

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 44/2017 (SB)

Ashok Ganpatrao Changole,
Aged about 50 years, Occ. Service,
r/o Quarter no.112/6,
Raghujinagar Police Quarters,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department having its office at
Mantralaya, Mumbai-400 032.
- 2) Commissioner of Police,
Nagpur Civil Lines, Nagpur.
- 3) The Deputy Commissioner of Police
(Head Quarters) Nagpur City, Nagpur.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.

Shri A.M. Khadatkhar, P.O. for respondents.

**Coram :- Hon'ble Shri A.D. Karanjkar,
Member (J).**

JUDGMENT

(Delivered on this 19th day of December,2018)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2. The applicant was appointed as Police Constable in the year 1991, he was posted at Police Head Quarters, Nagpur. In the year 1997 the applicant was posted at Police Station, Pachpaoli. When the applicant was serving at Police Station, Pachpaoli Crime No.30/1997 under Section 420 r/w 34 Indian Penal Code (IPC) was registered against the applicant at Tahsil Police Station, Nagpur. As the applicant was arrested in the said crime, he was placed under suspension from 09/06/1997. During suspension of the applicant second offence vide Crime No.140/1998 under Section 420 r/w 34 of the IPC came to be registered at Tahsil Police Station, Nagpur and the suspension order passed earlier was continued. Thereafter the third offence was registered against the applicant at Police Station, Pauni, District Bhandara as Crime No.186/1999 under Section 392, 120 B r/w 34 of the IPC.

3. The charge sheets were filed in the Court respect of all three offences and after the trials the applicant came to be acquitted in all the Crimes.

4. After acquittal the appellant made representation Anx. A7 to the respondent no.3 and requested to treat the period of suspension from 09/06/1997 to 16/09/2002, as a duty period.

Thereafter the respondent no.3 served Show Cause Notice dt/16-5-2016 on the applicant and called upon him to show why the suspension period should not be treated as such. The applicant submitted his reply and submitted that as he was acquitted in all the Crimes, therefore, there was no propriety of his trial and suspension, therefore, the suspension be treated as duty period. The explanation of the applicant was not accepted and order was passed to treat suspension period as suspension. The applicant challenged that order before the Director General of Police (DGP), but it was rejected. It is submitted that it was held by the respondent no.3 that in all three cases the applicant was acquitted giving benefit of doubt, therefore, the suspension period was treated as suspension.

5. It is submission of the applicant that without conducting departmental inquiry the order is passed by the respondent no.3 to treat suspension period as suspension and therefore this procedure is illegal. It is submitted that there was no evidence about the participation of the applicant in any Crime and the applicant was not acquitted after giving benefit of doubt, but he was acquitted in all the Criminal cases for the reason that the prosecution totally failed to prove his guilt. In this situation it is submitted that there was no evidence at all for the justification of the suspension, therefore, by allowing this application the impugned order be set aside and

suspension period be treated as duty period and direction be issued to the respondents to pay all consequential monetary benefits to the applicant.

6. The respondents submitted their reply which is at Page no.50 of the P.B. and justified the action. It is submitted that the procedure laid down by law was followed before passing the impugned order and as the acquittal of the applicant in all the three cases was on benefit of doubt, therefore, there is no fault in the impugned order. It is submitted that the opinion of the Competent Authority regarding suspension is justified considering the involvement of the applicant in three criminal cases and for this reason there is no substance in the application.

7. This matter was decided by this Bench on 02/04/2018. The order was challenged in Writ Petition No.4414/2018 the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur decided the Writ Petition on 16/10/2018 and set aside the order passed by this Tribunal and remanded the matter to decide the same in view of the observations made, within three months.

8. I have heard submissions on behalf both sides. There is no dispute about the facts that the applicant is acquitted in all three

criminal cases and the departmental inquiry is not conducted against the applicant after his acquittal in all the cases.

9. It is contention that the applicant was acquitted in all the three criminal cases for the reason that there was no evidence at all. In order to examine the contention it is necessary to go through the judgments delivered by the Criminal Court in all criminal cases.

10. In Regular Criminal Case No.200/1997. The prosecution witnesses examined, did not utter a word about the participation of the applicant in the Crime. In Para 18 of the Judgment it is observed that informant and eye witnesses failed to identify the accused, they did not say the accused before the Court was the same person who stopped the Bus and took the money. Neither the informant nor two eye witnesses before the court deposed that PW-4 was present at the spot and stopped the Bus. It is also observed that evidence adduced by the prosecution failed to establish the nexus of the accused with the alleged crime. The evidence adduced was not cogent, trustworthy and reliable. Thus the summary of the Judgment is that there was no stretch of evidence to connect the applicant with the crime, therefore, it is not possible to say that giving benefit of doubt the applicant was acquitted in Regular Criminal Case No.200/97.

