

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 1064 of 2019 (S.B.)**

Gulabsingh S/o Bisansingh Pawar,  
Aged about 65 years, Occ. R/o Pimplegaon (Ijara) Post, Adgaon,  
Tah. Pusad, District Yavatmal.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Through its Department of Revenue and Forest  
through its Secretary, Mantralaya, Mumbai.
- 2) Chief Conservative of Forest (Territorial), Yavatmal.
- 3) Deputy Chief Conservator of Forest,  
Pusad Forest Division, Pusad.

**Respondents.**

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**S/Shri N.R. Saboo, Mrs. K.N. Saboo, Advocates for the applicant.  
Shri A.M. Ghogre, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

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**Date of Reserving for Judgment : 10<sup>th</sup> August,2023.**

**Date of Pronouncement of Judgment : 5<sup>th</sup> September,2023.**

**JUDGMENT**

**(Delivered on this 5<sup>th</sup> day of September,2023)**

Heard Shri N.R. Saboo, learned counsel for the applicant  
and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant is a retired Government servant. He was placed under suspension vide order dated 25/11/1990, when he was on the post of Forest Guard on the ground that criminal case was

registered against him and he was arrested. The applicant was acquitted by the competent Court. Despite representation, he was not allowed to resume duty. The applicant has completed his age of superannuation on 31/03/2012. Thereafter the respondent department forwarded the proposal for regular pension of the applicant and same was granted as per the order dated 01/03/2019. But the suspension period from 21/11/1990 to 31/03/2012 is not regularized. The said suspension period is not counted as a duty period for the purpose of pension, therefore, the applicant has approached to this Tribunal for the following reliefs –

*“(9) (i) To modify order dated 13.03.2019 issued by Respondent No.2, Chief Conservator of Forest (Territorial) Yavatmal, annexed to the application at Annexure- A-6 & order dated 01.09.2018 passed by respondent No. 3, Deputy Conservator of Forest, Pusad annexed to the O.A. at Annexure A-4.*

*(ii) Allow the Original Application and direct the respondents to grant all service benefits including difference of salary to the applicant during the suspension period w.e.f. 21.11.1990 till 31.03.2012.*

*(iii) To direct the respondent to pay interest on delayed payment of pension as well as gratuity and other retirement benefits.”*

3. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was prosecuted for the offence punishable under Section 302 r/w Section 34 of the I.P.C. The applicant had challenged the suspension order in O.A.No. 773/2011 and same has been disposed of by this Tribunal. The applicant was

convicted by the Sessions Court in Session Trial No.16/1994 as per the judgment dated 10/08/2005. The applicant filed the appeal before the Hon'ble High Court. The Hon'ble High Court in Criminal Appeal No.504/2005 acquitted the applicant.

4. The applicant was also prosecuted for the offence punishable under Section 26 of the Indian Forest Act before the Judicial Magistrate First Class (JMFC). The said case was dismissed and the applicant was acquitted. The respondents / state have filed the Criminal Appeal No.385/2017. The said appeal was dismissed. It is submitted that the applicant was acquitted in both the matters on the ground of benefit of doubt and therefore it is clear that it was not a clear acquittal. Hence the O.A. is liable to be dismissed.

5. Heard Shri N.R. Saboo, learned counsel for the applicant. He has pointed out the Judgment of Hon'ble Bombay High Court, Bench at Nagpur in Criminal Appeal No.455/2005. He has pointed out the Judgment of the Judicial Magistrate First Class (JMFC) in Criminal Case No.114/1991. The Hon'ble High Court has acquitted the applicant. The acquittal in Criminal Case before the JMFC was challenged before the Hon'ble High Court. The said appeal came to be dismissed by the Hon'ble High Court.

6. The learned counsel for applicant Shri N.R. Saboo has pointed out the Judgment of this Tribunal in O.A.No.04/2022. He has

pointed out the Judgment of Hon'ble Supreme Court in the case of **Raj Narain Vs. Union of India and others, (2019) 5 SCC,809**. The learned counsel for applicant has submitted that the applicant is entitled for all the wages of suspension period and the suspension period is to be counted as a regular period for the pension.

7. The learned P.O. has relied on the Judgment of Hon'ble Supreme Court in the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others (1997) 3 SCC,636** and the Judgment of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.3524/2004, decided on 09/04/2018.

