

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.172 OF 2021**

**DISTRICT : MUMBAI**

Shri Tulshidas F. Nagvekar. )  
Age : 49 Yrs., Occu.: Police Constable, )  
Chunabhatti Police Station, Chunabhatti )  
(E), Mumbai and residing at 92/3233, )  
Nehru Nagar, S.G. Barve Road, Kurla (E), )  
Mumbai – 400 070. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Additional Chief Secretary )  
(Home), Mantralaya, Mumbai – 32. )  
2. The Director General of Police. )  
Maharashtra State, Mumbai. )  
3. Deputy Commissioner of Police, )  
Armed Police Tardeo, Tardeo, )  
Mumbai – 400 034. )...**Respondents**

**Mr. M.D. Lonkar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 15.02.2022**

**JUDGMENT**

1. The Applicant has challenged order dated 24.08.2020 passed by Respondent No.3 – Deputy Commissioner of Police, thereby treating the period from 14.01.2003 to 25.09.2005 suspension ‘as such’ for all

purposes in terms of Rule 72 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).

2. Briefly stated facts giving rise to this application are as under :-

Indeed, this is the second round of litigation. Initially, Applicant has filed O.A.No.442/2019 claiming full pay and allowances for out of duty period as well as for suspension period with all consequential service benefits, challenging order dated 14.09.2018 whereby he was granted 50% pay and allowances for out of service period restricted to monetary benefits of 3 years. As regard period of suspension from 14.01.2003 to 22.09.2005, the Government directed Respondent No.3 – Deputy Commissioner of Police being competent authority to pass further order in this behalf. O.A.No.442/2019 was partly allowed by order dated 18.06.2020 and directions were given to Respondent No.3 to decide about the claim of the Applicant to treat suspension period from 14.01.2003 to 22.09.2005 in accordance to 'Rules of 1981'. The Respondent No.3 accordingly issued show cause notice dated 08.07.2020 to the Applicant as to why period of suspension should not be treated as suspension period 'as such'. The Applicant submitted his reply on 31.07.2020 claiming full pay and allowances of the period of suspension. He raised the issue of order passed in the matter of Police Constable Madhuka Palande that his suspension period was treated as 'period spent on duty' and claimed parity. In this behalf, he also referred the order in the matter of ASI Shri Pawar also. In reply, he further stated that in view of acquittal in criminal cases instituted against him, he is entitled to treat suspension period as 'duty period'. The Respondent No.3, however, by order dated 24.08.2020 formed opinion that suspension was justified and in criminal cases, he was acquitted by giving benefit of doubt. The Respondent No.3, therefore, treated the

period from 14.01.2003 to 29.09.2005 as suspension invoking Rule 72(5)(7) of 'Rules of 1981', which is under challenge in the present O.A.

3. The Applicant was suspended by order dated 23.01.2003 in view of arrest in Crime No.08/2003 under Section 395, 363, 342, 419, 416, 171 of Indian Penal Code, Crime No.09/2003 under Section 395, 419, 323, 506 and Crime No.12/2003 under Section 452, 420, 170, 34 of I.P.C. The Department also initiated disciplinary action by issuance of charge-sheet dated 23.07.2004 on following charges.

१) तुम्ही सन २००१ मध्ये ७ वेळा ५९ दिवस गैरहजर राहीलात. त्यापैकी १ वेळेचा २ दिवसांचा कालावधी नियमित झालेला आहे.

२) सन २००२ मध्ये २४ वेळा ५३ दिवस गैरहजर राहीलात. त्यापैकी १४ वेळेचा ३५ दिवसांचा कालावधी नियमित झालेला आहे.

३) सन २००२ मध्ये दि.१०.१.०३ ते दि.१३.१.०३ पर्यंत ४ दिवस गैरहजर राहीलात.

४) उपरोक्त कर्तव्यावर विनापरवाना गैरहजर राहण्याच्या वर्तणुकीबाबत तुम्हांला विनावेतन, दंड, जावा कवायत, सक्त-ताकीद यासारख्या १२ वेळा शिक्षा देवुनही तुमच्या वर्तणुकीत सुधारणा झालेली दिसुन आली नाही.

