

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.460/2015.**

**(S.B.)**

Anil Bapurao Deshmukh,  
Aged about 50 years,  
Occ-Service as Constable B. No. 1428,  
R/o Lal Police Line Room No.273,  
Chikhli Road, Buldana.

**Applicant.**

**-Versus-**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-400 032.
- 2) The Superintendent of Police,  
Buldana.

**Respondents**

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Shri A.M. Sudame, the learned counsel for the applicant.

Shri A.M. Ghogre, the learned P.O. for the respondents.

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**Coram:-Shri J.D. Kulkarni,**  
**Vice-Chairman (J)**

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**ORAL ORDER**

(Passed on this 10<sup>th</sup> day of January 2019.)

Heard Shri A.M. Sudame, the learned counsel for  
the applicant and Shri A.M. Ghogre, the learned P.O. for the  
respondents.

2. Vide communication dated 5.11.2012 (Annexure A-1), pay has been fixed by treating the applicant's suspension period from 6.10.2004 to 25.2.2010 as suspension as such. The order dated 22.8.2012 issued by Superintendent of Police, Buldana shows that the applicant's suspension period was treated as suspension period as such, since he was given benefit of doubt and was acquitted on technical ground. Both these orders are challenged in this case and the applicant is claiming that suspension period from 6.10.2004 to 25.2.2010 be treated as duty period and the applicant be given consequential financial benefits.

3. The respondent No.2 i.e. the Superintendent of Police, Buldana has tried to justify the order and submitted that the applicant was acquitted on the technical ground and, therefore, the respondent authority has authority to pass necessary order. It is stated that the applicant was being prosecuted for serious offences punishable U/ss 366, 342 and 376 read with section 34 of the Indian Penal Code and U/s 3 (1) (12) of the SC, ST (Prevention of Atrocities) Act, 1981 and, therefore, action of treating the suspension period is legal.

4. Admittedly, no departmental enquiry was conducted against the applicant. The learned counsel for the applicant invited

my attention to the judgment in Sessions Case No. 52/2005 wherein the applicant alongwith another accused were prosecuted for the offences already stated above. The learned counsel for the applicant pointed out to the findings given by the Sessions Judge particularly para Nos. 8, 11, 18, 22 and 23 and submits that the Sessions Judge was pleased to observe that there was no evidence against the applicant and prosecution has miserably failed to produce evidence and, therefore, the applicant was acquitted. It is stated that the said acquittal was on merit and not on benefit of doubt. He also invited my attention to the provisions of Rule 72 (3), (5) and (6) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal And Removal) Rules, 1981 (hereinafter referred to as, "Rule of 1981").

5. Perusal of the impugned order dated 22.8.2012 shows that the competent authority has considered the judgment delivered by the Sessions Judge and came to the conclusion that the applicant was acquitted on technical ground and on benefit of doubt. The learned P.O. submits that this is sufficient compliance.

6. Rule 72 (3) (4), (5) and (7) of the Rules of 1981 reads as under:-

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

Provided that, where such authority is of the opinion that the termination of the proceedings instituted against the Govt. servant had been delayed due to reasons directly attributable to the Govt. servant, it may, after giving him an opportunity to make his representation within 60 days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Govt. servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

**Rule 72 (4).** In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

**Rule 72 (5).** In cases other than those falling under sub-rules (2) and (3) the Govt. servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and

allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Govt. servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed 60 days from the date on which the notice has been served, as may be specified in the notice.

**Rule 72 (7)**:- In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose;

Provided that, if the Govt. servant so desires, Such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Govt. servant.

**Note**:- The order of competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

- (a) extraordinary leave in excess of 3 months in the case of a temporary Govt. servant; and
- (b) leave of any kind in excess of 5 years in the case of permanent Govt. servant.

7. The learned counsel for the applicant submits that plain reading of the aforesaid rules together clearly shows that the competent authority has come to the conclusion as to whether the suspension was wholly justified/unjustified and then to take action as per relevance of rules. Applicant's case falls within the ambit of sub-rule (5) of Rule 72 of the Rules of 1981 and for taking such action, it was necessary for the competent authority to give an opportunity to the applicant to make representation within 60 days from the date of communication of order.

8. Perusal of communication dated 22.8.2012 (A-2) shows that the suspension period of the applicant was treated as suspension as such. But for that purpose, the applicant was neither heard nor any opportunity was given to him and on what basis the competent authority came to conclusion that the applicant was acquitted on technical ground or by giving benefit of doubt, has not been explained and straightway order dated 5.11.2012 was passed. As per sub-rule (3) of Rule 72 of the Rules of 1981, the competent authority has also to consider as to whether the delay in criminal prosecution was due to reason directly attributed to the Government servant.

9. In my opinion, the competent authority ought to have considered the judgment as a whole and should have recorded reasons as to whether the applicant's suspension was justified or not and then should have issued a show cause notice alongwith said reason to the applicant stating as to why his suspension period shall not be treated as suspension as such. After issuing said show cause notice and after obtaining explanation from the applicant necessary order should have been passed. However, this has not been done in the present case.

10. In view thereof, communication dated 22.8.2012 and the suspension communication dated 5.11.2012 is required to be quashed. Hence, I proceed to pass the following order:-

**ORDER**

- (i) The O.A. is partly allowed.
- (ii) The communications dated 22.8.2012 (A-2) and (A-1) are quashed and set aside.
- (iii) The respondent No.2 i.e. Superintendent of Police, Buldana is given an opportunity to go through the judgment properly and to record its own findings as to whether the suspension

of the applicant was justified or not and if it comes to the conclusion that the suspension is justified, may issue show cause notice to the applicant as to why his suspension period shall not be treated as a period of suspension as such. After receiving explanation of the said show cause notice, the competent authority may pass necessary order as per Rule 72 of the Rules of 1981.

- (iv) All such exercise shall be done within a period of two months from the date of this order.
- (v) No order as to costs.

(J.D.Kulkarni)  
Vice-Chairman (J)

Dt. 10.1.2019.

pdg