

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 668/2015.

Vijaykumar Vitthalrao Wakse,
Aged about 47 years,
Occ : Service,
R/o Defence Ordnance Factory Vasahat,
Ambazari Wadi, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai-400 001.
- 2) The Director General of Police (M.S.),
Mumbai.
- 3) The Commissioner of Police,
Nagpur City, Nagpur.
- 4) The Joint Commissioner of Police,
Nagpur City, Nagpur.
- 5) The Principal,
Police Training Centre, Nagpur.

Respondents

Shri G.G. Bade, Ld. Advocate for the applicant.
Smt. S.V. Kolhe, learned P.O. for respondents.

Coram:- Justice M.N. Gilani, Member (J).

Dated: - 7th January 2016.

Oral order

In this O.A., the applicant is concerned about his back wages and continuity in service for the period during which he was

placed under suspension on account of pendency of criminal case, under the provisions of Prevention of Corruption Act, against him.

2. In 2008, the applicant was posted as Police Sub-Inspector at Police Station, Wadi (Nagpur City). On the basis of some complaints, offence under Prevention of Corruption Act was registered against him and for that reason he was placed under suspension on 7.4.2008. The trial ended on 13.8.2014 in which the applicant was acquitted. Consequently on 13.3.2013, the applicant was reinstated in service. This was followed by the notice issued by the respondent No.3, calling upon him as to why the period of suspension be not treated as it is. The applicant replied to the said notice and prayed for treating the period of suspension as a period spent on duty. On 4.9.2014, the respondent No.4 passed the order impugned treating the period of suspension from 12.4.2008 to 13.3.2013 as it is. Further, nothing was stated about counting the said period as his qualifying service. Therefore, this O.A.

3. Factors which weighed with the respondent No. 4 while passing the order impugned are that: the complainant did not fully support the prosecution. The evidence of P.W. Nos. 1, 2 and 3 was not consistent. P.W.3 did not properly support the prosecution. The evidence of P.W. Nos. 6, 7 and 8 did not inspire confidence.

Therefore, the authority came to the conclusion that the suspension of the applicant was justified.

4. Copy of the judgment in Special ACB Case No. 19/2010 delivered on 13.8.2014 is placed on record. It seems that, while passing the order impugned, following observations made by the learned Special Judge in para 18 of his judgment were considered. They are extracted below:

“On careful consideration of prosecution case vis-a-vis, evidence of P.W.1 Ajit Satpute, the complainant; P.W. 2 Kuntal Bagesar,, the panch No.1, P.W.3 Diwakar Mohod, P.W. 4 T.S. Kamble, the Special Judicial Magistrate, Nagpur, P.W.6 D.G. Chavan, the then Police Inspector, Wadi police station, P.W. 7 Vilas Deshmukh, the I.O. land P.W. 8 V.D. Mishra, the Police Inspector, ACB, who has conducted house search and seized car after its inspection, in the light of rival submissions, it appears that prosecution has miserably failed to prove basic ingredient of offence i.e. “*demand and acceptance of bribe amount by accused from complainant/P.W.1 Ajit Satpute*” and hence, the prosecution case against the accused, in respect of any alleged offences, cannot be held as proved beyond reasonable doubt.”

5. Acquittal based on insufficient evidence in a criminal case does not automatically entitle a person to back wages, pensionary

benefits and consequential benefits on his reinstatement. The competent authority is empowered to treat the suspension period as not spent on duty after following principles of natural justice.

[Krishnakant Raghunath V/s State of Maharashtra (1997) 3 SCC 636.] In **Vasant Krishnakumar Kamble V/s State of Maharashtra (2003) 4 Mh. L.J. 606,** it was held that, “*acquittal of the employee by a criminal court, did not ipso facto entitle him to the benefit of salary under Rule 72 of the M.C.S. (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (in short Rules of 1981), the competent authority has to decide whether suspension was wholly unjustified*”.

6. Admittedly, before passing the order impugned, principles of natural justice were followed by issuing show cause notice to the applicant and explanation furnished by him was considered.

8. In a given set of facts and circumstances, the Supreme Court declined to allow back wages except counting qualifying service for the purpose of pension. In this connection, reference can be made to **Gurnam Singh V/s State of Punjab, 1988 (3) SLR 434, State of U.P. V/s Vedpal Singh, AIR 1997 SC 608, Regional Manager, Bank of Baroda V/s Presiding Officer, Central**

Government Industrial Tribunal, AIR 1999, SC 912. In UPSRTC

V/s Mitthu Singh, AIR 2006 SC 3018. It was held that, *“payment of back wages is a discretionary power which has to be exercised by a court / Tribunal keeping in view the facts in their entirety and neither straight-jacket formula can be evolved nor a rule of universal application can be laid down in such cases”*.

9. Turning to the facts of the present case, it appears that the complainant Ajit Satpute was the accused in a crime registered at Police Station, Wadi where the applicant was posted. It was alleged that, the applicant decided to arrest the brother of said Ajit, unless bribe was paid to him. On the basis of the complaint lodged by the said Ajit Satpute before the Anti Corruption Bureau, a trap was laid and the applicant was caught red-handed while accepting bribe. Having conscious about limitation of this Tribunal, suffice it to say that the respondent No.4 came to the conclusion that in the facts and circumstances of the case, the applicant is not entitled for back wages and I see no reason to interfere with the same.

10. The order impugned is silent as to whether the period of suspension shall count as qualifying service for the purpose of pension. Rule 43 of the M.C.S. (Pension) Rules, 1982 provides that, such a period shall not count as qualifying service unless the authority

competent to pass orders under the rule governing such cases expressly declares so. In the decisions of the Supreme Court, reference of which has already been made, while denying back wages direction was given to count the period of suspension as qualifying service. Same rule will have to be applied to the present case.

11. In the result, O.A. is allowed partly in the following terms:

(i) It is declared that the applicant shall be entitled for continuity in service as if he was not out of employment during the period from 12.4.2008 to 13.3.2013 and the said period shall count as qualifying service for the purpose of pension and other retiral benefits, however, without back wages and other monetary benefits.

(ii) There shall be no order as to costs.

(M.N. Gilani)
Member (J)

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