

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12660 OF 2017

Shri Sujatali Liyakatali Inamdar .. Petitioner
Vs.
The Superintendent of Police .. Respondent

Mr.Bhushan A. Bandiwadekar, for the Petitioner.
Mr.N.C.Walimbe, AGP for State.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

21st DECEMBER, 2017

P.C. :

1. The petitioner impugns the decision of the Tribunal dated 07/01/2011 in OA 1543/2009. The petitioner who was working as a police constable was placed under suspension because of anti-corruption trap. The Special Case No. 8 of 2005 before the Sessions Court, Ahmednagar has resulted in acquittal of the petitioner on 31/07/2008. The petitioner's suspension was revoked on 06/10/2008 and he was reinstated at Alandi police station. The appeal against the order of

acquittal was dismissed by this Court on 31/03/2009. The petitioner was under suspension for 4 years from 25/09/2004 to 07/10/2008. The petitioner's request for treating the suspension period as duty was rejected on 27/08/2009. Before the Tribunal the petitioner contended that the impugned order dated 27/08/2009 is illegal as the decision of the Sessions Court has resulted in a clean acquittal of the petitioner and not because of benefit of doubt. One more ground raised before the Tribunal was the Competent Authority did not give any reason while rejecting the representation. Learned Counsel for the petitioner invited our attention to the provisions of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. Learned Counsel invited our attention to the Sub-Rule 5 of Rule 72 which reads thus :

“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.”

2. According to the learned Counsel in compliance of the Sub-Rule 5 of Rule 72, no notice was given to the petitioner of the quantum proposed and therefore he had no opportunity to make a representation. According to him, the order impugned before the Tribunal was passed in breach of Sub-Rule 5 of Rule 72. We find that before the Tribunal this ground is not raised in clear terms. The petitioner has only mentioned that no reasons have been given while passing the impugned order. Learned Counsel for the petitioner invited our attention to ground (b) raised in this Petition contending that principles of natural justice have not been followed by giving reasonable opportunity to file reply to show cause notice. In our opinion, in the interest of justice, the petitioner should be given one more opportunity to raise the plea of non-compliance of Sub-Rule 5 of Rule 72 before the Tribunal.

3. Learned AGP opposing the petition placed reliance

on the decision of the Apex Court in the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra** reported in **1997(3) SCC 636**. The Apex Court though has observed that rule gives discretion to the disciplinary authority to decide how the suspension period is to be treated has nonetheless observed that authority may on the reinstatement after following the principles of natural justice pass appropriate order including treating suspension period as period of not on duty.

4. It is in this light of the matter, we are inclined to remit the matter back to the Tribunal for deciding the OA afresh on its merits. Hence, following order.

ORDER

- i) The impugned order dated 07/01/2011 passed by the Tribunal is quashed and set aside.
- ii) The Tribunal to hear and decide OA afresh on its own merits.
- iii) We may not be understood to have expressed any opinion either on the non-compliance of Sub-Rule 5 of Rule 72 or

on the merits of the issue before the Tribunal.

- iv) The Tribunal may decide the matter on its own merits and all the contentions are kept open.

5. The Petition is accordingly disposed of with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)