

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.11 OF 2020

DISTRICT : PUNE

Shri Sharad Shrirang Kamble.)
Age : 57 Yrs., Occu.: Police Head Constable)
at Yawat Police Station and residing at)
At Post : Rui, Tal.: Baramati,)
District : Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Special Inspector General of)
Police, Kolhapur Range, Kolhapur.)
3. The Superintendent of Police.)
Pune Rural, Dr. Homi Bhabha Road,)
Pune – 411 008.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 25.10.2021

JUDGMENT

1. The Applicant has challenged the orders dated 26.07.2018 and 03.10.2019 whereby he was granted 50% pay and allowances for out of

duty period instead of full pay and allowances after reinstatement in service.

2. Following are the admitted facts giving rise to this O.A.

(i) While Applicant was serving as Police Head Constable on the establishment of Respondent No.3 – Superintendent of Police, Pune Rural, he was convicted in Sessions' Case No.07/2015 by Judgment dated 15.02.2016 by Assistant Sessions' Judge for the offences under Section 306 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years with fine of Rs.10,000/- and also convicted for the offence under Section 498-A read with 34 of IPC and was sentenced to suffer rigorous imprisonment of three years and fine of Rs.3,000/-.

(ii) Consequent to conviction, the Applicant was dismissed from service by order dated 07.05.2016 after giving Show Cause Notice.

(iii) Being aggrieved by the Judgment of conviction, the Applicant preferred appeal No.10/2016 before Session Court wherein by Judgment dated 03.10.2016, he came to be acquitted from all charges.

(iv) The Applicant was, therefore, reinstated in service in view of his acquittal and accordingly, joined on 30.10.2017.

(v) After reinstatement, Show Cause Notice was given on 26.07.2018 as to why he should not be paid 50% pay and allowances for out of duty from 07.05.2016 to 29.10.2017 to which Applicant submitted his reply on 15.01.2018 claiming full pay and allowances in view of acquittal.

(vi) However, Respondent No.3 by order dated 26.07.2018 invoking Rule 70(1)(4)(5) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal

and Removal) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity) granted 50% pay and allowances for out of duty period and further held that the said period should be considered for pension purpose only and for none else.

(vii) Being aggrieved by it, the Applicant preferred appeal before Respondent No.2 – Special Inspector General of Police, Kolhapur Range, which came to be dismissed by order dated 03.10.2019.

3. It is on the above background, the Applicant has challenged the order dated 26.07.2018 and 03.10.2019 in the present O.A.

4. Shri K.R. Jagdale, learned Advocate for the Applicant submits that once the Applicant is acquitted in criminal case, it obliterates stigma of conviction and consequently, the Applicant ought to have been granted full pay and allowances for out of duty period. He has further pointed out that the Respondents chose not to initiate the departmental enquiry, and therefore, there is no reason whatsoever to grant 50% allowances only instead of 100%. In this behalf, he sought to rely on decision of Hon'ble Supreme Court in **AIR 1984 (SC) 380 [Brahma Chandra Gupta Vs. Union of India]** and Judgment of Hon'ble High Court of Chhattisgarh at Bilapur in **Writ Petition No.994/2010 [Shankar Lal Soni Vs. The State of Chhattisgarh & Ors.] decided on 09.07.2021**. He has further pointed out that no reasons for denying full pay and allowances are given in the impugned orders.

5. Per contra, Mrs. A.B. Kololgi, learned Presenting Officer supported the impugned orders *inter-alia* contending that the acquittal *ipso-facto* would not entitle the Applicant for full pay and allowances and Department's decision to grant 50% pay and allowances for out of duty period is legal and valid and impugned order needs no interference.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether the Applicant is entitled to full pay and

allowances for out of duty period and the impugned order needs interference by this Tribunal. In my considered opinion, the answer is in emphatic negative for the reasons to follow.

7. At this juncture, it would be apposite to see Rule 70(1)(4) and (5) of 'Rules of 1981' which govern the issue, which reads as under :-

“70. Regularization of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside as a result of appeal or review and such Government servant is re-instated.- (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order –

- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
 - (b) whether or not the said period shall be treated as a period spent on duty.
- (2)
- (3)
- (4)** In cases other than those covered by sub-rule (2), [including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held] the be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retirement, as the case may be, as the competent authority may determine and after considering the representation, if any, submitted by him in that connection within such period which is no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice :

Provided that any payment under this sub-rule to a Government servant [other than a Government servant who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936)] shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority, or immediately preceding the date of

retirement on superannuation of such Government servant, as the case may be.

- (5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, 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 direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.”

8. As such, Rule 70(1)(b) specifically empowers competent authority to decide whether or not out of duty period should be treated as a duty period for pay and allowances or other consequential service benefits. There is no such specific provision automatically entitling a Government servant to treat out of duty period as a duty period with full pay and allowances where he is dismissed from service after conviction of competent Court of laws but later reinstated in service consequent to acquittal in appeal. There is no such hard and fast rule regarding claim of back-wages and each case has to be determined on its own facts.

