

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO. 1123 OF 2012

DISTRICT : THANE

Shri Ayub Nijam Metkari)
Occ: Govt. service as API)
Under Suspension with his last posting)
At Tokawade Police Station,)
Tal: Murbad, Dist-Thane.)
C/o: Shri B.A. Bandiwadekar,)
Shri G.A. Bandiwadekar,)
Advocates, having office at 9, Ram Kripa)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)..Applicant

Versus

1. The Superintendent of Police,)
Thane (R), having office at Thane)
2. The State of Maharashtra)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)

3. The Director General and Inspector)
General of Police, (M.S), Mumbai)
Having office at Old Council Hall,)
S.B. Marg, Mumbai 400 039)..Respondents

Shri A.V. Bandiwadekar, learned advocate for the Applicant

Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 13.06.2013

ORDER

1. Heard Shri A.V. Bandiwadekar, learned advocate for the Applicant and Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents.

2. The facts of the case in brief are as follows:-

The Applicant joined Police service on 17.8.1992 after his retirement from the Indian Air Force. In the year 2008, he was posted to Police Station Tokawade in Thane District. On 2.11.2009, he was arrested by the Anti Corruption Bureau (A.C.B) while accepting bribe and a criminal case C.R No 119/2009 was registered on 3.11.2009. The Applicant was in custody for more than 48 hours and was placed under deemed suspension by order dated 5.11.2009 of the Respondent No. 1.

After release on bail on 6.11.2009, the Applicant made a representation to the Respondent No. 1 on 8.11.2009 seeking reinstatement, but to no avail. The Applicant approached this Tribunal by filing O.A No. 683/2010 for quashing the order of suspension. However, the Original Application was dismissed by order dated 23.3.2011. The Applicant had made several representations to the Respondents for revocation of the order of suspension, but no decision has yet been communicated to him. In this Original Application, the Applicant is seeking relief by way of directions to the Respondents to consider his representation and communicate the decision thereon to the Applicant.

3. Learned Counsel for the Applicant argued that the Applicant has a right to make representation against his suspension order and in the light of the decision of the Hon'ble Bombay High Court in the matter of State of Maharashtra Vs. S.S. Sadavarte, such a representation can be filed at any time and the rejection thereof may not operate as a bar in filing subsequent representations. The representations have to be decided by the Competent Authority within a reasonable period and after taking into consideration the nature of charges, progress in investigation / trial and other circumstances. Learned Counsel for the Applicant stated that the Government has issued a G.R dated 14.10.2011, laying guidelines for review of suspension cases and also formation of Review Committees

at various levels. The case of the Applicant has not been placed before any Review Committee. This has caused serious prejudice and injustice to the Applicant. Learned Counsel for the Applicant further argued that the Applicant is under suspension for more than 3 years and getting 75% of his salary as subsistence allowance without doing any work. The Respondents can revoke his suspension and post in non-executive post. Learned Counsel for the Applicant contended that in one case where a Police Inspector was trapped by A.C.B and suspended, the Respondent No. 3 has revoked his suspension. The Applicant deserves similar treatment.

4. The Learned Presenting Officer (P.O) argued on behalf of the Respondents that G.R dated 14.10.2011 is not applicable to the Police personnel. Learned Presenting Officer, further argued that Applicant has cited some cases where Police Officers, who were suspended were reinstated later. He argued that each case is decided on the facts and circumstances of the case and decision in one case cannot be cited without looking into the facts. Facts in these cases are not before this Tribunal. Learned Presenting Officer contended that G.R dated 14.10.2011 is not applicable to Police personnel of and below the rank of Police Inspector. They are governed under the Bombay Police Act, 1951 and the Bombay Police (Punishment and Appeal) Rules, 1956. Learned Presenting Officer, relied on the judgment of the Hon'ble Supreme Court in **STATE OF**

ORISSA Vs. BIMAL KUMAR MOHANTY, 1994 AIR SC 2296.

It was held that the Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of officer or post held by him. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge. The Hon. Bombay High Court in case reported in 2003 (2) ALL MR 434, has held that if allegation of illegal gratification are levelled against an official, no reinstatement can be ordered ignoring allegations and pendency of proceedings in competent Court. Learned Presenting Officer cited some more judgment and contended that looking into the nature of charges against the Applicant, he cannot be considered for reinstatement.

5. I have carefully perused the case papers and considered the arguments on behalf of the Applicant and the Respondents. The Applicant was placed under deemed suspension after he was arrested and was kept in custody for more than 48 hours. The charge sheet has been filed before Learned Special Court, on 11.9.2012 in Special Case No. 11/2012. The Applicant has claimed that his case of suspension may be reviewed in the light of G.R dated 14.10.2011. There is no doubt that this G.R is applicable only to those Government servants who are

governed by the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Admittedly, the Applicant is governed by totally different set of Rules namely the Bombay Police (Punishment & Appeal) Rules, 1956. The G.R dated 14.10.2011 is not applicable to the Applicant. Though the learned counsel for the Applicant had argued that the suspension of the Applicant ought to be revoked and the grounds mentioned in the Original Application, also give various reasons in support of this contention, this relief of revocation of suspension is not prayed for by the Applicant. It is, therefore, not necessary to consider the arguments of Learned Presenting Officer, against revocation of suspension of the Applicant. The Applicant is only praying that his representation against suspension may be considered by the Respondents in a time bound manner. In the prayer clause 9(a) of the Original Application, various provisions of G.R dated 14.10.2011 have been mentioned. However, as discussed above, the aforesaid G.R is not applicable in the present case. The Respondent No. 1 in his affidavit in reply has stated that if a criminal case is registered against a Police Officer under the Anti Corruption Act, the decision to reinstate such an officer can be taken only the Respondent No. 1. In para 12 of the aforesaid affidavit in reply it is stated that the State Government can review the suspension.

6. In view of the above facts and circumstances, ends of justice will be served if the Respondent No. 1 reviews the suspension of the Applicant.

7. The Learned Advocate Shri A.V. Bandiwadekar on behalf of the Applicant submitted that earlier representations made by the Applicant may not be readily available with the Respondents. He requested that the Applicant may be allowed to make a fresh representation to the Respondents within a period of 7 days and the same may be considered by the Respondents.

8. It is accordingly directed that the Respondent No. 1 will consider the representation of the Applicant, which he will file within a period of 7 days from the date of this order. The Respondent No. 1 will decide and communicate his decision on the said representations expeditiously, preferably within a period of 3 months. The Original Application is disposed of accordingly. There will be no order as to costs.

Place : Mumbai.
Date : 13.6.2013
Dictation taken by: A.K Nair.

(Rajiv Agarwal)
Vice-Chairman