11. After reading the Judgment of Regular Criminal Case No.21/2000 it seems that 4 witnesses were examined to prove the guilt of the applicant out of which the informant PW-3 did not identify the applicant. This witnesses declined to support the prosecution, therefore, there was no incriminating evidence against the applicant. The PW-4 Dinkar Rambhau Khendhe who conducted the test identification pared deposed that the applicant was identified by the informant, but the evidence was that the informant PW-3 denied the fact and considering this nature of the evidence the learned JMFC observed that the evidence adduced by the prosecution was not cogent, trustworthy and reliable and consequently the applicant was acquitted. After reading the entire Judgment it must be accepted that there was no stretch of evidence to connect the applicant with the crime.

12. In Criminal Case No.99/2000 the evidence was that the prosecution Witness No.1 was unable to identify the applicant. The JMFC observed that there was evidence that some unknown persons were involved in the crime and the witnesses examined did not depose about role of the present applicant and the co-accused Dilip Ahirwar. The learned JMFC refused to place reliance on the evidence i.e. recovery of Rs.7000/- from the appellant as the panch witnesses to seizure panchanama turned hostile. It seems that the Investing

Officer in that case was not examined to prove the seizure. The JMFC has observed that the complainant Khushal Kohat did not depose about any incriminating act committed by the applicant and the co-accused. There was no evidence to establish identity of the offender and consequently as there was no evidence, the Id. JMFC acquitted the applicant. Thus after reading this Judgment it seems that there was at all no evidence against the applicant as no incriminating fact was established disclosing involvement of the applicant in the crime, therefore it is no possible to hold that the applicant was acquitted giving benefit of doubt.

13. The learned P.O. has placed reliance on the Judgment in case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra & ors., (1997)3SCC,636.** The law is that the acquittal in criminal case on insufficient evidence does not automatically entitle a person to back wages, pensionary benefits etc. on his reinstatement, where suspension is ordered pending criminal case. The following observations made by the Hon'ble Apex Court are material-

"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 inquire 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 the acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may on reinstatement after following the principles of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.). Rules 72(3), 72(5) and 72(7) of the Rules give discretion to the disciplinary authority.”

14. There cannot be a doubt about the legal principles on which reliance is placed. In the present case as the applicant came to be acquitted in three criminal cases as there was no evidence at all, therefore, it was duty of the respondent no.3 to initiate disciplinary enquiry to inquire about the misconduct.

15. The learned PO has also placed reliance on judgment in case of Vasant Krishnaji Kamble v/s Stae of Maharashtra 2003(4) Mh.L.J. 606. In this case it is held that

“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 upholding 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.”

16. In case before Hon'ble High Court the delinquent gave admission in the reply to the show cause notice that the allegations were true. In present case after acquittal in the criminal cases representation was made by the applicant and it was submitted that he was cleanly acquitted in all three criminal cases, therefore, the suspension period be treated as duty period. It seems that while passing the impugned order the competent authority simply observed that the explanation submitted by the applicant was not satisfactory and as the applicant was acquitted giving benefit of doubt, therefore, held that it was necessary to treat the suspension period as suspension. After reading the impugned order it seems that the competent authority did not take the pain to read the judgments by which the applicant was acquitted. Thus the inference drawn by the competent authority that the applicant was acquitted giving benefit of doubt is not based on evidence, as this inference can not stand after reading the judgments. In this situation it was essential to call for some evidence to show justification for the suspension and this was possible only by conducting enquiry. In present case the competent authority did not make enquiry before arriving to the conclusion and bypassing the principals of natural justice passed the impugned order.

17. In the above circumstances had it been desire of the competent authority to treat the suspension period as suspension, the competent authority was bound to conduct the departmental inquiry following the principles of natural justice for arriving to conclusion that really there was substance in the allegations made against the applicant by the respective informants and the witnesses on basis of which the applicant was suspended. In the present matter in all three cases no witness has uttered a word about the participation of the applicant in any crime, therefore, without following the principles of natural justice it was not expected from the respondent no.3 to pass the impugned order. If a person is acquitted after giving benefit of doubt, then naturally there must be some evidence against him in the trial, disclosing his participation or somewhat involvement in the crime, but in present case there is absolutely no evidence to show connection of the applicant with any the crime. Therefore it was necessary for the Disciplinary Authority to conduct the inquiry after following the principles of natural justice for arriving to independent conclusion, but it is not done. I, therefore, hold that the impugned order dated 31/08/2016 passed by the respondent no.3 cannot be sustained. In the result, the following order:-

ORDER

The O.A. stands allowed. The order dated 31/08/2016 is hereby set aside. The suspension period be treated as duty period for all purposes. The respondents to issue all monetary benefits accrued to the applicant during the period of suspension. No order as to costs.

Dated :- 19/12/2018.

*dnk.

(A.D. Karanjkar)
Member (J).