

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 44 OF 2017 (S.B.)**

Shri Ashok Ganpatrao Changole,  
Aged about : 50 years, Occ. Service,  
R/o Quarter No. 112-6,  
Raghujinagar Police Quarters,  
Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Additional Chief Secretary,  
Home Department having its office at,  
Mantralaya, Mumbai-32.
- 2) Commissioner of Police, Nagpur,  
Civil Lines, Nagpur.
- 3) The Deputy Commissioner of Police,  
(Head Quarters) Nagpur City,  
Nagpur.

**Respondents**

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**Shri S.P.Palshikar, the Id. Adv. for the applicant.**

**Shri A.M.Khadatkar, the Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGMENT**

**(Delivered on this 02<sup>nd</sup> day of April, 2018)**

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

2. The applicant is a Police Shipai and was kept under suspension vide order dated 09/06/1997 as two offences under Section 420 read with Section 34 of the Indian Penal Code were registered against him, under crime no. 30/1997 and 140/1998 respectively. During the pendency of the suspension period another offences under Section 392, 120 (b) read with Section 34 of the Indian Penal Code were registered. The applicant was under suspension from 09/06/1997 till 16/09/2002 and his suspension was revoked on 16/09/2002.

3. The applicant submits that, in all the criminal cases filed against him, he was acquitted and, therefore, his suspension period should have been treated as duty period. The applicant filed representation and requested for the same, but vide impugned order dated 31/08/2016 (Annexure-A-1), at P.B., Pg. No. 17 and 18, his suspension period has been treated as a suspension as such and being aggrieved by the order, this application is filed.

4. The applicant has claimed that the impugned order dated 31/08/2016 issued by respondent no. 3 treating his suspension period as suspension as such be quashed and set aside and the respondents be

directed to treat it as a duty period for all purposes and to direct the respondents to pay all consequential and monetary benefits.

5. The respondent nos. 2 and 3 in their affidavit-in-reply has justified his suspension period as suspension period only. It is stated that, though the applicant was acquitted in the criminal cases pending against him, the acquittal was not on merits, but it was on benefits of doubt. Considering the antecedents of the applicant and nature of offences pending against him, the suspension period was treated as suspension period.

6. The Id. counsel for the applicant has invited my attention to the Judgments of criminal cases in which the applicant was accused. The first Judgment in this regard, is in Regular Criminal Case No. 200/1997 (Annexure-A-3) delivered on 08/04/2013 by Judicial Magistrate, First Class, Court No. 4, Nagpur. In the said case, the applicant has been acquitted of the offence punishable under 420 read with under Section 34 of the Indian Penal Code. The Id. counsel for the applicant submits that in the said Judgment, the competent Court has observed that the prosecution has failed to establish the nexus of the accused with the alleged crime. Evidence adduced is not cogent, trustworthy and reliable. The Id. counsel for the applicant, thereafter placed reliance on the Judgment in which the applicant was accused in criminal case no. 21/2000 delivered by Judicial Magistrate First Class, delivered on

09/08/2011, (Annexure-A-4), P.B., Pg. No. 30 to 35. In the said case also, the applicant has been acquitted. He then placed reliance on the Judgment delivered in Criminal Case No. 99/2000 by the Judicial Magistrate First Class, Pauni on 12/04/2007. In the said case also, the applicant was acquitted of the offence punishable under Section 392 r/w Section 34 of the Indian Penal Code.

7. According to the Id. counsel for the applicant, since the applicant has been acquitted from all criminal charges in all criminal cases, the suspension period should have been treated as duty period. The Id. counsel for the applicant has also placed reliance on the Judgment reported in **A.I.R. 1984 Supreme Court 380 in case of Brahma Chandra Gupta Vs. Union Of India.** In the said case the petitioner was under suspension for criminal prosecution and was dismissed after conviction. He was reinstated in the service in the appeal and it was held that he was entitled to full salary on reinstatement.

8. Countering the attack of the Id. counsel for the applicant, the Id. P.O. placed reliance on the Judgment delivered in **(1997) 3 SCC, Pg. No. 636, Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and Ors. Maharashtra Law Journal, Pg. No. 606 in the case of Vasant Krushnaji Kamble Vs. State of Maharashtra & Ors.** In the said cases the Hon'ble Apex Court has observed that the acquittal of the petitioner by a criminal court did not *if so 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 was wholly unjustified. The observations are as under:-

“That 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. In the facts and circumstances, though a criminal case was 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”.

9. In view of the observation as above, the Id. P.O. submits that the antecedents of the applicant were considered by the competent authority and, therefore, the competent authority has taken a proper decision as per Rule 72 (5) and 72 (7) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981.

10. Perusal of the impugned order dated 31/08/2016, shows that the competent authority i.e. respondent no. 2 has applied Rule 72 (7) and 72 (5) of the Rules of 1981 and, therefore, it has been decided to treat the suspension period as suspension as such. In the impugned order, the respondent no. 2 has referred to the suspension cases pending against the applicant in Crime No. 30/1997, 140/1998 and 186/1999. It was observed that though the applicant has been acquitted in these cases, the acquittal is on benefits of doubt and, therefore, the suspension

period was not treated as a duty period. Rule 72 of the Rules of 1981 as stated to below, empowers the competent authority to reinstate the Government servant after suspension and to pass a specific order regarding pay and allowances etc. and treating the period as spent on duty. Sub-rule (3) of the Rule 72 states that where the competent authority, who reinstate the employee is of the opinion that the suspension was wholly unjustified, the Government servant, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled to, had he not been suspended. Sub-rules (5), (6), (7), (8) and (9) are material and these read as under :-

**Reinstatement 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:-**

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation. If any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1), before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note:-The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of :-

- (a) extraordinary leave in excess of three months in the case of a temporary Government servant, and
- (b) Leave of any kind in excess of five years in the case of permanent Government servant.

(8) The payment of allowances under sub-rules (2), (3) or (5), shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or (5), shall not be less than the subsistence allowance and other allowances admissible under Rule 68.

11. The sub-rule(7) of the aforesaid rule of 1981 clearly shows that the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose. In the present case before issuing the impugned order, it seems that a show cause notice was given to the applicant on 16/05/2016. As per rules, Sr. No. 6, the applicant has replied the said notice as per letter under rule no. 7 of the impugned order and the respondent no. 2 has considered the representation. He has also considered the pendency of registration of various crimes against the applicant and came to the conclusion that it is a fit case to treat the suspension period as suspension as such.

12. From the record, it is clear that the applicant was kept under suspension on 09/06/1997 and his suspension was revoked on 16/09/2002. For the whole period the cases against the applicant were pending. In Regular Criminal Case No. 200/1997, the applicant was acquitted on 08/04/2013. In Regular Criminal Case No. 21/2000, the applicant was acquitted on 09/08/2011 and in Regular Criminal Case No. 99/2000, he was acquitted on 12/04/2007 and the order has been passed on 31/08/2016. This shows that during the period from 09/06/1997 to 16/09/2002, the applicant was facing three criminal

trials and the charges levelled against the applicant were grave in nature as already stated. Considering all these aspects, the competent authority seems to have decided to treat the suspension period as suspension as such. Before doing so, the competent authority has also issued a show cause notice to the applicant and his explanation was called and, therefore, the competent authority seems to have applied its mind, it while dealing with the case of the applicant as per rule 72 of the rules of 1981. I feel, that there is no reason to interfere in the discretion used by the competent authority in applying Rule 72 for not treating the suspension period of the applicant as duty period and hence the following order:-

**ORDER**

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

**Dated :- 02/04/2018**

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