

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 861 OF 2018

DISTRICT : JALGAON

Shri Bharatsing S/o Vitthalsing Patil,)

Age : 69 years, Occu. : retired,)

R/o Jamner, Shiva Colony,)

Plot No. 16/2, Dist. Jalgaon.)

.. APPLICANT

V E R S U S

1) **The State of Maharashtra,**)

Through : Principal Secretary,)

Home Department,)

Mantralaya, Mumbai – 32.)

2) **The Superintendent of Police,**)

Jalgaon.)

.. RESPONDENTS

APPEARANCE : Shri S.D. Dhongde, Advocate for the
Applicant.

: Shri B.S. Deokar, Presenting Officer for the
Respondents.

CORAM : **JUSTICE A.H. JOSHI, CHAIRMAN.**

RESERVED ON : **26.02.2019.**

PRONOUNCED ON : **28.02.2019.**

J U D G M E N T

1. Heard Shri S.D. Dhongde, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents. Perused the record.

2. Applicant has challenged order passed by the Respondent No. 2 which is Annexure-'A-2' dated 10.10.2018 at page Nos. 51 and 52 of paper book of O.A.

3. Impugned order holds against applicant as below :-

“९) विभागीय चौकशी अधिकारी यांनी नोंदविलेल्या निष्कर्ष व मा. उच्च न्यायालय मुंबई खंडपीठ औरंगाबाद यांनी अपील निकालामध्ये आरोपींना संशयाचा फायदा देत निर्दोष मुक्त केल्याचे आदेश केले आहेत. या बाबी विचारात घेता वरील दोन्ही कर्मचारी यांचे निलंबन समर्थनिय होते या निष्कर्षापर्यंत आम्ही पोहचली आहात.”

(Quoted from page No. 52 of paper book of O.A.)

4. Based on said finding the Respondent No. 2 has ordered against applicant as below:-

“२) माजी सफौ/भरतसिंग विठ्ठलसिंग पाटील यांचा दिनांक २०/०५/२००३ ते ०९/१२/२००४ पावेतोचा निलंबित कालावधी “जसाचे तसा ”(As Such) धरण्यात येत आहे. तसेच दिनांक १०/१२/२००४ ते ३१/०५/२००७ (सेवानिवृत्त दिनांक) पावेतोचा बडतर्फे सेवाबाह्य कालावधी NO WORK NO PAY या कार्यतत्व प्रणाली द्वारे व महाराष्ट्र नागरी सेवा (पदग्रहण अवधी परकीय सेवा आणि निलंबन, बडतर्फे व सेवेतून काढून टाकणे या काळातील प्रदाने) नियम १९८१ नियम ७०(१)(५) मधील तरतुदी विचारात घेऊन, सेवानिवृत्ती वेतनाचे प्रयोजन सोडून इतर कोणत्याही प्रयोजनासाठी कर्तव्यकाळ म्हणून गणण्यात येऊ नये असे आदेश निर्गमित करण्यात येत आहे व विभागीय चौकशी नस्तीबंदी करण्यात येत आहे.”

(Quoted from page No. 52 of paper book of O.A.)

5. Applicant has challenged findings and impugned order with following averments :-

“f) The applicant submits that impugned order is without any reasoning as to why the period of

suspension is treated as suspension and as to why the period of services rendered by the applicant is not to be counted for the purpose of pension. In fact the pension is the only ultimate benefit which each Govt. servant expects in his retired life. If the period of service rendered by the applicant is not to be counted for pension purpose, the applicant would get nothing out of his service tenure and in a way thrown on the street.

g) The applicant submits that the reason assigned by the respondent No. 2 that the Court acquitted them giving benefit of doubt is not correct one as can be verified from the Judgment of Honourable High Court in Criminal Appeal. Therefore depriving the applicant of benefit of continuance of service and grant of benefits treating the service as period of service is illegal and smells of malafides.”

(Quoted from page Nos. 4 and 5 of paper book of O.A.)

6. The Respondent No. 2 has answered averments contained in paragraph Nos. 6(d) to 6(h) in para No. 5 of his affidavit in reply. Relevant text reads as follows:-

“05. As regards to the contents of Para No. 6 (d to 4) of the Original Application, I say and submit that the contents of this para are not true and correct hence it is denied by deponent. I most respectfully say and submit that, the respondent no. 2 has rightly passed the order on 10.10.2018 by following procedure laid down in the Rule 70 (1) (5) of Maharashtra Civil Services [Joining

*Time, Foreign Service and Payments During Suspension, Dismissal and Removal] Rules, 1981 by holding that the applicant is not entitled for any benefit of the period of suspension i.e. 25.05.2003 to 09.12.2004 and the period of dismissal i.e. 10.12.2004 to 31.05.2007 except the pension. The deponent further holding that the said period is not treated as duty period, hence 'no work no pay' principle is applicable and he is not entitled for any benefit for that period. I further say and submit that, the deponent has already forwarded the proposal of the applicant to the Accountant General, Mumbai on 08.01.2019 for sanction and now it is pending before the Accountant General, Mumbai for sanction. I further say and submit that, the acquittal of applicant is not the clear acquittal but it is based on benefit of doubt. The action taken by respondent No. 2 in order dated 10.10.2018 is legal and proper as it is taken according to the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981. Hereto annexed and marked as **ANNEXURE R-1** is the copy of order dated 10.10.2018 for kind perusal of this Hon'ble Tribunal."*

(Quoted from page Nos. 54 and 55 of paper book of O.A.)

