

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.782 OF 2022**

**DISTRICT: THANE  
SUBJECT : PAY AND  
ALLOWANCES**

Dr. Pramod Namdev Chaudhari, )  
Age: 65 years (DOB : 26.01.1957), )  
Occ.: Retired as Medical Officer Group B )  
on the date of superannuation 31.01.2015. )  
R/at: 102, Darshan CHS, Bhoirwadi, Mahatma Phule )  
Road, Vishnu Nagar, Dombivali (E), Tal. Kalyan, )  
Dist. Thane. Mobile: 9819768892. )  
Email: advocate\_kjagdale@rediffmail.com )... **Applicant**

**Versus**

The State of Maharashtra, )  
through the Secretary, Public Health Department )  
Mantralaya, Mumbai. )...**Respondents**

**Shri Kishor R. Jagdale, learned Advocate for the Applicant.**

**Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER (J)**

**DATE : 12.12.2022.**

**JUDGMENT**

1. The Applicant has challenged order dated 10.08.2021 thereby treating out of duty period from 28.01.2005 to 31.01.2015 for pension purposes only but declined to grant pay and allowances for the said period, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Following are undisputed facts:-

A) While the Applicant was serving as Medical Officer at Chopda, Dist. Jalgaon he came to be suspended on

05.02.1996 in view of registration of crime under the provision of Prevention of Corruption Act, 1988.

- B) In Criminal prosecution Learned Special Judge Amalner, Dist, Jalgaon by Judgment dated 05.03.2003 convicted the Applicant and sentenced him to suffer rigorous imprisonment of one year and to pay fine.
- C) Consequent to conviction, Respondent by order dated 28.01.2005 dismissed the Applicant from service invoking Rule 13 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.
- D) The Applicant preferred Criminal appeal no.213/2003 before Hon'ble High Court in which he came to be acquitted on 09.06.2016.
- E) During the pendency of Criminal appeal the Applicant attained the age of superannuation and stands retired on 31.01.2015.
- F) Respondents by order dated 10.08.2021 regularized the period of suspension from 05.02.1996 to 28.01.2005 as duty period for all purposes in view of his acquittal invoking Rule 72(3) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981.
- G) Respondents however by another order dated 10.08.2021 declined to grant pay and allowances for out of duty period but it was to be considered for pension purposes only.

It is on the above background, the Applicant has filed the present O.A. claiming pay and allowances of out of duty period i.e. from 28.01.2005 to 31.01.2015.

3. Shri K.R. Jagdale, leaned Advocate for the Applicant sought to assail the legality of the order dated 10.08.2021 *inter-alia* contending that once the Applicant has been acquitted from the criminal charges the stigma of conviction obliterates and Respondents ought to have

granted pay and allowances for the period in which he was kept out of duty. According to him, in view of subsequent acquittal it will have to be held that there was no case so as to keep the Applicant out of duty, and therefore it needs to be compensated by granting pay and allowances of out of duty period. He has further pointed out that Respondents having not initiated D.E. and having accepted the Judgment of acquittal in criminal appeal now the Government cannot deny pay and allowances of out of duty period otherwise it would amount to punishment.

4. Per Contra, Shri A.J. Chougule, learned P.O. sought to justify the impugned order *inter-alia* contending that in view of conviction Rule 13(I) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 are attracted and disciplinary authority rightly dismissed the Applicant by order dated 28.01.2005. Thus, according to him, in view of conviction the Applicant was not to be continued in services, and even if he is acquitted in appeal that *ipso-facto* does entitle him to claim back-wages of the period in which he was not on duty. In this behalf, he sought to place reliance on the decision of Hon'ble High Court in ***Writ Petition No.14311 of 2017 (Mr. Gangadhar Krushna Pukale v/s. Rayat Shikshan Sanstha, Satara) decided on 11.08.2022***, wherein in similar situation claim of back-wages has been turned down with the finding that in the intervening period of out of duty period the petitioner therein was incapacitated to perform his duties.

5. In view of submission advanced at bar, issue placed for consideration is whether the Applicant is entitled to back-wages of out of duty period and impugned order suffers from any legal infirmity. In my considered opinion, the answer is in empathic negative.

6. The facts as narrated above are not in dispute. The Applicant stands retired on 31.01.2015 during the pendency of criminal appeal, and therefore the question of reinstatement in service didn't survive. He was suspended by order dated 05.02.1996 in view of registration of

crime under section of provision of Prevention of Corruption Act, 1988 and was under suspension till he was convicted on 05.03.2003. In view of his conviction, Respondents by order dated 28.01.2005 dismissed the Applicant from service exercising power under Rule 13 of MCS (Discipline and Appeal) Rules, 1979. Indeed, such order of dismissal from service ought to have been passed expeditiously after the Applicant came to be convicted by Judgment dated 05.03.2003. As such there was inordinate delay on the part of the Government to take further steps in the matter. Be that as it may, the question arises whether the acquittal in criminal case *ipso-facto* entitle the employee to claim back-wages for the period of out of service owing to conviction in criminal case.

7. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court holding the field which are as under:-

(I) ***(1996) 11 SCC 603 (Ranchhodji C. Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar & Anr.)***. In this case, the Petitioner was dismissed from service on account of his conviction under Section 302 read with 34 of I.I.C. In view of conviction, he was dismissed from service. The Petitioner had challenged legality of dismissal order by filing Writ Petition before Hon'ble High Court. During the pendency of Writ Petition, the Petitioner was acquitted in Criminal Appeal. Therefore, in the matter of challenge to the dismissal order, the Hon'ble High Court directed for reinstatement in services with continuity of service but denied back-wages. Against that order, the Petitioner had filed Special Leave Petition before the Hon'ble Supreme Court, which came to be dismissed. While dismissing SLP, the Hon'ble Supreme Court held the question of back-wages would be considered only if the Department have taken action of disciplinary proceeding and the said action was found to be unsustainable in law and he was lawfully prevented

from discharging the duties. The Hon'ble Supreme Court further observed that, since the Petitioner had involved in a crime though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in Jail. It has been further observed that each case requires to be considered in its own back-drop. Resultantly, the claim of the Petitioner therein for back-wages was rejected.

(II) **(2004) 1 SCC 121 (Union of India Vs. Jaipal Singh)**. In this case, the Government servant was tried for the offence under Section 302 read with Section 34 of IPC and was convicted by Session's Court. However, in appeal, he was convicted and as a consequence thereof, he was reinstated in service. The order of reinstatement and order of full pay and allowances was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court quashed the order of full back-wages with the finding that the State cannot be made liable to pay full back-wages for which the State could not avail the services of the Government servant.

(III) **(2005) 8 SCC 747 (Baldev Singh Vs. Union of India & Ors)**. This is also a case arising from similar situation wherein Appellant who was in Indian Army was arrested for the offence under Sections 302, 452 read with 34 of IPC and was convicted by Trial Court. However, in appeal, he was convicted. Consequent to it, he was reinstated in service but his pay and allowances were not fixed or released. Later, he was discharged from service. It is on this background, in Para No.7, the Hon'ble Supreme Court held as under :-

*“7. As the factual position noted clearly indicates, the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for the concerned period. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly*

*stated in Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board.”*

(IV) **(2007) 1 SCC 324 (Banshi Dhar Vs. State of Rajasthan & Anr.)**. In this case, the Applicant was working as Patwari and offence under Prevention of Corruption Act was registered against him. He was placed under suspension. Later, he was convicted under Section 5(1) (d) of Prevention of Corruption Act read with Section 161 of IPC. Consequent to it, he was dismissed from service. However, in appeal, he was acquitted. But in the meantime, he attained the age of superannuation. The Appellant remained under suspension for 11 years and during that period received Subsistence Allowance in accordance to Rules. Thus, on acquittal, he was to be reinstated in service but in the meantime, attained the age of superannuation. His entire period of suspension was calculated for pensionary benefits but the question remains as to whether he will be entitled to back-wages. The Hon'ble Supreme Court held that on hard and fast rule can be laid down in regard to grant of back-wages and each case has to be determined on its own facts and grant of back-wages is not automatic. In Para Nos.11 and 13, the Hon'ble Supreme Court held as under :-

*“11. Departmental proceedings, however, could not be held as on the date of passing of the judgment of acquittal, he had already reached his age of superannuation. The learned counsel may be right that the decisions of this Court referred to hereinbefore involved the respective appellants therein on charge of murder under Section 302 of the Indian Penal Code, but, as noticed, it has also been laid down that each case has to be considered on its own facts. The High Court refused to exercise its discretionary jurisdiction having regard to the aforementioned decision of this Court in Ranchhodji Chaturji Thakore. We do not see any reason to take a different view. Grant of back wages, it is well settled, is not automatic. Even in cases where principles of natural justice have been held to have not been complied with, while issuing a direction of reinstatement, this Court had directed placing of the delinquent employee under suspension.*

**13.** *Even in relation to the industrial disputes, this Court, in many judgments, has held that back wages need not be granted automatically although the order of termination passed against the workman concerned was found to be invalid.”*

(V) **(2013) 11 SCC 67 (State Bank of India & Anr. Vs. Mohammed Abdul Rahim).** In this case, an offence under Section 498-A of IPC read with Section 4 of Dowry Prohibition Act was registered against the employee of State Bank of India. He was convicted, and therefore, discharged from service. However, in appeal, he was acquitted with the finding that prosecution has failed to prove his case beyond reasonable doubt. Consequent to acquittal, he was reinstated in service. However, back-wages for the period he was out of service were not granted and issue posed whether the employee is entitled to back-wages. The Hon'ble Supreme Court held that subsequent acquittal though obliterates his conviction does not operate retrospective to wipe out the legal consequences of the conviction and the entitlement to back-wages has to be judged on this basis. In that case, he was acquitted on 22.02.2002 and made representation for reinstatement on 22.04.2002. However, he was reinstated in service on 07.11.2002. The Hon'ble Supreme Court, therefore, granted back-wages from the date he had made representation for reinstatement following his acquittal i.e. from 22.04.2002, but no back-wages were granted for the period for which he was out of service.

