

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.733/2016.

(S.B.)

Ramesh Dashrath Malode,
Aged about 59 years,
Occ-Retired,
R/o C/o Rajendra Ghosekar,
18, Umrer Road, Near Dighori Dahan Ghat,
Nagpur-03.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Additional Chief Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Commissioner of Police,
Nagpur City-01.

Respondents

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

Shri A.M. Ghogre. the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,

Vice-Chairman (J)

JUDGMENT

(Delivered on this 19th day of July 2018.)

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

2. The applicant has claimed that the communication dated 28.12.2015 issued by the respondent No.2 i.e. the Commissioner of Police, Nagpur City be quashed and set aside and the respondent No.2 be directed to release the amount of General Provident Fund (GPF) of the applicant for the period from 2.5.1978 to 1.3.1987 forthwith with interest. It is further prayed that the respondent No.2 be directed to grant all service benefits taking into consideration the fact that the period from 1.3.1987 to 21.1.2014 be treated as continuous in service and also to count it as qualifying service and to grant interest. Vide communication dated 28.12.2015, it was intimated to the applicant that his period out of service from 1.3.1987 to 21.1.2014 will be treated as service period only for the purpose of pension and he will not be entitled to claim any salary and allowances for such period.

3. From the admitted facts on record, it seems that the applicant was appointed as Police Constable on 2.5.1978 and was posted at Headquarters at Nagpur. He stood retired on attaining the age of superannuation on 29.2.2016. In September 1986, a charge-sheet was issued and a departmental enquiry was initiated against the applicant and he was kept under suspension while he was working at Police Driver. The Enquiry Officer found the applicant

guilty and suggested penalty of lowering the pay scale of the applicant to the basic level for two years and also withholding of increments. The respondent No.2, however, did not agree with such suggestion and imposed order of dismissal / removal from service on the applicant. The applicant filed departmental appeal before respondent No.2. But it was also dismissed. Thereafter he filed Writ Petition No. 82/1991 before the Hon'ble High Court. But it was transferred to this Tribunal. This Tribunal dismissed the petition and, therefore, the applicant again approached the Hon'ble High Court. But the Hon'ble High Court also dismissed the Writ Petition on 21.1.2012. The applicant thereafter approached the Hon'ble Apex Court by filing Civil Appeal No.8265/2013 arising out of SLP (C) No. 21741/2012. Vide order dated 16.9.2013, the Hon'ble Apex Court was pleased to direct the respondent No.2 to reinstate the applicant in service, but without back wages. On the representation dated 25.11.2013, the respondent No.2 issued an appointment order in favour of the applicant on 20.1.2014. But the applicant was reverted back to the post of Police Constable. The applicant thereafter challenged this order by filing O.A. No. 169/2015 before this Tribunal and vide order dated 23.9.2014, this Tribunal directed the respondents to reinstate the applicant with continuity in service, but

without back wages and it was declared that the period for which the applicant was out of service, shall be counted as qualifying service.

4. From the aforesaid facts, it seems that the applicant was out of employment from 1987 to 20.1.2014 and this period was to be treated as continuous and qualifying service. The applicant, therefore, on 7.10.2015 filed representation and claimed that he should be granted all retiral benefits and other service benefits for his continuous service. However, he was informed that he was not entitled to get such benefits. According to the applicant, letter dated 28.12.2015 whereby his claim for monetary benefits was rejected and he was not entitled for continuous service period, is illegal and hence this O.A.

5. The respondent No.2 justified rejection of claim of the applicant. It is stated that the applicant has been reinstated in service and his absence period from 1987 to 2014 has been treated as continuous service for the purpose of pension. The directions of the Hon'ble Apex Court as well as of this Tribunal have been complied with and the applicant has no right to claim financial benefits of his absence period.

6. In the first round of litigation, the applicant approached upto the Hon'ble Apex Court and the order passed by the

Hon'ble Apex Court in S.L.P. (Civil) No.21741/2012 arising out of W.P. No. 2513/2001 is placed on record at page Nos. 25 and 26.

The Hon'ble Apex Court has passed the following order:-

“The appellant shall be reinstated in service. It has been brought to our notice that since the appellant was working on the lowest post, the punishment of reversion cannot be imposed on him. We, therefore, direct that the appellant shall be reinstated, but without any back wages. In addition, his five future annual grade increments shall be forfeited with cumulative effect. The appeal is accordingly disposed of. No costs.”

7. It seems that the said order was not properly implemented and the applicant was in fact re-appointed. The applicant, therefore, challenged the said order in O.A. No. 169/2015 before this Tribunal and in the said judgment delivered on 23.9.2015, this Tribunal was pleased to allow the application and O.A. was disposed of as under:-

“(i) The O.A.is partly allowed.

(ii) It is declared that the reinstatement of the applicant shall be with continuity in service, however, without back wages. Consequently,

period during which he was out of employment, shall count as qualifying service.

(iii) No order as to costs.”

8. The aforesaid orders passed by the Hon'ble Apex Court as well as this Tribunal clearly show that the reinstatement of the applicant was with continuity in service, however, without back wages. It was observed that the period for which the applicant was out of employment, was to be counted as qualifying service. The qualifying service means the 'qualifying service for the purpose of pension'. In other words, while considering the case of the applicant for pension, his absence period was to be treated as service period. In short, inspite of the fact that the applicant remained absent from 1986 to 2014, his service period was to be treated as continuous service. Since it was specifically mentioned by both the Hon'ble Apex Court as well as this Tribunal that the applicant will not be entitled to any monetary benefits for such absence period, there remains no doubt that the applicant was not entitled to any increment or financial benefits for this period nor he was entitled to any back wages.

9. The learned counsel for the applicant has invited my attention to the impugned letter at Annexure A-1, page No.21 dated 28.12.2015 which is as under:-

“मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, नागपूर यांनी मूळ अर्ज क्र. १६९/२०१५ मध्ये वर नमूद आदेशानुसार पोशी/५३४२ रमेश दशरथ मालोदे यांचा सेवाबाह्य कालावधी बाबत या कार्यालयाचे संदर्भ क्र. १ व २ चे आदेश या आदेशाद्वारे बाजूला सारून खालील प्रमाणे आदेश देण्यात येत आहे.

पोशी/५३४२ रमेश दशरथ मालोदे यांचा दि. १.३.१९८७ ते २१.१.२०१४ पर्यंतचा सेवाबाह्य कालावधीचे वेतन व भत्ते त्यांना लागू न करता फक्त सेवानिवृत्ती प्रयोजनार्थ कर्तव्यकाल म्हणून गणण्यात येत आहे.”

10. The learned counsel for the applicant submits that the said communication clearly shows that the respondent No.2 has ignored the orders passed by the Hon'ble Apex Court as well as this Tribunal. However, it is not so, as the reference Nos. 1 and 2 mentioned in the said order are to be the letters issued by the respondent department and the order is not breached. The fact that the absence period of the applicant was to be treated as continuous service only for the purpose of pensionery benefits and that the applicant was not entitled to any financial benefits during that period including back wages, itself shows that the period of absence was to be counted only for the purpose of pensionery benefits. I, therefore, do not find any illegality in the communication dated 28.12.2015. The applicant's claim for financial benefits has been legally denied and, therefore, there is no merit in the O.A. Hence, I proceed to pass the following order:-

ORDER

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

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

Dt: 19th July 2018.

pdg