

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 564 of 2021 (S.B.)**

Sheikh Salim Sheikh Rahman aged 59 yrs.,
Occ.- Pensioner, R/o. Yadav Nagar, Housing Board,
Pachpaoli, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
Through its secretary, Home Department,
Mantralaya, Mumbai-440032.
- 2) The Director General of Police,
Maharashtra State, Shahid Bhagatsing Marg, Mumbai-1.
- 3) The Commissioner of Police,
Nagpur City, Patel Bungalow, Chhaoni, Sadar, Nagpur.

Respondents.

**Shri S.M. Khan, Advocates for the applicant.
Shri S.A.Sainis, learned P.O. for respondents.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 19/10/2023.

J U D G M E N T

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

2. The case of the applicant in short is as under –

The applicant was working as a Police Constable. While
he was working as a Police Constable, he remained absent from duty.
During that period, some Criminal cases / offences were registered

against him. All three Criminal cases were filed before the Court. The applicant was suspended as per the order dated 12/11/1999. The respondent / disciplinary authority issued the charge sheet to the applicant. The report was submitted by the Inquiry Officer with a finding that there is no evidence in respect of Criminal offences against the applicant. Only charge no.1, i.e., in respect of absenteeism is held to be proved. Without any inquiry, the office of respondent no.3, i.e., the Commissioner of Police, Nagpur passed the final order stating that the applicant was absent from 15/07/1999 to 30/07/1999 and this charge is proved against him. Other charges in respect of Criminal cases are not proved, because, in those cases Judgments were not pronounced. Moreover, those cases were in respect of dispute / rival between the applicant and his brother, therefore, one increment was stopped by respondent no.3.

3. By order dated 04/07/2013 the office of respondent no.3, i.e., the Commissioner of Police, Nagpur passed the order stating that the applicant is acquitted by the Court of Judicial Magistrate First Class, Nagpur in all three Criminal cases by giving benefit of doubt therefore the suspension period treated as such. Hence, the applicant approached to this Tribunal for the following reliefs –

“(7) In view of fact and circumstances of the case the applicant prays for following relief as under :-

(A) That impugned order of respondent No. 3 as Annexure-A6, A10, to be quashed and set aside as it is unreasonable, arbitrary and illegal.

(B) Issue direction to the respondent in respect of suspension period from 12/11/1999 to 10.07.2002 deemed to be duty period and draw the full salary with arrears accordingly.

(C) Issue direction to the respondent to restore seniority as equal to the batchmate /junior and revise the pension with retrospective effect.

(D) That any other relief including that cost be granted to the applicant this Hon'ble Tribunal deem fit and proper in the fact and circumstances of the case.

(8) STATUS QUO PRAYED FOR :- The applicant do not seek status quo or interim relief but seeking the disposal at the time of motion hearing if possible.”

4. The O.A. is strongly opposed by the respondents. It is submitted that as per the Rule 72 of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, it is for the Disciplinary Authority / Appointing Authority to decide the suspension period. When the authority come to the conclusion that suspension was unreasonable, then only suspension period can be treated as a duty period.

5. During the course of submission the learned counsel for the applicant has pointed out the Judgments in Criminal cases.

6. In Criminal Case No.278/1999, the Court has recorded its findings in para nos.8 and 9 as under –

“ (8) Beside the above discussed evidence of the informant there is no evidence to connect with the alleged offence as stated above material witnesses have not been examined by the prosecution As they are reported to be not traceable. Considering the reason discussed here in above I hold that the prosecution has failed to establish that the accused in prosecution of their common object formed an unlawful assembly, they were armed with sword, stick and deadly weapons and committed no use trespass by entering into the house of the elder brother of the informant after having made preparation causing hurt or injury to him. There is no iota of evidence on point Nos. 1 to 4. I, therefore, answer all the points in the Negative.

(9) AS TO POINT NO 3: Prosecution has failed to establish the Point No.1 to 4 therefore accused are entitled for acquittal. In the result following order is passed.