8. In **Mr. Gangadhar Krushna Pukale's case (cited supra)** the Applicant was convicted for the offence under section 302, 498 r/w section 34 of IPC and preferred appeal against the conviction during the pendency of appeal the petitioner attained the age of superannuation on 31.07.2013. In appeal he was acquitted on 31.07.2015. No D.E. was conducted, the petitioner claim pay and allowances for out of duty period. In Para.10,11 & 12 Hon'ble High Court held as under:-

“10. In the present case, the Petitioner was taken in custody on 05.07.2008. The Petitioner was convicted for life for the charges against him and till his age of superannuation was in jail. Pursuant to the order of conviction, the Petitioner could not have performed his duties even if the management would not have suspended him. In such a case, once having been convicted and is incapacitated to perform his duties, the Petitioner certainly will not be entitled for payment of salary. He has not performed his duties. The management was not at fault. It was the Petitioner who was incapacitated during the interregnum to perform his duties.

11. The judgments relied by the learned Counsel for the Petitioner, as such, would not be said to be in case of similarly situated Petitioners. The Petitioner having been convicted of the offence was in custody throughout till he attained the age of superannuation, would not be entitled for the salary only because after two years of attaining the age of superannuation he has been acquitted by the High Court. Principle of no work no pay in such a case would apply.

12. Though it is held that the Petitioner would not be entitled for salary from 05.07.2006 till he had attained the age of superannuation, the said period shall be counted for the purpose of continuity and all consequential benefits for pension purpose.”

9. Thus, from the aforesaid Judgments of Hon'ble Supreme Court, the following principles can be culled out.

(a) The acquittal in Criminal Case ipso-facto does not entitle the employee to claim back-wages for the period for which he was out of service on account of conviction in Criminal Case.

(b) Even if the employee is acquitted in appeal, the Department can initiate D.E. and question of back-wages would be considered only where the action was found to be unsustainable in law and the employee was unlawfully prevented from discharging the duties.

(c) Rule 72 of 'Joining Time Rules 1981' gives discretion to the disciplinary authority to regulate the payment during the period of



suspension.

(d) No hard and fast rule can be laid down in regard to the claim of back-wages i.e. the period for which the employee was kept out of service on account of conviction, which is later reversed in appeal and each case has to be determined on its own facts.

(e) Subsequent acquittal though obliterates his conviction, it does not operate retrospectively to wipe out the legal consequence of the conviction.

10. Now turning to the facts of the present case, though the Government did not choose to initiate D.E. the fact remains that it is because of conviction in criminal case the Applicant came to be dismissed from service since it was legal consequence flowing from his conviction. The perusal of Judgment of Hon'ble High Court in appeal reveals that the Applicant was given benefit of doubt, it was not clean chit or honorable acquittal as such. In Para 21 of the Hon'ble High Court observed as under:-

“21. I thus, hold that the prosecution failed to prove that the accused demanded money by way of gratification for himself or that the accused had accepted the money by way of gratification. For reasons discussed, there is room for serious doubts and it would not be appropriate to uphold the conviction.”

11. Thus, the alleged criminal conduct and conviction was the foundation for dismissal in service. In such situation though in appeal the Applicant came to be acquitted for lack of sufficient evidence or by giving benefit of doubt that he cannot be entitle for grant of consequential benefits of back-wages as a matter of course. It would be deleterious to the maintenance of discipline and public administration that if the person is convicted for service charge under the provision of Prevention of Corruption Act, 1988 then he could be given full back-

wages as a matter of course on his acquittal. The Government in impugned order dated 10.08.2021 rightly observed that even if the Applicant is acquitted it cannot be said that the action of dismissal was incorrect. Respondents gave benefits of out of duty period for pension purposes and that was the only benefit to be given to the Applicant on his acquittal. This is not a case where employee was unlawfully prevented from discharging duties. He had incurred disqualification on conviction and was dismissed from service by operation of law.

12. In view of various decision of Hon'ble Supreme Court referred to above, it is no more *res-integra* that there could be no automatic entitlement to full back wages because of subsequent acquittal in criminal case. All that it obliterate conviction but that *ipso- facto* does not entitle the applicant to full back wages for which he was totally incapacitated to perform duties.

13. The totality of the aforesaid discussion leads me to conclude that challenge to the impugned order is devoid of merit and O.A. is liable to be dismissed. Hence, the Order.

**ORDER**

The Original Application is dismissed with no order as to costs.

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 12.12.2022  
Dictation taken by: N.M. Naik.

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