

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 42 OF 2016

DISTRICT : AURANGABAD

Jailal s/o Ganeshlal Kasliwal,)
Age : 66 years, Occu. : Retired,)
Govt. Servant, R/o. Plot No. 22, Vinayak)
Adarsh Co-operative Housing Society, Tilak)
Nagar, Aurangabad.).. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
The Department of Animal Husbandry,)
Dairy Development and Fisheries,)
Mantralaya, Mumbai -32.)

2. **The Dairy Development Commissioner,)**
Maharashtra State, Worli Dairy,)
Mumbai-18,)
.. **RESPONDENTS**

APPEARANCE : Shri A.D. Gadekar, Advocate for Applicant.

: Shri N.U. Yadav, P.O. for the Respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **20.04.2023**

Pronounced on : **07.06.2023**

O R D E R

(Per : Shri V.D. Dongre, Member (J))

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 the present Original

Application is filed seeking directions / orders to the respondents to withdraw the suspension orders dated 30.10.1991 and 24.08.2001 and order of dismissal dated 06.12.2001 (Annexure A-1 collectively) and consequently seeking benefits of pay and allowances including pension and pensionary benefits together with interest.

2. The facts in brief giving rise to this application can be stated as follows :-

(i) The applicant was dismissed from the service by the order dated 06.12.2001 (part of Annexure A-1 collectively) because of his conviction in Criminal Case No. 92/1996 by the Court of learned Chief Judicial Magistrate, Dhule by judgment and order dated 21.08.2001. Before that the applicant was placed under suspension because of pendency of criminal case and also in contemplation of DE twice once from 03.11.1991 to 30.06.2001 and thereafter from 30.08.2001 to 06.12.2001.

(ii) While the applicant was working as an Administrative Officer at Government Milk Scheme at Dhule, he was entrusted with additional charge of the post of Store Officer. It is alleged that whilst he was holding the

additional charge certain irregularities took place in the matters of purchase of milk cans and even though, the applicant was not at all concerned and or responsible for it, he was suspended on 30.10.1991 from this substantive post of Administrative Officer along with other officers such as General Manager and Dairy Manager of Government Milk Scheme, Dhule.

(iii) Thereafter, by the order dated 19.06.1992 a Departmental Enquiry was ordered as against seven officers of Government Milk Scheme, Dhule including the applicant. Though the said D.E. was not concluded expeditiously, the applicant was continued to be put under suspension. He made several representations. But in vain. In view of that, the applicant filed O.A. before this Tribunal. By the order dated 30.03.2001 in that O.A., the D.E. was ordered to be concluded within 15 days or else the suspension to come to an end. In terms of the said order, by the order dated 22.06.2001 the applicant was reinstated as Assistant District Dairy Development Officer at Bhandara, where he joined his duties on 30.06.2001. In fact, the Enquiry Officer submitted his report to the

department on 28.07.1995. However, no further action was taken on the said report till date.

(iv) Meanwhile Criminal case No. 92/1996 was registered against abovesaid persons including the applicant. The said Criminal Case came to be terminated convicting the applicant and two others by decision dated 21.08.2001. The applicant challenged the said conviction order by preferring Criminal Appeal No. 17/2001 before the Sessions Court. The said appeal No. 17/2001 came to be decided by the order dated 18.06.2008, whereby the applicant was acquitted. Some of the accused, however, were convicted. Those accused persons filed revision before the Hon'ble High Court of Bombay, Bench at Aurangabad. The State also filed appeal against the acquittal being Criminal Appeal No. 55/2009, so far as the applicant is concerned. At the time of filing of this O.A., the said Criminal Appeal was still pending. It is not likely to be heard in near future.

(v) As stated earlier, the decision of conviction of the applicant dated 21.08.2001 rendered by the learned Chief Judicial Magistrate, Dhule was challenged by the applicant

before the learned Sessions Judge, Dhule. Learned Sessions Judge, Dhule stayed the conviction order during pendency of appeal. However, the Government showed undue haste and again put the applicant under suspension by the order dated 29.08.2001.

(vi) On 24.08.2001 the applicant was served with a notice to show cause as to why he should not be dismissed from the service in view of his conviction and sentence. The applicant submitted his explanation dated 18.10.2001 pointing out the developments in the matter. However, the applicant was dismissed from service by the impugned order dated 06.12.2001. Thereafter, the applicant came to be acquitted in the criminal appeal by the order dated 18.06.2008 and the appeal against the said acquittal is still pending before the Hon'ble High Court of Bombay, Bench at Aurangabad as stated earlier. In view of his acquittal, the applicant is entitled for pay and allowances during his suspension period till his date of superannuation in the month of November, 2006 and also for reinstatement in service by setting aside the order of dismissal.