ORDER

(1) Accused Naushed Ahmed S/o Gulam Kadar Sheikh, Accused No.2 Mohd. Sharif S/o Sheikh Tanumiya, accused No.3 Mohd. Bashir S/o Mohd. Hakim, accused No.4 Gulam Kadar S/o Mohd. Sardar Sheikh, accused No.5 Sheikh Rehman S/o Sheikh Farid, accused No.6 Asfaq Ahmed S/o Gulam Kadar Shaikh, accused No.7 Habib Khan S/o Hossain Khan, accused No.8 Sheikh Jamil S/o Shiekh Rehman, accused No.9 Sheikh Hamid Buddha S/o Sheikh Rehman, accused No.10 Ibrahim Khan S/o Hussain Khan, accused No.11 Sheikh Salim Sheikh Rehman, accused No.12 Mohd. Yasin S/o Sheikh Tanumiya and accused No.13 Mohd. Rafiq S/o Sheikh Tanumiya Qureshi are hereby acquitted U/s.248 (1) of the Cr.P.C of the offence punishable M/s 147,148,149,452 and 427 of IPC.

2. Then bail bonds are cancelled.

3. They be set at liberty.”

7. In Criminal Case No.130/2000 the Court has recorded its findings in para no.8 as under –

“८. सदर प्रकरण २००० सालचे असून, पुरेशी संधी देवुनहि अभियोग पक्षाने इतर साक्षीदारांची उपस्थिती प्राप्त केलेली नाही निशाणी २४ ते २७ कडील अहवालानुसार साक्षीदार क्रमांक १ ते ४ मिळून आलेले नाहीत. उपलब्ध पुराव्याचे वरील प्रमाणे केलेले विवेचन विचारात घेता असे दिसून येते कि, सदर प्रकरणातील फिर्यादी न मिळून आल्याने आणि पंच साक्षीदार न मिळून आल्याने सदर प्रकरणातील फिर्याद व छापील प्रथम वर्दी अहवाल, घटनास्थळ पंचनामा सिध्द झालेली नाही. तसेच वैधकीय अधिकारी यांची साक्ष न नोंदविल्यामुळे फिर्यादीचा वैधकीय दाखला सिध्द झालेला नाही. अशा परिस्थितीत उपलब्ध पुरावा विचारात घेता, अभियोग पक्षाने आरोपी विरुद्ध दोषारोप सिध्द करण्यासाठी आरोपीवरील दोषारोपाचे घटक, आवश्यक असलेल्या सर्व बाबी सबळ, सुस्पष्ट, सुसंगत आणि प्रत्यक्ष पुराव्याच्या आधारे सिध्द केला, असे म्हणणे न्यायसंगत होणार नाही. म्हणून मी मुद्दा क्रमांक १ ते २ चे उत्तरे नकारार्थी देतो.

मुददा क्रमांक २ :-

मुददा क्रमांक १ व २ चे नकारार्थी उत्तरामुळे आरोपी सदर प्रकरणातून दोषमुक्त होण्यास पात्र आहेत म्हणून मी मुददा क्र. ३ या उत्तरास खालील आदेश पारित करतो.

आदेश

१) आरोपी १) शेख सलीम शेख रहमान, २) शेख जम्मू शेख रहमान यांना फौजदारी व्यवहार संहितेच्या कलम २४८ (१) अन्वये भा.द वी. चे कलम २९४, ३२३ सह कलम ३४ प्रमाणे शिक्षेस पात्र असलेल्या गुन्हा केल्याचा आरोपातून निर्दोष मुक्त करण्यात येत आहे.

२) त्याचा बंधनपत्र व जमानतपत्र रद्द करण्यात येत आहे.

३) आरोपीची सदर प्रकरणातून तात्काळ मुक्तता करण्यात यावी.”

