

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH : NAGPUR.
ORIGINAL APPLICATION NO. 774/2015

Kishor Nimbaji Mahajan,
Aged about 58 years,
R/o Room No. 19, Police Club (Jim Khana),
Walker Street, Civil Lines,
Nagpur. -----**APPLICANT.**

-Vs-

1. The State of Maharashtra ,
Through its Secretary,
Home Department,
Mantralaya, Mumbai
2. The Director General of Police,
Shahid Bagat Singh Marg, Kulaba,
Mumbai. 400 001.
3. The Additional Director General of Police,
(Establishment), Shahid Bhagat Singh Marg, Kulaba,
Mumbai. 400 001 (M.S.)
4. The Commissioner of Police, Nagpur.
Civil Lines, Nagpur. . -----**RESPONDENTS.**

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1. Shri I.S. Charlewar, Advocate for the applicant .
 2. Shri M.I. Khan, P.O. for the respondents.
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CORAM : B. Majumdar : Vice-Chairman
DATE : 6th May, 2016.

ORDER

The applicant is an Assistant Police Inspector. In the O.A. he has sought relief as follows :-

- A) " Quash and set aside the impugned order dated 16/11/2015 passed by the respondent no. 3 ;
- B) Direct the respondent nos. 2 and 3 to treat the period of suspension as well as dismissal i.e. the period from 23/11/2002 to 25/1/2005 and 26/1/2005 to 4/2/2015 as a duty period for all purposes including promotion from the date on which the Juniors to the applicant came to be promoted;
- C) Direct the respondent nos. 2 and 3 to grant all the monitory benefits with interest for the aforesaid period by treating as a duty period."

2. Sometime in 2002 a criminal case under the Prevention of Corruption Act was registered against the applicant and during the period from 23/11/2002 to 25/1/2005 he was placed under suspension. Following his conviction in

the above criminal case, he was dismissed from service on 12/1/2005. The High Court vide its order dtd. 18/9/2014 in Criminal Appeal No.779/2004 quashed and set aside the conviction and acquitted the applicant from ^{all} the above ~~at~~ charges. He was reinstated in service on 18/1/2015 and he joined on 5/2/2015. On 16/11/2015 the Additional D.G. of Police (Establishment)(R/2) issued an order vide which the period of the applicant's suspension from 23/11/2002 to 25/1/2005 was treated as such and the period during which he was under dismissal, i.e. 26/1/2005 to 4/2/2015 was treated as leave due/admissible. The applicant has challenged the legality of this order in the O.A.

3. The applicant submits that the entire period of his suspension and dismissal is required to be treated as duty for all purposes since the High Court had granted him a clean acquittal and this order was not challenged before the Supreme Court. No department enquiry (DE) was instituted against him nor was he served with any ^{show cause} notice. He also states that some identically situated employees, namely., S/shri D.M.

Deshmukh, Ashok Vishnu Waghmare, Rajendra Liladhar Pathak, Manik Sathe and Bandu Gopalrao Gaikwad, on being granted acquittal from criminal charges under the Prevention of Corruption Act, were given all benefits by treating the period of suspension and dismissal as duty for all purposes. In case of Shri D.M. Deshmukh an order to that effect was issued by mentioning therein that it was subject to the outcome of the appeal preferred by the State.

4. The Director General of Police (R/3) in his reply filed by Awadesh Ganesh Tripathi, Asstt. Commissioner of Police submits that the periods of suspension and dismissal have been decided in terms of the impugned order dtd. 16/11/2015 by taking a conscious decision and without any mala fides or vindictiveness. He further submits that the period of leave due/admissible will not come into the way of the applicant's further promotion.

5. Shri I.S. Charlewar, Id. Counsel for the applicant as also Shri M.I. Khan, Id. P.O. for the respondents reiterated the submissions for the respective sides in the O.A.

