

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 937 OF 2016

DISTRICT : SOLAPUR

Shri Rajaram Krishnaji Pawar)
Occ-Nil, R/o: 123 South Sadar Bazar)
In front of Shree Ram Temple,)
Solapur 413 003.)...**Applicant**

Versus

1. The State of Maharashtra)
 Ministry of Home Department,)
 Mantralaya, Mumbai – 32.)
2. The Director General of Police,)
 M.S, Police Head,)
 Shahid Bhagat Singh Marg,)
 Colaba, Mumbai.)
3. Commissioner of Police,)
 Office of Commissioner of Police)
 Pune.)
4. Dy. Commissioner of Police,)
 Pune Zone, Pune-1.)...**Respondents**

Shri R.G Panchal, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **29.08.2023**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicant prays that this Tribunal be pleased to direct the Respondents to reinstate the applicant into service with all consequential benefits holding and /or declaring that the order dated 20.5.1988 removing the applicant from service on the basis of alleged departmental inquiry and the order passed by the Desk Officer, Home Department, as null, void and non-est and also relies on the ration laid down by the Hon'ble Apex Court in the case of A.V Papayya Sastry & Ors Vs. Government of A.P.O & Ors, (2007) 4 SCC 221. The applicant also prays for action against the officers who are responsible in the fraud of removal of the applicant from service and also claims compensation.

2. This Original Application was filed on 23.8.2016 and therefore, it is necessary for the learned counsel for the applicant to satisfy us on the point of maintainability of the Original Application in view of the delay.

3. Learned counsel for the applicant has submitted that the applicant joined service as Police Constable on 13.8.1981. The applicant was arrested on 15.5.1988, pursuant to the filing of FIR for offences punishable under Sections 454, 457, 380 and 511 read with Sec 34 of IPC. The applicant was released on bail on 26.5.1988. He remained absent from duty from 2.6.1987 to

28.6.1987. However, he was dismissed from service by order dated 20.5.1988. Learned counsel for the applicant pointed out to the order dated 20.5.1988 and submitted that the order of removal from service was not issued by the competent authority, i.e., the Commissioner of Police, but the Deputy Commissioner of Police. Learned counsel has submitted that the applicant preferred appeal dated 3.11.2005 to the Director General of Police. Thereafter order dated 7.8.2009 came to be issued by the Desk Officer, Home Department. Learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in **A.V Papayya Sastry & Ors Vs. Government of A.P & Ors, 2007 (4) SCC 221.**

4. Learned P.O has raised the point of res judicata as this issue was decided by this Tribunal by order dated 7.1.2014 in M.A 253/2013 in O.A 19/2013, wherein this Tribunal held that the said Original Application suffered from gross delay and no sufficient cause is shown. Misc Application is totally devoid of merit and hence dismissed.

5. We pointed out to the order dated 7.1.2014 passed by this Tribunal in M.A 253/2013 in O.A 19/2013. We further asked the learned counsel for the applicant to show the relief sought in the Original Application 19/2013 and the learned counsel stated that the copy of the Original Application is annexed to the present Original Application. The reliefs prayed in O.A 19/2013 are as follows:-

“(a) This Hon'ble Tribunal be pleased to direct the Respondents to decide the appeal/application of the Applicant against the order of removal dated 20.5.1988 after affording an opportunity of being heard to the applicant as expeditiously as possible.”

In that Original Application, the applicant had prayed that the Respondent, i.e., the Appellate Authority be directed to decide his appeal wherein he has challenged the order of removal dated 20.5.1988. Our attention is drawn by the learned Presenting Officer to the order dated 7.8.2009 and also the appeal preferred by the applicant dated 3.11.2005. Thus, in the said appeal the applicant has challenged the order dated 20.5.1988 before the Appellate Authority and the Appellate Authority by order dated 7.8.2009 has communicated the decision to the applicant.

6. In the present Original Application, he has challenged the said order of removal from service dated 20.5.1988 and the order of the Appellate Authority dated 7.8.2009. The applicant thus while deciding the Original Application No. 19/2013 was fully aware of the previous orders of the Appellate Authority, yet in the said Original Application sought directions from the Tribunal directing the Appellate Authority to decide his appeal. We are of the view that it is suppression of the fact. Moreover, it was observed in para 3 of the order dated 7.1.2014, in O.A 19/2013, wherein the said order was accepted by the applicant. It is argued that fraud is played on the applicant and therefore the Tribunal in the earlier order was misguided and passed the said order. This submission is baseless and cannot be accepted. If at all according to the applicant there was a fraud played on him, then he should have challenged the said order dated 7.1.2014 of the Tribunal before the Hon'ble High Court or he should have filed review of the said order. No legal recourse was taken by the applicant.

7. In view of the ratio laid down in the case of **A.V Papayya Sastry (supra)**, that if any judgment or order is obtained by fraud, it cannot be said to be judgment or order in law however, I view of the present facts, it is not at all helpful to the applicant.

8. Thu, we find no merit in the Original Application and the same is dismissed.

**Sd/-
(Medha Gadgil)
Member (A)**

**Sd/-
(Mridula Bhatkar, J.)
Chairperson**

**Place : Mumbai
Date : 29.08.2023
Dictation taken by : A.K. Nair.**