8. There is no dispute that the applicant was prosecuted for the offence punishable under Section 302 r/w of 34 of the I.P.C. The Sessions Court in Session Trial No. 16/94, decided on 10/08/2005 held accused nos.1 to 6 guilty including the applicant and they were sentenced to suffer rigorous imprisonment for life and shall also directed to pay fine Rs.1000/- each. The said judgment was challenged before the Hon'ble Bombay High Court, Bench at Nagpur in Criminal Appeal No.455/2005. The Hon'ble High Court in para 20 has recorded the reasons stating that the circumstantial evidence are not sufficient to convict the accused including the applicant. Prosecution has not discharged the burden to prove the offence beyond reasonable doubt, therefore, on the ground of benefit of doubt

the accused including the applicant were acquitted by the Hon'ble High Court. In Criminal Case No.114/1991, the applicant was accused no.2. In that case offence punishable under Section 26 of the Indian Forest Act for cutting Teak Wood worth Rs.36,000/- and committing theft of the same was charged against the applicant.

9. In para-12 of the Judgment, the JMFC has recorded its findings that "the whole prosecution story is in the shadow of doubt and therefore accused including the applicant were acquitted". The said Judgment was confirmed by the Hon'ble Bombay High Court, Bench at Nagpur in Criminal Appeal No.385/2017.

10. From the perusal of both the Judgments, there is no dispute that the applicant was one of the accused. The Hon'ble High Court has given benefit of doubt to the accused including the applicant. Therefore, they were acquitted for the offence punishable under Section 302 of the I.P.C. in criminal case under Section 26 of the Indian Forest Act. The applicant was acquitted on the ground of benefit of doubt. Therefore, the cited decision is not applicable to the case in hand. In the case of ***Raj Narain Vs. Union of India and others (cited supra)***, the Hon'ble Supreme Court has held that "granting backwages on the ground that disciplinary proceeding was dropped, but after four years he was reinstated in the service". It was held "he should have been immediately reinstated after closer of the

departmental inquiry”. In O.A.No.04/2022, this Tribunal has found that A-summery was filed and therefore it was clear that there was no any criminal case pending against the said applicant, but suspension period though revoked, it was not counted as a regular duty. When the A-summery was filed, it was clear that there was no any offence was made out and therefore the O.A. was allowed, hence the cited Judgments are not applicable to the case in hand.

11. In the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others (cited supra)**, the Hon'ble Supreme Court has held as under –

*“Legal evidence may be insufficient to bring home the guilt beyond doubt. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. If the alleged conduct is the foundation for prosecution, grant of consequential benefits with all back wages. etc. cannot be as a matter of course, even if the employee may have been acquitted on appreciation or lack of sufficient evidence. It would be deleterious to the maintenance of discipline if a person who was suspended on valid considerations is given full back wages as a matter of course, on his acquittal. The disciplinary authority has option either to enquire into the misconduct unless the selfsame conduct was subject-matter of the charge and on trial the acquittal was not based on benefit of doubt but on a positive finding that the accused did not commit the offence*

*at all. The authority may also, on reinstatement, pass appropriate order including treating suspension period as not spent on duty, after following the principles of natural justice.*

*Rule 72 gives a discretion to the disciplinary authority. The appellant is not entitled to consequential benefits on his reinstatement after acquittal. He is also not entitled to be treated as on duty from the date of suspension till the date of acquittal, for the purpose of computation of pensionary benefits, etc.”*

12. From the perusal of the Judgment of the Hon'ble Supreme Court in the case of ***Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others (cited supra)***, it is clear that two courses are open to the disciplinary authority, viz., it may enquire into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on the benefit of doubt given. Appropriate action may be taken thereon. If the acquittal is on the ground of benefit of doubt, then suspension period cannot be treated as a duty period. It is the authority of the employer / disciplinary authority to decide the suspension period as per the Rules 72 of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981. The discretion is given to the disciplinary authority to regulate the payment during suspension period. Rejecting the claim cannot be said to be faulty. In both the Judgments, the Judgment in criminal

cases there is no positive finding that the applicant has not committed any offence. It appears that in the Judgment of Hon'ble High Court and also in the Judgment of JMFC, benefit of doubt was given to the applicant. Hence, the applicant cannot claim that his suspension period be treated as a duty period. Therefore, the following order is passed:—

**ORDER**

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

**Dated** :- 05/09/2023.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

\*dnk.



I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 05/09/2023.