

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 612/2015 (SB)**

Yashwant Sambhaji Dadmal,  
Aged about 55 years, Occ. Service,  
R/o Tukum, Chandrapur,  
Tahsil & District Chandrapur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
- 2) The Special Inspector General of Police,  
Nagpur Range, Civil Lines,  
Nagpur.
- 3) The Superintendent of Police,  
Chandrapur, District Chandrapur.

**Respondents.**

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**S/Shri D.M. Kakani, G.K. Bhusari, V.V. Dhande, Advs. for the applicant.**  
**Shri A.P. Potnis, P.O. for respondents.**

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

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**JUDGMENT**

**(Delivered on this 19<sup>th</sup> day of December, 2018)**

Heard Shri D.M. Kakani, learned counsel for the applicant  
and Shri A.P. Potnis, learned P.O. for the respondents.

2. The applicant was initially appointed as Police Constable.  
Thereafter he was promoted in the year 1997 as Police Head

Constable and posted at Mahakali Police Outpost, District Chandrapur. That while working at Mahakali Police Outpost the complaint was lodged by one Subhash Yelkulla against the applicant alleging that the applicant was demanding illegal gratification, the trap was arranged and the applicant was caught accepting the illegal gratification. In view of the registration of the offence under the P.C. Act the applicant was suspended. There was investigation, later on the charge sheet came to be filed against the applicant in the Court of Special Judge, Chandrapur. In Special Case No. 06/1999 the learned Special Judge held that the charges against the applicant were proved. The learned Special Judge convicted the appellant u/s 7 and 13(1) (d) r.w. 13(2) of the P.C. Act and sentenced the applicant to undergo R.I. for one year and to pay fine Rs.300/- in default to suffer R.I. for 3 months for each offence. As the applicant was convicted by the Special Court the disciplinary authority dismissed the applicant from the service.

3. Being aggrieved by the order of conviction Criminal Appeal No.378/2007 was preferred by the applicant and the Hon'ble High Court acquitted the applicant vide Judgment dated 30/07/2012.

4. After the acquittal by the Hon'ble High Court, the applicant was reinstated in service. Thereafter the applicant requested to pay him the salary for the period of suspension by treating it as duty

period. It is grievance of the applicant that vide order dated 16<sup>th</sup> Sept.,2013 the respondent no.3 held that the applicant was guilty of misconduct and therefore directed to deduct 50% pay and allowances for the suspension period.

5. In this application it is contention of the applicant that as there was no evidence against the applicant, therefore the Hon'ble High Court acquitted him from the charges and it is wrongly held by the respondent no.3 that benefit of doubt was given to the applicant for his acquittal. The second contention of the applicant is that it was duty of the respondent nos.2 and 3 to conduct the disciplinary inquiry to decide whether misconduct was committed by the applicant or not and without doing so the respondent no.3 had no authority to hold that the suspension period to be treated as suspension and to deduct 50% of the pay and allowances for the suspension period. According to the applicant, the procedure followed by the respondent no.3 is contrary to Rule 70 and Rule 72 (2) & (5) of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981. It is therefore submitted that the impugned order passed by the respondent no.3 be quashed and 100% pay and allowances of the suspension period i.e. from 05/09/1998 to 03/11/2005 be paid to him. It is also prayed that the direction be issued to the respondents to fix the pay of the applicant in

each year and to give the benefit of 5<sup>th</sup> and 6<sup>th</sup> pay commission to the applicant.

6. The application is opposed by the respondents vide reply at Page no.96 of the P.B. It is submission of the respondents that though the applicant was acquitted by the Hon'ble High Court in appeal, but his acquittal is not honourable acquittal, but benefit of doubt is given to him. According to the respondents the applicant was working as Police Head Constable at Mahakali Police Outpost, he was trapped while accepting the illegal gratification and considering this evidence the learned Special Judge convicted the appellant. The Hon'ble High Court did not acquit the applicant for the reason that the prosecution's case was false or there was at all no evidence against the applicant. It is submitted that as the applicant is acquitted giving benefit of doubt, therefore, the action of the competent authority to deduct 50% of the wages and allowances for the suspension period is perfectly illegal, therefore no interference is required.

7. I have heard submissions on behalf the applicant and submissions on behalf of the respondents. The main submission of the applicant is that he is acquitted in the case by the Hon'ble High Court as there was no evidence to prove the charges against him and therefore, it was incumbent on the respondents to conduct the departmental inquiry for awarding any punishment or even for treating

the suspension period as suspension. The learned counsel for the applicant has placed reliance on the Judgment in O.A.343/2016 decided by the Principal Bench of MAT on 25/01/2017, the Judgment in case of **Union Territory Chandigarh Administration & Ors. Vs. Pradip Kumar & Ano., 2018 SCC online SC,8** and Judgment in case of **Narayan Shankar Bharsakade Vs. State of Maharashtra** in O.A.361/2015 decided by the MAT, Nagpur Bench on 18/02/2016.