(vii) After his acquittal in criminal appeal, the applicant made representation dated 22.08.2008 seeking to withdraw

his suspension and dismissal order and consequently seeking monetary benefits. Thereafter, also he made representations dated 17.07.2009, 29.12.2010, 07.05.2012 and 22.08.2013 (Annexure A-2). But in vain.

(viii) On 14.08.2013, the Hon'ble Supreme Court of India had rendered decision in Civil Appeal No. 6770/2013 in the case of State of Jharkhand and Ors. Vs. Jitendra Kumar Shrivastava and another, wherein the question which had fallen for consideration was as to whether in the absence of any provision in the pension Rules, the State Government can withhold a part of pension and/or gratuity during pendency of the Departmental / Criminal proceedings. The Hon'ble Apex Court by answering the said question held that a person cannot be deprived of his pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution of India. In view of that, the applicant is entitled for all the monetary benefits including full pay and allowances during the suspension period and pension and pensionary benefits upon retirement on superannuation by setting aside the order of dismissal in view of his acquittal. Hence, the present Original Application.

3. Initially affidavit in reply on behalf of respondent Nos. 1 and 2 is filed by one Shri Shrikant S/o Ramakant Shipurkar working as incharge Regional Dairy Development Officer, Aurangabad Region, Aurangabad, thereby he denied all the adverse contentions raised in the present Original Application. It is however, admitted that the applicant was suspended. Twice Departmental Enquiry was held against the applicant and six others in the year 1992. The Enquiry Officer submitted his report dated 28.07.1995 wherein the findings were that the charges against only one of the delinquents were proved and the charges against the applicant and 5 others were not proved. The said enquiry report is still under consideration of General Administration Department. Meanwhile, the Criminal Case No. 92/1996 is registered against those 7 delinquents including the applicant. The said Criminal Case was decided by the order dated 24.08.2001, wherein the applicant was convicted along with two others, thereby the applicant was sentenced to suffer 3 years RI and fine of Rs. 5000/-. The applicant preferred Criminal Appeal No. 17/2001 against the conviction order in Sessions Court, Dhule and obtained stay on conviction vide order dated 24.08.2001. However, in view of G.R. dated 12.06.1986, show cause notice dated 24.09.2001 was issued to the applicant, to

which the applicant submitted his reply dated 18.10.2001. However, in view of conviction order, the applicant has been rightly dismissed from service vide impugned order dated 06.12.2001. It is admitted that latter on in the Criminal Appeal No. 17/2001 the applicant has been acquitted vide order dated 18.06.2008. However, the Government has filed Criminal Appeal No. 55/2009 against the acquittal order of the applicant, which is still pending. In view of the same, there is no merit in the present Original Application and the same is liable to be dismissed.

4. Further affidavit in reply on behalf of respondent No. 1 is filed by one Mahesh S/o Dinkar Pathak, working as Principal Secretary, Food and Civil Supply Department, Mantralaya and Shri Shrikant S/o Ramakant Shipurkar working as incharge Regional Dairy Development Officer, Aurangabad Region, Aurangabad, thereby stating that the order of dismissal of the applicant dated 06.12.2001 is not challenged by the applicant in departmental appeal and therefore, the present Original Application is not maintainable.

5. We have heard the arguments advanced by Shri A.D. Gadekar, learned Advocate for the applicant on one hand and

Shri N.U. Yadav, learned Presenting Officer for the respondents on the other hand.

6. After having considered the rival pleadings, documents and submissions on record, admittedly it is evident that the applicant is dismissed from service by the impugned order dated 06.12.2001 (part of Annexure A-1 collectively) in view of the order of conviction of the applicant dated 21.08.2001 passed by the learned Chief Judicial Magistrate, Dhule. Before that the applicant was suspended twice by the orders dated 30.10.21991 and 24.08.2001 in view of contemplation of disciplinary action and subsequent criminal proceeding. Had the applicant not been dismissed from service, he would have been superannuated w.e.f. 30.11.2006.