8. In Criminal Case No.178/1999 the Court has recorded its findings in para no.10 as under –

“(१०) सरकारी पक्षाचा पूर्ण पुरावा पाहिला तर असे दिसून येते की, कोणत्याही साक्षादारांनी असे सांगितले नाही की, आरोपीने गैर कायदेशिर मंडळी जमा केली, फिर्यादीला मारहाण केली त्याच्या हातामध्ये हत्यार होते व त्यांनी जिवानी ठार मारण्याची धमकी दिली त्यामुळे आरोपींनी कोणताही अपराध केला आहे हे सरकारी पक्ष सिद्ध करू शकला नाही म्हणून मुददा क्र.४ व ९ चे उत्तर नकारार्थी आले.

मुददा क्र.१० करीता -

११. मुददा क्र.१ ते ९ च्या नकारार्थी उत्तरामुळे आरोपी सदर आरोपातून दोषमुक्त होण्यास पात्र आहेत. म्हणून मुददा क्र.१० च्या उत्तरामध्ये खालील आदेश देत आहे.

आदेश

(१) आरोपी क्र.१ हबीबखान हुसनखान, आरोपी क्र.२ हब्बुखान इबाहिमखान हुसेनखान, आरोपी क्र.३ शेख जमिल शेख रहेमान, आरोपी क्र.४ शेख रमजान रमजू शेख चांद, आरोपी क्र.५ हयातखान उफ चिंदू शब्बीर खान, आरोपी क्र.६ रफिक खान शब्बीर खान, आरोपी क्र.७ शेख सलीम शेख रहेमान व आरोपी क्र.८ शेख हमीद शेख रहेमान यांची फौजदारी व्यवहार संहितेच्या कलम २४८ (१) अन्वये भा.द.वी. चे कलम १४३, १४७, १४८, १४९, ३२४ २९४. ५०६ व सहकलम ३४, शस्त्र कायद्याचे कलम ४/२५ व मुंबई प्रतिबंधक कायद्याचे कलम १३५ प्रमाणे शिक्षेस पात्र असलेल्या अपराध केल्याच्या आरोपातून दोषमुक्त करण्यात येत आहे.

(२) त्यांची बंधनपत्र व जमानतपत्र रद्द करण्यात येत आहे.

(३) आरोपींची सदर प्रकरणातून तात्काळ मुक्तता करण्यात यावी.

(४) जप्ती पंचनाम्याप्रमाणे तलवार, चाकु यांची योग्यरित्या विल्हेवाट लावण्याकरीता मा. जिल्हा दंडाधिकारी, नागपूर यांचेकडे पाठविण्यात यावे, तसेच लाठी, लोखंडी राड, अपिलाची मुदत संपल्यानंतर नियमानुसार नाश करावेत.”

9. In all the three Judgments, the Court has not recorded any finding in respect of benefit of doubt. In Criminal Case No.278/1999, the Court has recorded its statement that the prosecution has failed to establish that the applicant and others were armed with sword etc. and committed any offence for which injury to the complainant. There is no iota of evidence and therefore recorded negative finding.

10. In Criminal Case No.130/2000, the Court has recorded its findings that “the complainant himself not remained present many times, summonses were issued, but the prosecution failed to examine the complainant and others material evidences, therefore, for want of evidence the applicant was acquitted.”

11. In Criminal Case No.178/1999, the Court has recorded its finding in para-10 that “none of the witnesses have stated anything against the accused / applicant and therefore the accused / applicant was acquitted.”

12. In all three Judgments in criminal cases, there is no evidence to show that the applicant was acquitted on benefit of doubt. It appears that the prosecution failed to adduce any evidence against the applicant, therefore, he was clearly acquitted. Hence, treating the suspension period as such by recording the finding by respondent

no.3 that he was acquitted by giving benefit of doubt appears prima facie not legal and proper. Hence, the following order –

ORDER

(i) The O.A. is allowed. The impugned orders dated 04/07/2013 and 24/07/2020 are hereby quashed and set aside.

(ii) The respondents are directed to treat the suspension period of applicant as a duty period and pay all consequential benefits.

(iii) No order as to costs.

Dated :- 19/10/2023.

(Justice M.G. Giratkar)
Vice Chairman.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 19/10/2023.