Act and 365, 395, 427 & 201 of I.P.C.. He was arrested on the same day. He was in Police Custody for more than 48 hours. By order dated 04.05.2019 (A-1) passed under Rule 4 (2) (a) of The Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 he was placed under suspension w.e.f. 18.04.2019. Order of his reinstatement (A-2) was passed on 21.01.2020. Order of his posting on reinstatement (A-3) was passed on 18.03.2020.

3. Contentions raised by the applicant are:-

A. Period of suspension beyond 90 days cannot be treated "as such" and hence, the applicant would be entitled to get full salary w.e.f. 18.07.2019 in view of legal position laid down in **Ajay Kumar Choudhary vs. Union of India, (2015) 7 SCC 291** that currency of a suspension order should not extend beyond three months if within this period memorandum of charges/ chargesheet is not served on the delinquent employee; if the memorandum of charges/

chargesheet is served, a reasoned order must be passed for extension of suspension period; and

B. Once suspension beyond 90 days is held to be non-est annual increments of the applicant falling due on 01.07.2019 and 01.07.2020 could not have been withheld.

4. Further undisputed facts are that in the departmental enquiry the applicant was served with a chargesheet dated 02.08.2019 and presently departmental as well as judicial proceedings against him are pending. Rule 72 of The Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981 which is relevant reads as under:-

72. Re-instatement of a Government servant after suspension on specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty.

(1) When a Government servant who has been suspended is reinstated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order:-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 68, where a Government servant under suspension dies before the disciplinary or

Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provision of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or the Court proceeding, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government Servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note.- *The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -*

(a) extraordinary leave in excess of three months in the case of a temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent Government Servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 68.

5. The applicant has relied on a judgment dated 08.10.2021 in **O.A. No. 524/2020 (Shri Sanjay Sapkal & 2 Ors. Vs. The Commissioner of Police, Thane & one another)** passed by Principal Bench of this Tribunal. In this case it is observed that suspension can be revoked pending finalization of disciplinary or judicial proceeding and any such order can be reviewed by the competent authority on completion of proceeding and there is no need to wait for conclusion of proceedings before passing such order. In this case, the Tribunal directed the Competent Authority to decide nature of period of suspension in

accordance with law within a period of two months from the date of the judgment.

6. The applicant has further relied on a judgment of the Principal Bench of this Tribunal dated 29.08.2022 in **O.A. No. 179/2021 (Shri Rahul Marathe Vs. The Chief Conservator of Forest)**. In this case, by relying on Ajay Kumar Choudhary (supra), and facts of the case suspension of the applicant beyond 90 days was held to be impermissible and he was held entitled to full pay and allowances for the period of suspension beyond 90 days.

7. The applicant has further relied on a judgment of Aurangabad Bench of this Tribunal dated 07.07.2021 in **O.A. No. 69/2020 (Suresh Ghanshyam Tandale Vs. The State of Maharashtra & 3 Ors.)**. In this case it is held:-

C) Continuance of the Impugned suspension order of the Applicant dated November 02, 2015, beyond 90 days is without review and as no fact has been presented to establish justification for the continuation of suspension, therefore, the same is disregarded and it is directed that the Applicant shall be deemed to have been reinstated after completion of prescribed review period of 90 days of actual suspension and all consequential benefits thereof shall follow treating that suspension ceased to exist 90 days after the date of suspension.

8. Stand of respondent no. 1 is that chargesheet was issued to the applicant within 90 days from the date of issuance of order of

suspension, there is no provision to give full salary and allowances to the employee while under suspension, during period of suspension question of releasing increments would not arise and it is for the concerned authority to pass order as to how period of suspension is to be treated. Respondent no. 1 has relied on a judgment of this Bench dated 04.07.2022 in **O.A. No. 608/2022 (Anand Tukaram Bandehuche Vs. The State of Maharashtra & 2 Ors.)**. In this case directions were sought from the Tribunal for payment of subsistence allowances as well as releasing the increments which had fallen due during the period of suspension. In para 10 of the judgment the Tribunal observed that criminal proceeding against the applicant was still pending. After considering Rule 72 of The Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981, the Tribunal observed that it was for the Competent Authority to record its opinion as to whether suspension was wholly unjustified or not. The Tribunal relied on **Vasant Krushnaji Kamble Vs. State of Maharashtra & Another 2003 (4) Mh.L.J., 606** wherein 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.

9. On a conjoint consideration of facts of the case and the law applicable to it I have come to the conclusion that an order directing the concerned authority to decide within the time to be stipulated by this Tribunal, the issue of how the period of suspension of the applicant is to be treated, will meet the ends of justice as was done by the Principal Bench while deciding O.A. No. 524/2020. As observed in the said judgment, Sub Rule (6) of Rule 72 enables the concerned authority to revoke suspension pending finalization of the disciplinary or judicial proceeding and such order is to be reviewed on conclusion of the proceeding. Sub Rule (1) of Rule 72 makes it clear that while passing the order of reinstatement the authority competent to order reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the Government Servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and whether or not the said period shall be treated as a period spent on duty. Sub Rule 3 of Rule 72 then makes it incumbent upon the concerned authority to record his opinion whether or not suspension was wholly unjustified. Rule 72 (1) (a)

consists of two distinct limbs. Read thus the conclusion would be inescapable that order in terms of sub rule (a) & (b) must accompany the order of reinstatement.

10. In view of legal position discussed hereinabove following order shall meet ends of justice. The Competent Authority is directed to decide how period of suspension of the applicant is to be treated. Order pursuant to this direction shall be passed within two months from today. Since the question of how period of suspension of the applicant is to be treated is directed to be decided by the Competent Authority, question of issuing directions for release of increments would not arise. The O.A. is allowed in these terms with no order as to costs.

Member (J)

Dated :- 29/11/2024
aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 29/11/2024
and pronounced on

Uploaded on : 02/12/2024