7. In this Original Application, the applicant is seeking direction against the respondents to withdraw the suspension orders dated 30.10.1991 and 24.08.2001 and order of dismissal dated 06.12.2001 in view of his acquittal by the order dated 18.06.2008 in Criminal Appeal No. 17/2001. The State however, preferred Criminal Appeal No. 55/2009 against the order of acquittal of the applicant and one Shri Prabhakar Karbhari Ghatmale passed by the learned Sessions Judge, Dhule in

Criminal Appeal No. 17/2001. At the time of filing the present Original Application, the said Criminal Appeal No. 55/2009 was pending before the Hon'ble High Court of Bombay, Bench at Aurangabad. The present Original Application is filed on or about 19.01.2015. During pendency of the present O.A., the said Criminal Appeal No. 55/2009 and Ors. are decided by the order dated 29.05.2020 in following terms :-

“O R D E R

I. Criminal Appeal No. 55/2009 fled against the decision given by Sessions Court in Criminal Appeal No. 17/2001 in favour of accused No. 3 Jaylal Kasliwal is allowed. The decision of acquittal of accused No. 3 given by the Sessions Court is set aside. Accused No. 3 stands convicted for the offences punishable under sections 465, 417 r/w. 34 of I.P.C. Criminal Appeal No. 55/2009 fled as against accused No. 1 – Prabhakar Ghatmale stands dismissed. Criminal Appeal No. 56/2009 stands disposed of. Criminal Revision Application Nos. 145/2008 and 146/2008 stand dismissed. Criminal Appeal No. 430/2001 fled against the decision of Trial Court in R.C.C. No. 92/1996 acquitting accused Nos. 4 to 7 is dismissed. Other proceeding, if any, stand disposed of.

II. Accused No. 1 – Prabhakar Karbhari Ghatmale, Accused No. 2 Mandal Ashok Ambdekar and accused No. 3 – Jailal Ganeshlal Kasliwal stands convicted for the offences punishable under sections 465, 417 r/w. 34 of I.P.C. For the offence punishable under section 465 r/w. 34 each of accused Nos. 1 to 3 is sentenced to suffer R.I. for one year and to pay fine of Rs.5000/- (Rupees five thousand) by each of them. In default of payment of fine, they have to undergo S.I. for six months as per the decision of the Trial Court. For the offence punishable under section 417 r/w. 34 of I.P.C. each of accused Nos. 1 to 3 is sentenced to suffer R.I. for one year and to pay fine of Rs.5,000/- by each of them. In default of payment of fine, each of them is to undergo S.I. for three months.

III. The substantive sentence given to each accused Nos. 1 to 3 to run concurrently.

IV. Accused Nos. 1 to 3 to surrender to the bail bonds for undergoing the sentence.

V. They are entitled to set of in respect of the period for which they have been behind bars.

VI. Registry to provide copy of this judgment free of cost to accused.”

8. In view of above, the applicant and others have been convicted for the offences punishable under sections 465, 417 r/w. 34 of I.P.C. each of accused Nos. 1 to 3 is sentenced to suffer R.I. for one year and to pay fine of Rs.5000/- (Rupees five thousand) by each of them. In default of payment of fine, they have to undergo S.I. for six months as per the decision of the Trial Court. For the offence punishable under section 417 r/w. 34 of I.P.C. each of accused Nos. 1 to 3 is sentenced to suffer R.I. for one year and to pay fine of Rs.5,000/- by each of them. In default of payment of fine, each of them is to undergo S.I. for three months.

9. In view of this development, learned Presenting Officer was called upon to place on record the subsequent development as to whether the applicant has undergone sentence or not. In this regard, learned Presenting Officer placed on record a copy of letter dated 18.04.2023 received from the office of Dy. Superintendent of Police, State Crime Investigation Department,

Dhule Unit, whereby it is stated that the applicant Shri Jailal Ganeshlal Kasliwal is absconding and non-bailable warrant has been issued against him.

10. In view of above contentions raised on behalf of the applicant that he is entitled to be reinstated in service by setting aside the order of dismissal dated 06.12.2001 is not maintainable and sustainable. The applicant has been convicted and his conviction is confirmed by the Hon'ble High Court. The applicant has not placed on record any development to show that he has challenged the said order. In view of above, there is no merit in the present Original Application and the same is liable to be dismissed. Hence, the following order :-

ORDER

The Original Application No. 42/2016 stands dismissed with no order as costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 42/2016 VDD & BK 2023 Dismissal from service or direction.