५) तसेच तुम्ही गैरहजर कालावधीत दि.१३.१.२००३ रोजी भिवंडी पोलीस ठाण्याच्या हद्दीत एकाच दिवशी इतर आठ साथीदारांच्या मदतीने तीन निरनिराळ्या ठिकाणी जबरीने पैसे लुबाडले. म्हणुन तुमच्या विरुद्ध भिवंडी शहर पोलीस ठाणे येथे १) गु.र.क्र.८/०३, कलम ३९५,३६३,३४२, ४१९,४१६ भादवि व २) गु.र.क्र.९/०३, कलम ३९५,४१९,३२३,५०६ असे दोन गुन्हे व नारपोली पोलीस ठाणे भिवंडी येथे गु.र.क्र.१२/०३,कलम ४५२,४२०,१७०,३३४ असे एकुण ३ गुन्हे दाखल झालेले आहेत. त्यापैकी गु.र.क्र.८ /०३ व ९/०३ ची सत्र न्यायालय ठाणे येथे कोर्ट केस क्र. ३१२/०३ व २१३/०३ अन्वये सुनावणी होवुन त्यातुन आपली निर्दोष मुक्तता झालेलीच आहे. आणि नमूद नारपोली पोलीस ठाणे गु.र.क्र.१२/०३ हया गुन्ह्याची सुनावणी सध्या महानगर दंडाधिकारी, भिवंडी कोर्ट येथे चालु आहे.

६) तुम्ही जनतेचे संरक्षक असुनही जनतेकडुन पैसे लुबाडण्यासारखे पोलीस खात्याला काळीमा लावणारे कृत्य केले आहे. म्हणुन तुम्हांला दि. १४.१.२००३ पासुन निलंबित केले आहे. तुमची गैरहजर राहण्याची सबब व गैरहजेरीच्या कालावधीत केलेल्या गुन्ह्याकरिता तुम्ही मुंबई पोलीस नियम १९५६ (शिक्षा व अपिल) अंतर्भूत नियम ३ अन्वये कोणत्याही शिक्षेस पात्र आहात.”

4. In departmental enquiry, the Applicant was dismissed from service by order dated 22.09.2005 invoking Section 25 of Maharashtra Police Act, 1951 and appeal came to be dismissed by Director General of Police on 10.03.2006. However, in revision, the Government allowed the appeal by order dated 03.11.2009 thereby setting aside dismissal and directions were issued to reinstate the Applicant in service. The dismissal was set aside solely on the ground that in the meantime, in all criminal cases, the Applicant has been acquitted by the Court. Accordingly, the

Applicant joined service on 06.01.2010, and thereafter, made representation to regularize his out of service period as well as suspension period which was decided by order dated 14.09.2018 which was the subject matter of earlier O.A.No.442/2019. Since suspension period was not decided by the competent authority, directions were given by this Tribunal to decide the same in accordance to law and consequent to it, by impugned order dated 24.08.2020, the suspension has been held justified and period of suspension is treated 'as such' for all purposes.

5. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the impugned order *inter-alia* contending that once the Applicant has been acquitted in criminal cases, it wipe-out the stigma of suspension, and therefore, suspension order which was passed only because of registration of offences against the Applicant cannot be said justified. He further emphasized that the Judgment of Criminal Court will have to be read as a whole and even if the Court has used general phraseology of acquitting the accused on benefit of doubt, that itself should not come in the way of Applicant so as to deprive of pay and allowance of suspension period. Thus, according to him, the Applicant cannot be allowed to suffer evil consequences when he is acquitted in all criminal cases. Once order of dismissal is set aside in view of acquittal in criminal cases and Applicant is reinstated in service, he is entitled to full pay and allowances of the suspension period.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to support the impugned order and pointed out that there is no such honourable acquittal in the criminal cases and Applicant is acquitted by giving benefit of doubt. He has further pointed out that the competent authority in impugned order has formed opinion that suspension was justified.

7. Rule 72 of 'Rules of 1981' provides and regulates the procedure where a Government servant is reinstated in service which inter-alia provides that competent authority to order reinstatement required to consider the issue and shall make specific order regarding pay and allowances for the period of suspension ending with reinstatement and as to whether said period shall be treated as a period spent on duty. In this behalf, Rule 72(3), (4) and (5) is material, which is as under :-

**“3.** Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the terminate of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

**4.** In a case failing under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

**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.

8. As such, where competent authority is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to provision of Sub-rule 8 be entitled to full pay and allowances to which he would have been entitled had he not been suspended. In other words, negative test has to be applied to find out as to whether suspension was justified or otherwise. If suspension was not wholly unjustified, the

competent authority is required to issue notice before passing further order about pay and allowances of the suspension period, as mandatory in Sub-rule 5 of Rule 72 of 'Rules of 1981'.