6. After going through the records placed before me and after hearing the submissions on both sides, I find that it is undisputed that the applicant was placed under suspension following registration of a criminal case against him under the Prevention of Corruption Act. Following his dismissal based on conviction by the lower court, he was reinstated after hon'ble the High Court had set aside the conviction and acquitted him from all the charges. It is also not disputed that no DE was initiated against the applicant at any stage. Hence it is clear that the applicant's suspension was on the basis of registration of a crime and his dismissal was as a result of his conviction. His subsequent reinstatement was on the basis of setting aside of the conviction and acquittal by the High Court. On perusal of the impugned order dtd.16/11/2015, I find it states that the applicant's representation dtd. 7/9/2015, that on the basis of his acquittal by the High Court, his suspension period should be treated as on duty for all purposes was decided by issuing the impugned



order treating the period of suspension as suspension and the period of dismissal as leave due/admissible.

7. R/2, in his reply has stated that the above decision was a conscious one. However, on careful perusal of the order I find that it nowhere states or even indicates whether such a conscious decision was taken. It only states that

“ या प्रकरणाच्या छाननीअंती सपोनि श्री महाजन यांच्याउक्त कालावधीच्या बाबतीत खालील नमुद केल्याप्रमाणे निर्णय घेण्यात येत आहे.”

8. The issue regarding grant of pay and allowances for the period of suspension is regulated by Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payments during Suspension, Dismissal and Removal) Rules, 1981, which is entitled as “Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty .” Sub-rule (3) of the above rule states as follows :-

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

Provided -----”

9. Hence in terms of the above Rule, the applicant will have entitlement to treat the period of suspension as service for all purposes only if the respondents have reached the conclusion that the suspension was wholly unjustified. The provisions of this Rule have been dealt with by hon'ble the High Court in *Shri Vasant Krushnaji Kamble Vs/ State of Maharashtra and others [2003(4) Mh.L.J. 606]*. The petitioner was placed under suspension and a criminal case was registered against him. He was subsequently acquitted but the period of suspension was treated as suspension. Hon'ble the High Court, observing that the petitioner's case was

covered under Rule 72 held as follows :-

Para 6: *"In our opinion, therefore, acquittal of the petitioner by a criminal Court, did not ipso facto entitle him to the benefits of Salary under Rule 72. What was required to be seen was whether in the opinion of the competent authority, the action of suspension of the petitioner was "wholly unjustified" In other words, a negative test has to be applied for holding the person to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty.*

Para 7: *In the facts and circumstances, though a criminal case as instituted against the petitioner, and he was acquitted by the court, keeping in mind the admission in response to the show cause notice that the allegations were true, if an order was passed, it cannot be said that such an order could not have been made by the authority or suspension was "wholly unjustified"*

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Para 8 : *Regarding admission of the petitioner, it is his contention that so called admission was not voluntary but was made under pressure of Block Education Officer, Kolhapur, in our opinion, such a plea cannot be allowed to be agitated in this Court under Article 226 of the Constitution and that too after about fifteen years.*

Para 9 : *In the circumstances, in our opinion, decision of respondent No. 2 cannot be held illegal, unreasonable or unlawful. The petition , therefore deserves to be dismissed and is accordingly dismissed."*

10. In the case of the present applicant I find that there is nothing on record or in the averment of R/2 in his affidavit that the applicant at any stage had admitted to accepting bribe. I am therefore of the clear view that the respondents have failed to demonstrate that the applicant's suspension was other than wholly unjustified. Hence in terms of Rule 72 (3) the respondents are required to treat the period as on duty. Similarly, as the applicant was dismissed on the basis of

a conviction which was set aside by the High Court, there could be no ground or justification for treating the period of dismissal as other than on duty for all purposes. I therefore find considerable merit in the present O.A. and the same stands disposed of in terms of the following order :-

- a) The impugned order dtd. 16/11/2015 is quashed and set aside.
- b) The applicant will be deemed to be on duty for the period when he was under suspension and dismissal for all purposes, including pay and allowances and seniority. However, as he did not work during the period, he will not be entitled to any arrears on this count.
- c) No order as to costs.

Sd/-

(B. Majumdar)
Vice-Chairman.

Skt.