

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

DIST : THANE

ORIGINAL APPLICATION NO.883 of 2017

Shri Pradip Dhondopant Nagpurkar,)
Age : 61 years, Occ : Nil)
R/at. C/o. Prakash Ambada Phatak, Plot)
No.276, near Sai Niketan School,)
Ulhasnagar-4, Dist. Thane.)...**Applicant**

Versus

- 1) The Superintendent of Police,)
Nagar (Rural), O/at. Nagpur.)
- 2) The State of Maharashtra, through)
Additional Chief Secretary, Home Dept.)
O/at. Mantralaya, Mumbai 32.)...**Respondents**

Shri A. V. Bandiwadekar, Advocate for the Applicant.

Shri A. J. Chougule, Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 26.08.2019.

ORDER

1. In the present O.A., the Applicant has prayed to set aside the order dated 31.01.2015 issued by the Responent No.1 whereby his request to reinstate him in service was rejected.

2. Heard Shri A. V. Bandiwadekar, learned Cousnel for the Appliant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

3. The Applicant was appointed on the post of Police Constable in the year 1977. In the year 1989 while he was attached to Khaparkheda Police Station, Dist. Nagpur, the offence under Section 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988 was registered against him and after investigation, the charge sheet was filed. Simultaneously, D.E. was also conducted against the Applicant and by order dated 30.04.1997, the Respondent No.1 removed him

from service. The Applicant had preferred appeal before the Director General of Police on 26.06.1997 which has also been dismissed. Later, the Applicant was convicted in Special Case No.11/1990 by the learned Special Judge, Nagpur for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 by judgment dated 02.08.2004. Being aggrieved by it, the Applicant preferred Criminal Appeal No.541/2004 before the Hon'ble High Court Bench Nagpur. Appeal was allowed on 30.10.2014. It is on this background, the Applicant had made representation to the Respondent No.1 contending that in view of his acquittal, he is entitled for reinstatement in service. However, the Respondent No.1 by impugned order dated 31.01.2015 informed to the Applicant that he is removed from service in pursuance of D.E. and, therefore, the question of reinstatement in service because of subsequent acquittal in Criminal Case does not survive.

4. Thus, what transpires that the Applicant was removed from service in pursuance of the punishment order imposed in D.E. and the order of removal from service has been maintained by the Appellate Authority i.e. Director General of Police. This being the position, only because the Applicant was later acquitted in criminal case, he cannot ask for reinstatement in service. In other words, the acquittal in criminal case would not *ipso facto* upset the findings recorded by the Disciplinary Authority, which has attained the finality. Suffice to say, the relief claimed by the Applicant is misconceived and deserves to be rejected.

5. During the course of submission, Shri A. V. Bandiwadekar, learned Counsel for the Applicant submitted that his client had filed the Review Petition before the then Government against the order of removal of service and the then Hon'ble Minister Shri Manikrao Thakare had decided the appeal and modified the sentence by imposing punishment of withholding of two increments. According to him, though such order was passed by the then Hon'ble Minister, it

was not communicated to the Applicant. He had placed on record the xerox copy of the letter issued by Shri Manikrao Thakare on 27.02.2019, which is at page 114 of the Paper Book(PB) wherein he states as under:-

“ प्रति,

अॅड.अरविंद बांदिवडेकर,
महाराष्ट्र राज्य न्याय प्राधिकरण,
मुंबई - ५.

सन १९९९ ते २००३ या कालावधीत मी गृह राज्यमंत्री, महाराष्ट्र राज्य असताना नस्ती क्र. ०४९६/ना.ग्रा.१५०/पोल-६ (अ) मंजूर करून, दोषारोपाच्या तुलनेत दिलेली बडतर्फीची शिक्षा कठोर असल्याचे दिसून येते. तथापि, श्री.प्रदीप धोंडोपंत नागपूरकर, बडतर्फ पोलीस हेड कॉन्स्टेबल यांना दोन वेतनवाढी रोखून ठेवण्याची शिक्षा देऊन त्यांना पूर्ववत सेवेत सामावून घेण्याबाबतचे लेखी अभिप्राय देऊन दि.६ जुलै, २००० मध्ये नस्ती मंजूर करून मी प्रकरण निकाली काढले आहे.

माहितीस्तव सादर.

(माणिकराव ठाकरे)
मजी उपसभापती,
महाराष्ट्र विधानपरिषद’

6. Thus, learned Counsel for the Applicant wants Tribunal to believe that the then Hon’ble Minister had allowed the appeal, therefore, the Applicant is entitled for the relief claimed. Though in fact, no such official order is forthcoming from the record.

7. Shri A. J. Chougule, learned Presenting Officer for the Respondents submitted that no such order is passed on the Review Application purportedly made by the Applicant. He has filed Affidavit of Shri Vijay Damodar Patil, Deputy Secretary, Home Department who *inter-alia* stated that the record was destroyed in the fire of 2012 and further stated that no such order has been passed in Review Petition. Learned P.O. further submits that there being no legal and valid order on the appeal mere later issued by Shri Manikrao Thakare after the period of 15 years cannot be taken into consideration.

8. Indeed, the Applicant by letter dated 25.07.2002 addressed to the then Hon'ble Minister Shri Thakare made a request that though the Hon'ble Minister had made note on his file on 06.07.2000 that punishment imposed is severe and in its place punishment of withholding two increments be imposed, no such further follow up action was taken by the department and, therefore, requested to issue necessary orders. Thus, from the letter dated 25.07.2002, written by the Applicant, it is quite clear that no such final order was passed in Review Application. Indeed, the letter of the Hon'ble Minister dated 27.02.2019 (reproduced above) also shows that he had only made note on the file on 06.07.2000 that the punishment of removal of service being harsh, it be modified and substituted by the punishment of withholding of two increments. Needless to mention that these letters purportedly issued by the then Hon'ble Minister have no legal sanctity in the eye of law. It cannot be taken into account as legal and valid order. At the most, it can be said that the then Hon'ble Minister allegedly only made note in Review Application but it cannot be treated as a decision of the Government as required to be communicated by and in the name of the Governor under article 166 of the Constitution.

9. If really any such order was passed by the then Hon'ble Minister then the copies of the same ought to have been furnished to the concerned department and secondly, it ought to have been figured in the relevant registers maintained by the Mantralaya or by the concerned department. However, no such authenticated, legal and valid order is forthcoming. This being the position, a letter dated 27.02.2019 purportedly issued by the then Hon'ble Minister cannot be considered to construe that punishment was modified by the Government.

10. Learned P.O. also raised issue of jurisdiction stating that the Applicant stands retired from Nagpur and therefore, this Tribunal has no jurisdiction. He has also filed M.A. No.883/2017 to challenge the jurisdiction of this Tribunal. He,

however, submits that he does not want to press the M.A. as well as the point of jurisdiction as the matter is being decided on merit.

11. The totality of aforesaid discussion leads me to sum up that Original Application is totally unsustainable and misconceived. It is devoid of any merit and deserves to be dismissed. Hence the following order.

ORDER

Original Application is dismissed with no order as to costs.

**Sd/-
(A.P. KURHEKAR)
MEMBER (J)**