

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 56 OF 2007

DIST.: AURANGABAD

Shri Mohd. Mobarjuddin Siddiqui,
 Age: 51 Years, Occu: Service as
 Senior Clerk, SRPF- Group III, Jalna,
 R/o. Yunus Colony, Opp. Motiwala Function Hall,
 Plot No. 52, Aurangabad.

-- **APPLICANT**

VERSUS

1. The State of Maharashtra,
Through P.O. M.A.T.,
Aurangabad Bench.
2. The Commissioner of Police,
Police Commissionerate, Aurangabad.
3. The Director General of Police,
M.S., Mumbai.
4. The Secretary,
Home Department,
Mantralaya, Mumbai-400 032.

-- **RESPONDENTS**

 APPEARANCE : Shri Kakasaheb B. Jadhav, learned
 Advocate for the Applicant.

: Shri N.U. Yadav, Learned Presenting
 Officer for the Respondents.

CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI B.P. PATIL, MEMBER (J)

DATE : 04.08.2017.

ORDER

[Per- Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)]

1. Heard learned Advocate Shri Kakasaheb B. Jadhav, for the Applicant and learned Presenting Officer Shri N.U. Yadav for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 21.09.1994, bringing the pay to the Applicant to the minimum of the pay scale for five years. This order was confirmed in appeal by the Respondent No. 3 by order dated 9.12.1997. The Applicant's representation was rejected by the Respondent No. 4 on 9.8.2006. The Applicant has challenged these orders also.

3. Learned Counsel for the Applicant argued that the impugned order dated 21.09.1994 issued by the Respondent No. 2 as it was alleged that the Applicant abetted Shri Syed Iliyas Ahmed, Clerk in taking illegal gratification, for which offence under the Prevention of Corruption Act was registered against him and Shri Ahmed. Shri Ahmed was convicted by Learned Special Judge, Aurangabad and was sentenced to 6 month's rigorous imprisonment. Shri Ahmed

was, however, acquitted by Aurangabad Bench of Hon'ble High Court in Criminal Appeal No. 201/1986 by judgment dated 7.4.1997. The Applicant was also acquitted in this case. Learned Counsel for the Applicant argued that the charges against the Applicant in the Departmental Enquiry were that he abetted Shri Ahmed in his bribe taking. However, Shri Ahmed has been acquitted by Hon'ble High Court and the punishment of dismissal, which was imposed on him, has been set aside by the Respondent No. 4 and he has been reinstated in service. During the period Shri Ahmed was out of service, has been treated as duty period. The Applicant was accused of abetting the crime of Shri Ahmed. When Shri Ahmed was acquitted and has not been given any punishment, it would be highly discriminatory, if the punishment imposed on the Applicant is maintained.

4. Learned Presenting Officer (P.O.) argued on behalf of Respondents that the Applicant was punished after a regular Departmental Enquiry (D.E.) was held against him. He was given full opportunity to defend himself. There is no ground to interfere with the impugned order dated

21.09.1994. Departmental Enquiry was distinct from the Criminal Case, which was filed against the Applicant. His acquittal in the Criminal Case is not on merit and therefore, he is not entitled to any relief.

5. We find that by judgment dated 7.4.1997 in Criminal Appeal No. 201/1986 Hon'ble High Court has observed as follows : (the date of order appears to be 7.4.1997 as per para 5 of the affidavit in reply of the Respondent No. 2 dated 2.7.2007.)

“5. Now, coming to the case against accused no. 2 Appellant in Criminal Appeal no. 201 of 1986, when the prosecution has failed to establish the guilt of the main accused, namely, Ilyas, it is not possible for the Court to convict abettor, for the obvious reason that an abettor cannot independently be hold guilty for the abetment. I therefore, hold that conviction of accused no. 2 is also bad in law and he also deserves to be acquitted.”

6. The Applicant was an alleged abettor in the crime of Shri Syed Ilyas Ahmed, who was acquitted by Hon'ble High Court. The Applicant was also acquitted by Hon'ble

High Court. By order dated 16.02.2005 (Exhibit 'D' page no. 14), the Respondent No. 4 has treated the period when Shri Ahmed was out of service pursuant to his conviction by Learned Special Judge, as Duty Period. For all practical purposes, Shri Ahmed has not been given any punishment. When the main accused has escaped any punishment, it will be nothing but highly discriminatory to impose, even minor punishment on the abettor. The defense of the Respondents is that the charges in D.E. against the Applicant were not identical with the charges in the Criminal Case. We do not find any substance in this contention of the Respondents. A mere glance at the impugned order is sufficient to show that the charges in the D.E. against the Applicant were more or less identical with the charges in the criminal case. The order dated 21.09.1994 is clearly unsustainable.

7. Having regard to the aforesaid facts and circumstance of the case, order of the Respondent No. 2 dated 21.09.1994 is quashed and set aside. Order of the respondent No. 3 dated 9.12.1997 is also quashed and set aside along the order of the respondent no. 4 dated

9.8.2006. This O.A. is allowed accordingly. The Applicant will be eligible to get all benefits as if order dated 21.09.1994 was never passed. There will be no order as to costs.

MEMBER (J)

Kpb/DB OA No 56 of 2007 RA 2017

VICE CHAIRMAN (A)