9. Indisputably, the Applicant was convicted by competent Court of law and consequent to it, invoking Rule 3 of Maharashtra Police (Punishment & Appeal) Rules, 1956 (hereinafter referred to as 'Rules of 1956' for brevity), after issuance of Show Cause Notice, the Applicant came to be dismissed exercising powers of punishment as contemplated under 'Rules of 1956'. As such, in view of conviction, he should not have been continued in service since he rendered himself disabled or incapable to continue in Government service. Thus, by operation of law, the Applicant was dismissed. Suffice to say, this is not a case where a Government servant is kept out of duty without there being any fault on his part or was kept out of duty for some unjustifiable reason. It is no more *res-integra* that acquittal in criminal case would only obliterate

stigma of conviction but that *ipso-facto* will not entitled a Government servant to claim back-wages for the period in which he was out of service on account of conviction in criminal case. Only because Department has not initiated departmental enquiry, that hardly matters for grant of full pay and allowances for out of duty period. This issue is in fact no more *res-integra* in view of following decisions :-

“(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) (1997) 3 SCC 636 (Krishnakant R. Bibhavnekar Vs. State of Maharashtra & Ors.). In this case, the Petitioner was suspended on account of registration of offence under Section 409 of IPC. After his acquittal in Criminal Case, he was reinstated in service without consequential benefits. The Petitioner initially approached the Administrative Tribunal by filing O.A.No.40/1992, which was dismissed. The Petitioner, therefore, filed Special Leave Petition before the Hon'ble Supreme Court. Before Hon'ble Supreme Court, the submission was advanced that in view of acquittal in Criminal Case, the Petitioner is entitled to all consequential benefits including pensionary benefits treating suspension period as duty period. However, the Hon'ble Supreme Court dismissed Civil Appeal and held as under :-

“If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into 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 benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.). Rules 72(3), 72 (5) and 72 (7) of the Rules give discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service he would not be entitled to the consequential, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of

computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paras 5 and 6 of the additional affidavit.”

(III) (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 acquitted and as a consequence thereof, he was reinstated in service with full back wages. 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.

(IV) (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 acquitted. 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.”

(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 its 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.

10. 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 70 of 'Rules of 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.

11. In so far as Judgment delivered by Appellate Court acquitting the Applicant is concerned, in Para No.20, learned Session Judge held as under :-

“20. The conclusion is that all the prosecution witnesses who are related to deceased Jaya are not specifically stating about the alleged demand of Rs. 4 lac in clear terms i.e., in which year or month, who demanded to whom etc.,.

Thus, the prosecution evidence does not show that there was such a harassment to deceased Jaya that forced her to commit suicide. There is no evidence, that all the accused in furtherance of their common intention instigated deceased Jaya to commit suicide. The prosecution evidence does not show that there was a mental process going on in the minds of the accused instigating or intentionally aiding deceased Jaya to commit suicide. Therefore, the evidence being very dim and moonshine the accused cannot be held guilty of the offence, for which they have been charged.”

12. Thus, it appears that Session Judge was not satisfied with the quality of evidence, and therefore, acquitted the Applicant and other co-accused. As such, it appears to be a case of benefit of doubt to the accused. Be that as it may, the acquittal itself could not *ipso-facto* entitle the Applicant to full back-wages.

13. Now turning to the decisions rendered by learned Advocate for the Applicant in ***Brahma Chandra Gupta's*** case (cited supra), Civil Suit

was filed for full pay and allowances after acquittal in criminal case, which was decreed. However, material to note that in that matter, the suspension was found not wholly justified and in that context, decree for full pay and allowances was confirmed by Hon'ble Supreme Court. Whereas, in the present case, we are dealing with out of duty period in view of conviction from competent Court of law. Whereas, in **Shankar Lal Soni's** case (cited supra). The perusal of Judgment reveals that it is centered around the concept of honourable acquittal. After acquittal, the Petitioners therein were denied back-wages on the principle of 'no work no pay'. The Hon'ble Madras High Court held that theory of principle of 'no work no pay' would not attract. However, it is noticed that none of the Judgment of Hon'ble Supreme Court cited supra has been brought to the notice of Hon'ble High Court. As such, it seems to be *per incuriam* and is of no assistance to the Applicant in the light of well settled legal position expounded by Hon'ble Supreme Court in various Judgments cited supra.

14. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order is devoid of law and O.A. deserves to be dismissed. Hence, the order.

ORDER

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

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 25.10.2021
Dictation taken by :
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\October, 2021\O.A.11.20.w.10.2021.Pay & Allowances.doc

Uploaded on