

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.361/2015.

Narayan Shankar Bharsakade,
Aged about 59 years,
Occ-Retired A.S.I.,
R/o Salim Nagar, Near Vivekanand School,
Warora, District Chandrapur. **Applicant.**

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
Occ-Retired
2. The Superintendent of Police,
Chandrapur. **Respondents.**

AND

ORIGINAL APPLICATION NO.380/2015.

Chandrabhan Shyamraoji Tadas,
Aged about 50 years,
Occ-Service,
R/o Shivaji Ward, Near Salve Colony,
Ekta Chowk, Tukum, Chandrapur. **Applicant.**

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Superintendent of Police,
Chandrapur. **Respondents.**

Smt. S.S. Wandile, Ld. counsel for the applicants.
Shri P.N. Warjekar, Ld. P.O. for the respondents.

Coram:- B. Majumdar, Vice-Chairman

Dated:- 18th February 2016.

Order

The O.As are disposed of through this common order as the facts and law issues involved are common to them.


2. The applicant in O.A. No. 361/2015 is a retired Assistant Sub-Inspector of Police. The applicant in O.A. No. 380/2015 is a Police Constable. They are aggrieved as the period during which they were placed under suspension has been treated as such and not regularized. The applicant in O.A. No. 361/2015 has also prayed for grant of retiral benefits after fixing his pay by regularizing the period of suspension, while the applicant in the other O.A. has prayed for similar pay fixation and also further promotion.

3. In 2003, a criminal case under the Prevention of Corruption Act was registered against the applicants. They were placed under suspension from 11th March 2003 to 24th/25th of October, 2011. On 29.12.2010, the Special Judge, Warora acquitted the applicants. The State filed an appeal before Hon'ble the High Court which came to be rejected. The applicants were served with show cause notices on 6.1.2015 asking them to explain as to why in terms of Rule 70 (5) of the Maharashtra Civil Services (Joining Time, Foreign

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Service and Payment During Suspension, Dismissal and Removal) Rules, 1981 (in short Joining Time Rules) as well as the G.R. of 24.12.1987, the period during which they were placed under suspension should not be treated as suspension for all purposes. The applicants replied to the show cause notices. On 8.4.2015, the Superintendent of Police, Chandrapur (R.2) issued orders treating the period of suspension of the applicants as suspension under Rule 70 (5) of the Joining Time Rules. The applicants have challenged these orders in these O.As.

4. The applicants submit that criminal charges against them were not proved as they were granted a clean acquittal. Hence, the statement in the impugned order of suspension that the acquittal was by giving benefit of doubt, is wrong. Further, the High Court had upheld their acquittal. Though they were issued show cause notices, no personal hearing was granted to them. They further submit that Rule 70 of the Joining Time Rules does not apply in their case and in fact their case is governed by Rule 72 which deals with reinstatement of a Government servant after suspension on a specific order of the competent authority regarding treatment of the period as spent on duty.



5. The Superintendent of Police, Chandrapur (R.2) in his reply submits that from perusal of the order of the Special Judge, Warora, it will be seen that the applicants were acquitted by ^{giving} ~~granting~~ benefit of doubt. Hence, they are not entitled to the relief sought and the period of suspension has to be treated as such. He specifically ^{Para 26 and the} relies on ^{page} last three lines of ~~para~~ 16 of the judgment of the Special Judge, Warora to conclude that the applicants were granted benefit of doubt.

6. Smt. S.S. Wandile, the learned counsel for the applicants submitted that the applicants' acquittal was a clean one. Nowhere the judgment states that it was by giving benefit of doubt as has been stated by respondent No.2. The learned Special Judge, Warora, in fact, in ²⁶ para 20 of the judgment relied on by respondent No.2 has concluded that mere acceptance of the amount is not sufficient proof that the accused No.1 (applicant in O.A. No. 361/2015) had received illegal gratification and there was no evidence that the accused No.2 (applicant in O.A. No. 380/2015) had committed an offence within the meaning of Section 7 and 13 (2) of the Prevention of Corruption Act. The show cause notices state that acquittal was by giving benefit of doubt and thus in view of the above, the show cause notices do not hold any ground. She then relies on the judgment of

the Central Administrative Tribunal (CAT) in O.A. No.937-CH-2011 dated 23.8.2013 (B.S. Adhikari s/o Kisan Singh Adhikari V/s Union of India and others). The Tribunal relied on several judgments (Mannilal V/s Permial, AIR 1971 SC 330, Dilip Kumar Sharma and others V/s State of M.P. AIR 1976 SC 133) and held that benefit of doubt is also an acquittal on merit and once a person is acquitted he is exonerated of the charge that has been framed against him and the administrative authority cannot question the same once a person has been acquitted. Acquittal on benefit of doubt cannot be used adversely against the person. The C.A.T. therefore, had quashed the order of the applicant B.S. Adhikari (supra) who was acquitted by giving him benefit of doubt. The Tribunal however did not give benefit of past service to the applicant on acquittal.

7. Shri P.N. Warjekar, the learned P.O. relied on the provisions of Rule 72 of the Joining Time Rules, which states that where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) of Rule 72 of the Joining Time Rules, be paid full pay and allowances to which he would have been entitled had he not been suspended. Thus as per this rule, unless the disciplinary authority comes to a conclusion that the

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suspension was wholly unjustified, the Government servant is not entitled to treat the period of suspension as duty. He relied on **Vasant Krishnaji Kamble V/s State of Maharashtra [2006 (4) Mh.L.J. 606]**.