7. During hearing learned Advocate for applicant has kept fervent reliance on :

(a) Entire text of judgment in Criminal Appeal No. 814 of 2004 dated 23.03.2018 (at page Nos. 10 to 50 of paper

book of O.A.) and placed reliance on the text of para No. 42 of judgment.

(b) Proviso to Sub Rule (2) of Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981.

8. Now this Tribunal has to examine the points raised by the applicant.

9. Point of acquittal on 'Benefit of Doubt' :

(a) Perusal of judgment of acquittal which runs in 50 pages consists of discussion of evidence of prosecution. It is seen that based on elaborate discussion Hon'ble High Court has branded prosecution story as 'unbelievable and a craft work'. Thereupon Hon'ble High Court has recorded conclusions and findings in para No. 42, text where of reads as follows:-

"42. After having considered the entire evidence on record, it is revealed that the prosecution has failed in bringing on record any unimpeachable evidence to prove the alleged demand allegedly made by accused no.1 and alleged acceptance of the said amount by accused no.2. The prosecution has also failed in bringing on record any cogent and sufficient evidence so as to prove the motive for PW 1 in paying the bribe amount to accused no.1 as well as its acceptance by accused no.2. In absence of any concrete evidence, the trial Court ought not have based the conviction of the accused for the offenses with which they were

charged. I have no hesitation in holding that the evidence which has been brought on record by the prosecution against the appellants is not free from doubt the benefit of which would definitely go in favour of the appellants.”

(Quoted from page No. 49 of paper book of O.A.)

- (b) Last sentence of para No. 42 quoted above contains a passing reference to ‘doubt’ which in fact is a casual reference and it is done in a rhetoric manner and main finding is contained in all sentences preceding last sentence.
- (c) The S.P. Jalgaon is sitting in his finding recorded in para No. 9 of impugned order like a literary critique, and holds that the judgment of acquittal is due to ‘benefit of doubt’. This version and/or finding of S.P. Jalgaon is a product of parallax which executive has developed against their own ranks.
- (d) The view or finding of S.P. Jalgaon that Hon’ble High Court gave benefit of doubt is based on selective reading and this conclusion has all shades and properties of conclusions reached by him being perverse. This finding and attitude is abhorred and seriously deplored being an attitudinal folly.

10. Point of reliance on Rule 70 (2) to 70 (5) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 :

(a) It is necessary to have a look at Rule 70 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981. It shall suffice to draw summary of each sub rule instead of quoting whole text as below:-

- Competent authority shall have to make an order upon reinstatement due to decision in appeal/ Review except superannuation/retirement, as regards period intervening to be treated as duty or otherwise and as to pay during intervening period.
(Rule 70 Sub Rule (1))
- In case of full exoneration, full pay and allowances shall follow except that those can be determined to lesser magnitude (amount) if delay in decision of proceedings is attributable to the delinquent, after notice to delinquent, and upon consideration of representation if any made by him, and for reasons to be recorded.
(Rule 70 (2) & proviso thereof)
- Whenever suspension is due to 'proceedings' as provided in sub rule (2) of Rule 70, the period of suspension shall have to be treated as period spent on duty for all purposes.
(Rule 70 (3))
- Rule 70 (4) and 70 (5) apply to cases under Article 311 (2) of Constitution of India, and do not apply to cases covered by Rule 70 (1) and 70 (2).
- Rule 70 (6) to 70 (8) apply as general rules for cases covered by Rule 70(1) or 70 (4).

11. Considering the totality of scheme of Rule 70 (1) and 70(2) of Maharashtra Civil Services (Joining Time, Foreign Service and

Payments During Suspension, Dismissal and Removal) Rules, 1981, it contemplates Disciplinary Proceedings and not the charge under Criminal Law. Moreover disciplinary proceedings were commenced and were kept dormant and finally lapsed.

12. Impugned order makes it clear from para No. 8 of impugned order that due to statutory bar of Maharashtra Civil Services (Pension) Rules, 1982 any further disciplinary proceedings are not permissible.

13. It is not the case/defence of the State that delay in conclusion/completion of disciplinary proceedings was attributable to the applicant.

14. Present case is not shown to be one covered by action under Article 311 (2) of Constitution of India, and hence Rule 70 (4) and 70 (5) have no application.

15. Therefore, impugned order turns out to be totally unsustainable being :-

- (I) Perverse and contrary to the judgment of Hon'ble High Court rendered in Criminal Appeal No. 814/2004 and in specific total reading and summary contained in para No. 42 thereof.

- (II) Impugned order does not contain reasons even one word as to reasons due to which applicant can be denied being treated on duty and entitled for full back wages excluding allowances towards period of suspension if any already paid, while recording of reasons is mandatory as laid down in proviso to sub Rule (2) of Rule 70.
- (III) Applicant's case is not one governed by action by resorting to the powers under Article 311 (2) of Constitution of India.

16. Therefore, present Original Application deserves to be allowed and is allowed, as follows :-

- (A) Impugned order Annexure A-2 dated 10.10.2018, page Nos. 51 and 52 of paper book is set aside
- (B) Respondent No. 2 is directed to pay to applicant entire amount of salary and allowances from the date of suspension till the date of superannuation, by treating entire intervening period as period spent on duty for all purpose.
- (C) Costs of Original Application are quantified to Rs. 10,000/- which too be paid along with arrears.
- (D) This order be complied within 60 days from the date of this judgment.

(E) Presenting Officer is directed to communicate this order to the Respondent No. 2.

(A.H. JOSHI)
CHAIRMAN

PLACE : AURANGABAD.

DATE : 28.02.2019.

Kpb SB O.A. No. 861 of 2018 AHJ Suspension Period