

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15327 OF 2017

Shravan Yashwant Khairnar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri N. B. Suryawanshi, Advocate h/f Shri Sanket N.
Suryawanshi, Advocate for the Petitioner.
Shri A. P. Basarkar, A.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.
DATE : 06TH JULY, 2018.**

FINAL ORDER :

. The petitioner assails the punishment imposed upon him, so also the order of the Tribunal.

2. Mr. Suryawanshi, the learned counsel for the petitioner submits that, the petitioner was suspended on 16.05.2005 and thereafter show cause notice was issued to the petitioner on 06.07.2009. The petitioner filed reply on 21.12.2009 to the show cause notice. Again on same facts fresh notice was issued to him on 14.09.2010 for which again reply was filed on 04.10.2010, charge sheet was given on 14.10.2011 and the enquiry was concluded on 07.11.2012. The charge against the petitioner was

about absenteeism. The learned counsel further submits that, the charge framed was erroneous. The petitioner had categorically replied about the charge being improper. The petitioner had taken leave of one day and when on leave the petitioner became sick. The petitioner sent application for medical leave. The petitioner did not receive any notice to remain present for medical examination. The petitioner has not worked for any political party and the respondents relied on the news paper report. The learned counsel submits that, it was on these grounds, the departmental enquiry was initiated in the year 2011 though the petitioner was kept under suspension from 16.05.2005. There was no reason for keeping the petitioner under suspension for such a long period and not conducting the departmental enquiry after the petitioner was kept under suspension.

3. The learned counsel submits that, the enquiry was also not conducted in proper manner. The enquiry was conducted only after this Court passed order in writ petition to take decision within eight weeks. The petitioner was held guilty for charges Nos. 1 and 2 and was exonerated from charge Nos. 3 and 4. According to the learned counsel, the appellate authority also did not consider the contention of the petitioner. The petitioner never remained absent willfully. The petitioner was given two advance increments for good work rendered by him in the year 2001 and he never disobeyed the orders of his superior. The

learned counsel submits that, the punishment imposed upon the petitioner is disproportionate and harsh. In fact, the petitioner was required to be exonerated even for charge Nos. 1 and 2. The petitioner could not have been held guilty for charges of absenteeism.

4. The learned counsel further submits that, as departmental enquiry was going on for considerable long time and suspension being unwarranted the period of suspension ought to be treated as duty period. The learned counsel relies on the judgment of the Apex Court in a case of **Ajay Kumar Choudhary Vs. Union of India Through Its Secretary and another** reported in ***AIR 2015 SC 2389***.

5. Mr. Basarkar, the learned Assistant Government Pleader for respondent Nos. 1 to 3 supports the order of the Tribunal and submits that the petitioner was issued notice in the year 2004. The petitioner did not file any reply. The employer is not responsible for the delay in conducting the departmental enquiry. According to the learned A. G. P., the Tribunal has considered all relevant aspects of the matter and has rightly passed the order. The charge of absenteeism has been proved against the petitioner. The department took lenient view against the petitioner and imposed minor punishment. The suspension period has to be treated as suspension period, considering the conduct of the petitioner. The learned A. G. P. relies on the

judgment of the Apex Court in a case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra** reported in (1997) 3 SCC 636.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The charge of absenteeism has been proved. The enquiry report and the documents on record suggest so. The disciplinary authority has not committed any error in accepting the finding of enquiry officer that charge Nos. 1 and 2 have been proved. The petitioner has been imposed with minor punishment of withholding two annual increments permanently. The Tribunal has also considered the said aspect.

8. The jurisdiction of this Court in interfering with the departmental enquiry would be in limited compass. This Court would only consider due observance of the procedure and the principles of natural justice being followed. It has been observed that, the petitioner was given several opportunities in the departmental enquiry proceedings. In view of that, said finding needs no interference.

9. The next question is about treating the suspension period as such. The authority has directed that, the suspension period to be treated as suspension period and not to be counted as duty period. The Tribunal has not dilated on the said aspect in the

judgment.

10. It has been submitted that, though the petitioner was suspended on 16.05.2005 for the first time the notice was issued to the petitioner on 06.07.2009 and the petitioner filed his reply to the said show cause notice on 21.12.2009. On the same facts again subsequent notice was issued on 14.09.2010, to which the petitioner filed reply on 04.10.2010. No explanation is coming forth on the part of respondents for not initiating Departmental proceedings against the petitioner for five years, though the petitioner was suspended on 16.05.2005. Once the petitioner was placed under suspension, the respondents were duty bound to conduct the departmental enquiry expeditiously. There was no purpose of keeping the petitioner under suspension and not initiating the departmental enquiry. The charge sheet was filed on 14.10.2011, more than six years after the petitioner was placed under suspension. Upon conclusion of enquiry minor punishment was imposed upon the petitioner.

11. Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment During Suspension, Dismissal and Removal) Rules, 1981 would be relevant. The relevant portion of the said rule reads thus :

**The Maharashtra Civil Services (Joining Time,
Foreign Service and Payment During Suspension,
Dismissal and Removal) Rules, 1981**

1.

2.

72 Re-instatement of a Government servant after suspension and 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 so reinstated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement 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 re-instatement 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.

3. Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions 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 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, as may be specified in the notice.

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 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 temporary Government servant: and

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

12. No doubt, it is prerogative of the disciplinary authority to pass orders with regard to manner of treating the suspension period. In the present case, the suspension period has been treated as such and not on duty period. The termination of the departmental proceedings are delayed from the date of suspension not on the part of the petitioner. The petitioner cannot be even remotely held responsible for departmental proceedings not being conducted within a reasonable time. There is total apathy on the part of the respondents in not initiating the

departmental proceedings for more than five years after the suspension of the petitioner. Once the petitioner was placed under suspension, the respondents were duty bound to conduct the departmental enquiry and conclude it expeditiously. However, as observed supra, though the petitioner was suspended on 16.05.2005, for the first time the show cause notice was issued in the year 2009. On the same facts again notice was issued in the month of September, 2010, though the petitioner had replied the show cause notice. Thereafter by filing writ petition in this Court bearing Writ Petition No. 2839 of 2011 the petitioner challenged the show cause notice and order passed by the Tribunal. The said writ petition came to be disposed of on 31.07.2012. This Court in para No. 4 of the said order had observed that, "after the second show cause notice dated 14.09.2010, period of about 2 years has expired and no decision upon culpability or punishment is yet taken. The departmental enquiry is still pending. The Tribunal has dismissed the original application as premature on 03.02.2011 and though period of one and half year has expired, position remained as it is." This Court further directed the respondents to pass appropriate orders within eight weeks. The Court also directed the respondents to keep in mind that the petitioner is only a peon and has been continuing under suspension.

13. The petitioner was placed under suspension for more than seven and half years. The charge Nos. 3 and 4 were not proved

and only charge of absenteeism was proved for which the petitioner has been imposed punishment of stoppage of two annual increments. There was no reason on the part of respondents not to initiate departmental enquiry for a period of six years after placing the petitioner under suspension. For such act of respondents, the petitioner cannot be penalized for suspension period. Proviso to sub Rule 3 of Rule 72 of Rules of 1981 would be relevant.

14. Considering the above, we set aside the order of disciplinary authority to the extent of treating the suspension period as not on duty period. We are not inclined to give any actual monetary benefit to the petitioner for the said period, apart from the subsistence allowance paid. However, the period under suspension shall be counted for all further benefits as on duty period. With these observations, the writ petition is partly allowed. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]