9. Now turning to the facts of the present case, admittedly, show cause notice was given to the Applicant to which he had given reply, and thereafter, impugned order dated 24.08.2020 has been passed. The following is the conclusion of competent authority in impugned order dated 24.08.2020.

“पोशि/नागवेकर यांनी त्यांचे उत्तरात शासनाचे दिनांक १५ मे २०१० रोजीच्या परिपत्रकाचा उल्लेख केला असून, शिक्षा रद्द झाल्याने निलंबन कालावधी नियमित झाल्याची दोन उदाहरणे दिली आहेत. पोशि/नागवेकर यांना मा. न्यायालयाने वर नमूद केल्याप्रमाणे संशयाचा फायदा देऊन मुक्त केले आहे. तसेच ते कर्तव्यावर विनापरवाना गैरहजर राहून त्यांनी गंभीर स्वरूपाच्या गुन्ह्यात सहभाग असल्याचे सकृतदर्शनी पुराव्यावरून सिद्ध होते. त्यांच्याविरुद्ध नोंद झालेले गंभीर स्वरूपाचे गुन्हे यांचा सारासार विचार करता त्यांचे निलंबन सयुक्तिक वाटते. तसेच शासनाच्या दि. १४/०९/२०१८ रोजीच्या आदेशान्वये पोशि/नागवेकर यांना त्यांच्या ४ वर्षे ४ महिने बडतर्फ कालावधीचे पूर्ण वेतन न देता तीन वर्षांच्या कालावधीच्या मर्यादित ५० टक्के वेतन व भत्ते देण्याचे आदेश निर्गमित केले आहेत. यावरून पोशि/नागवेकर यांना पूर्णतः दोषमुक्त केले नसल्याचे दिसून येते. नमूद बाबीचा विचार करता पो.शि.क्र.३१६१३/तुळशीदास फकीर नागवेकर यांचे उत्तर समाधानकारक वाटत नाही. यास्तव, पो.शि.क्र.३१६१३/तुळशीदास फकीर नागवेकर, चुनाभट्टी पोलीस ठाणे तत्कालीन नेमणूक सशस्त्र पोलीस ताडदेव, मुंबई यांचा दि.१४/०१/२००३ ते दि.२५/०९/२००५ पर्यंतचा निलंबन कालावधी हा महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीयेत्तर सेवा आणि निलंबन, बडतर्फ, सेवेतून काढून टाकणे या काळातील प्रधाने) नियम १९८१ मधील नियम ७२(५)(७) मधील तरतुदीनुसार “सर्वार्थाने निलंबन काळ” म्हणून नियमित करण्यात येत आहे.”

10. Thus, the perusal of impugned order reveals that the competent authority having regard to the serious charges framed against the Applicant in criminal cases and Applicant's frequent absenteeism came to the conclusion that suspension was justified. Having recorded such conclusion, the competent authority treated the period from 14.01.2003 to 25.09.2005 suspension 'as such' for all purposes under Rule 72 of 'Rules of 1981'.

11. Here material to note that in DE, there were 6 charges framed against the Applicant and Charge Nos.1 to 4 relate to frequent unauthorized absenteeism. It further reveals that he was subjected to censure 12 times, as seen from Charge No.4, but there was no improvement in his conduct. Thus, he was found incorrigible. Whereas, Charge Nos.5 and 6 were framed on the basis of registration of 3 crimes against him. The involvement of criminal case was found unbecoming to Police Personnel. It may be noted that at the time of issuance of notice,

the Applicant was already acquitted in two cases by Sessions' Court, Thane and only one criminal case was pending before Judicial Magistrate, 1<sup>st</sup> Class, Bhivandi. Initially, in DE, he was dismissed from service and the dismissal was maintained in appeal. It is only in revision preferred by the Applicant, the Government by order dated 03.11.2009 set aside the dismissal solely on the ground that, in all criminal cases, the Applicant has been acquitted. In this behalf, perusal of order of Government reveals that in very cryptic order, the dismissal has been set aside solely on the ground of acquittal in criminal cases. The authority that time has completely over-looked another charges (Charges No.1 to 4) framed against the Applicant for which also he was held guilty. Be that as it may, the fact remains that in DE, he was held guilty for other charges, but there is no such reasoning in the order dated 03.11.2009 on the said issue while setting aside dismissal.