Hon'ble the High Court had held that the acquittal in a criminal case did not *ipso facto* entitle a Government servant to the benefit of salary under Rule 72 of the Joining Time Rules, and what is required to be seen is whether in the opinion of the competent authority action of suspension of a Government servant was "wholly unjustified". In other words, negative test has to be applied to decide whether the period of suspension deserves to be treated as on duty.

8. Having heard the arguments of both sides and after going through the records placed before me, I find that it is not disputed that the applicants were placed under suspension consequent to registration of criminal cases against them under the Prevention of Corruption Act. According to respondent No.2, the applicants' period of suspension cannot be regularized, as the Special Judge, Warora had acquitted them by granting benefit of doubt. This is contested by the applicants. I therefore now examine if the above contention of respondent No.2 is correct. Respondent No.2 has relied on para 26 of the judgment dated 29.12.2010 passed by the Special Judge, Warora. The said para of the judgment is reproduced below:

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“Under these circumstances to my mind, mere acceptance of amount by accused No.1 is not sufficient to prove that he has received the amount for accused No.2 and that amounts to illegal gratification. Though accused No.2 would be responsible for receiving the amount, but in absence of evidence that he has acted on the say of accused No.1 that acceptance would not be taken as offence within the meaning of Section 7 of the Prevention of Corruption Act or u/s 13 (2) of the Prevention of Corruption Act. Hence, I have no hesitation to hold that the prosecution has failed to prove beyond all reasonable doubts that the accused No.2 has committed the offence as charged”.

9. Respondent No.2 has also relied on last three lines of para 24 of the above judgment which reads as follows:

“The testimony of the complainant and his son became doubtful as they denied the complaint against the accused No.1. They were interested person and having grudge against the complainant.”

The judgment then states that “therefore in absence of independent corroboration and when the complainant denied that any demand was made by the accused No.1, the prosecution has failed to prove the demand to raise presumption in favour of the prosecution”.

10. From the above contents of the judgment, I am unable to find anything to conclude that the acquittal was by giving

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benefit of doubt. Thus in my view, the respondents' presumption that the applicants were acquitted by giving benefit of doubt, is incorrect.

11. The learned P.O. has submitted that in case of the applicants, Rule 72 (3) of the Joining Time Rules will apply. The above rule states as follows:

“72 (3)- Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provision of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended”.

12. Sub-rule (4) states that in case falling under sub-rule (3), period of suspension shall be treated as a period spent on duty for all purposes.

13. It is now necessary to see how the above rule 72 has been interpreted by Hon'ble the Supreme Court and Hon'ble the High Court. In **Krishnakant Raghuntah Bibhavnekar V/s State of Maharashtra (1997 (3) SCC 636)**, the Apex Court interpreted Rule 72 of the Joining Time Rules by holding that grant of consequential benefits with all back wages in a case of suspension cannot be decided as a matter of course. I quote the following from para 4 of the judgment:



“The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits will all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may require into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given.”

14. In Vasant Krishnaji Kamble V/s State of Maharashtra (Supra), Hon'ble the High Court had held that even if a Government servant is acquitted, in terms of the provisions of Rule 72 of the Joining Time Rules, it was open to the disciplinary authority to take a conscious decision about treating the period of suspension by considering that the suspension was wholly unjustified. Paras 6 and 7 of the judgment are reproduced below:

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“6. In our opinion, therefore, acquittal of the petitioner by a criminal Court, did not ipso facto entitle him to the benefits of salary under Rule 72. What was required to be seen was whether in the opinion of the competent authority, the action of suspension of the petitioner was “wholly unjustified”. In other words, a negative test has to be applied for holding the person to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty.

7. In the facts and circumstances, though a criminal case was instituted against the petitioner, and he was acquitted by the Court, keeping in mind the admission in response to the show cause notice that the allegations were true, if an order was passed, it cannot be said that such an order could not have been made by the authority or suspension was “wholly unjustified”.

15. In the above case, the High Court had considered the fact that the petitioner Kamble in his reply to the show cause notice as to why the period of suspension should not be treated as such, had clarified that though he had admitted the allegations levelled against him and the receipt of the amount for the students, it was under duress and coercion and admission was not voluntary.

16. From the above two judgments, I find that in terms of Rule 72 of the Joining Time Rules, the question whether on acquittal, the period under suspension should be treated as suspension or on duty must be decided by the disciplinary authority after carefully

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considering the question whether suspension was "wholly unjustified." In other words, whether, inspite of acquittal, the records show that there was some substance in the ground for placing a Government servant under suspension.

17. In case of the present applicant, show cause notices dated 6.1.2015 issued by respondent No.2 state that these are based solely on assumption that the Special Judge, Warora, had come to the conclusion that the applicants have been acquitted by giving benefit of doubt and it was not a clean acquittal. As has been stated earlier, in my view, the order of the Special Judge, Warora can in no way be construed or interpreted to mean that the applicants were acquitted by giving benefit of doubt. I therefore hold that the negative test which respondent No.2 had applied in this case, i.e., whether acquittal was a clean one, has failed to justify treating the period of suspension as such.

18. In view of the above, I hold that the impugned orders dated 8.4.2015 vide which respondent No.2 has treated the period of suspension of the applicants as suspension are not sustainable and deserves to be set aside.

19. Accordingly the O.As stand disposed of in the following terms:

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(a) The O.As are allowed.

(b)The impugned orders dated 8.4.2015 are quashed and set aside.

(c)b Respondent No.2 is directed to treat the period of suspension of the applicants as on duty for all purposes including pay, seniority and retiral benefits.

(d) No order as to costs.

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(B.Majumdar)
Vice-Chairman

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