8. In order to examine the contentions it is necessary to peruse the Judgment delivered by the Hon'ble High Court. On page No.75 in para-22 the Hon'ble High Court has observed as under –

*“ It was also open for the trial court to summon and examine Vijay Dindewar as a Court witness by exercise of power under Section 311 of the Code of Criminal Procedure before it could disbelieve the defence evidence. Thus, it is the grievance on behalf of the appellant that the defence evidence was not understood in proper perspective bearing in mind the likelihood of false implication of the appellant due to evidence of sale transaction of bicycle which had taken place between Vijay Dindewar and the accused.”*

9. On Page No.77 of the Judgment in Para-24 it is further observed that *“But, unfortunately he was not examined. Under these circumstances, the benefit of doubt arising from discrepancies or*

*inconsistencies found in the prosecution evidence have to go in favour of the accused in front of criticism that prosecution has suppressed the material witnesses like Pramod and Vijay Dindewar.”*

*“I think there was probable explanation from the defence which ought to be considered in its proper perspective in view of likelihood of false implication of the appellant in respect of money paid due to sale transaction of bicycle. One cannot conclude with full confidence that the amount paid in sum of Rs.300/- to the accused no.1 by the complainant was totally unrelated to the bicycle transaction between the accused no.1 and Vijay Dindewar. Unfortunately, witness Vijay Dindewar was not examined by the prosecution, therefore adverse inference can be drawn against the prosecution that had he been examined he might have deposed in favour of the defence.”*

10. In view of these material observations ultimately the Hon'ble High Court held that the benefit of doubt ought to go in favour of the accused looking to the totality of the evidence and nature of inconsistencies and discrepancies pointed out from the record.

11. After reading the Judgment of the Hon'ble High Court and particularly the reason for the acquittal of the accused/applicant, it must be said that the applicant who was the accused no.1 in the trial

was acquitted in the appeal merely for the reason that the hypothesis of his defence was sufficient to make the case of the prosecution doubt full. On the basis of this material inference cannot be drawn that the applicant was acquitted for the reason that the prosecution measurably failed to prove the case against him or the prosecution's case was entirely false.

12. I have gone through the Judgments on which reliance is placed by the learned counsel for the applicant in O.A.343/2016 in Para-14 the Judgment delivered by the Hon'ble Bombay High Court in Writ Petition No.4178 of 2001 in case of **Shri Vithal A. Shinde Vs. State of Maharashtra & Ors.**, dated 25/10/2001 was considered. It is observed that it is practice to right in the Judgment that the accused is acquitted giving benefit of doubt though there is total failure of the prosecution to bring home the charge. It was also observed by the Hon'ble High Court in that case that even after acquittal a departmental inquiry could be held.

13. In case of **Krishnakant Raghunath Bibhawnekar Vs. State of Maharashtra, 1997 (3) SCC, 633** and **Vasant Krushnaji Kamble Vs. State of Maharashtra 2003 (4) Mh.L.J., 606**. It was held that in such situation it is necessary to examine the following aspects –

(i) Whether the acquittal of the applicant is clear acquittal without giving benefit of doubt and,

(ii) The consideration of sub clause (5) of Rule 72 of the said Rules which has to be read along with sub rule 7 .... –

14. In case of Krishnakant following observations are made by the Hon'ble Apex Court-

*“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.”*

15. In such situation, as per decision in case of Krishankant's case two courses are available to the disciplinary authority it may



enquire into misconduct unless there is sufficient material in the trial on the basis of which finding can be recorded that the applicant did commit or not commit any misconduct. In the present matter after reading the Judgment delivered by the Hon'ble High Court it is crystal clear that on the basis of the evidence recorded in the trial two sets of hypothesis were possible, one was favouring the case of the prosecution and other was favouring the defence story. As higher degree of proof i.e. proof beyond reasonable doubt is required to convict a person in a criminal trial, therefore, the Hon'ble High Court accepted the hypothesis favourable to the applicant and gave him the benefit of doubt as material witnesses were not examined before the trial court. After going through the reasons recorded by the Hon'ble High Court for the acquittal of the applicant, it is not possible to accept that there was at all no evidence either for suspension or prosecution of the applicant for the charges under the Prevention of Corruption Act. The Hon'ble High Court accepted the case of the prosecution to the extent that an amount of Rs.300/- was received by the applicant, but only because two witnesses were not examined, therefore, adverse inference was drawn against the prosecution and benefit of doubt was given to the applicant.

16. In the present matter it appears that the disciplinary authority the respondent no.3 after acquittal of the appellant issued show cause

notice dated 16<sup>th</sup> Sept.,2013 to the applicant and called upon him to show cause why the impugned order should not be passed by deducting 50% of salary and allowances for the suspension period. Thereafter reply was submitted by the applicant to the show cause and after hearing the applicant, the impugned order dated 02/11/2013 was passed by the respondent no.3 holding that considering the circumstances in which the applicant was acquitted it was necessary to deduct 50% of salary and allowances for the suspension period.

17. Thus in view of this evidence it is not possible to accept that the applicant was acquitted for the reason that there was no stretch of evidence or total failure of the prosecution to prove his guilt, but on the contrary this evidence discloses that the applicant was acquitted only after giving benefit of doubt and this material justifies the suspension of the applicant. I, therefore, hold that there is no flaw in the impugned order passed by the respondent no.3 and no interference is required in this matter. Hence, the following order :-

### **ORDER**

The O.A. stands dismissed with no order as to costs.

**Dated** :- 19/12/2018.

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

\*dnk.