12. Now turning to the Judgments of criminal cases, the perusal of Judgment in Sessions' case No.212/2003 reveals that Criminal Court find it unsafe to rely upon the evidence laid by the prosecution because of inconsistency, improvement and contradictions in the evidence. Apart, the Court also held that non-examination of independent witness though available creates doubt about the prosecution case. Ultimately, in Para No.22, the Court sum-up that the prosecution has failed to prove the offences against the accused beyond reasonable doubt. As regard acquittal in Sessions' trial No.213/2003, the acquittal was based because the material witnesses turned hostile. Insofar as 3<sup>rd</sup> case i.e. R.C.C.No.840/2003 is concerned, in this case also, all witnesses turned hostile, and therefore, Applicant came to be acquitted.

13. Thus, the perusal of Judgment of Criminal Court reveals that in one case, the Applicant was acquitted giving benefit of doubt and in remaining two cases, witnesses turned hostile, which is common phenomenon. Needless to mention, acquittal will not obliterate legal consequences retrospectively. One need to see the situation prevailing at

the time of suspension and what transpired later in judicial proceedings or departmental proceedings, so as to find out whether suspension was wholly unjustified or otherwise.

14. Needless to mention, mere acquittal by Criminal Court itself would not entitle a Government servant to claim full pay and allowances of the suspension period. What is required to be seen is whether in the opinion of competent authority, the action of suspension was wholly unjustified. Negative test was required to be applied for holding the person to be entitled for all benefits of suspension period. In the present case, having regard to the facts and circumstances of the matter as discussed above, the opinion of competent authority that suspension was unjustified cannot be said perverse or illegal. True, even if the foundation for suspension was registration of offences and it ended in acquittal for lack of evidence or giving benefit of doubt where suspension was found not wholly unjustified, the Applicant in my considered opinion, cannot be paid full pay and allowances of suspension period.

15. In this behalf, reference can be made to **(1997) 3 SCC 636 [Krishnakant R. Bibhavnekar Vs. State of Maharashtra & Ors.]** wherein Hon'ble Supreme Court in the matter of treatment to suspension period after acquittal in criminal case 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.”*

16. Similarly, reference of decision of Hon’ble High Court **(2003)4 Mh.L.J. 606 [Vasant K. Kamble Vs. State of Maharashtra]** is inevitable, wherein it has been held as under :-

*“In our opinion, therefore, acquittal of the Petitioner by Criminal Court did not ipso-facto entitle him to the benefit of salary under Rule 72. What was required to be seen was where in the opinion of the Competent Authority, the action of suspension of the Petitioner was “wholly unjustified”. In other words, the 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 aforesaid case, the Petitioner Vasant Kamble was suspended in view of registration of crime for forgery. In criminal case, he was acquitted. No DE was initiated against him. The period of suspension was treated ‘as such’. Before Hon’ble High Court, the contention was raised that in view of acquittal in criminal case, the Petitioner is entitled to all benefits of suspension period. However, Hon’ble High Court rejected the defence stating that acquittal *ipso-facto* does not entitle him to the benefit of salary under Rule 72 of ‘Rules of 1981’. As such, in view of this precedent, the claim of the Applicant for pay and allowances of suspension period is devoid of merit.

17. As regard orders of payment of pay and allowances for suspension period in the matter of some Police Constables as referred in reply to the show cause notice, needless to mention, mere fact authority has passed a particular order in case of another person that can never be a ground

for passing similar order in favour of the Applicant on the plea of discrimination. Whether the suspension was wholly unjustified or otherwise is question to be decided in fact and circumstances of the matter. It is not clear what were the facts of those cases. Indeed, it is trite law that there cannot be equality in illegality and concept of negative discrimination is unknown to law. Therefore, this ground raised in reply holds no water.

18. The totality of aforesaid discussion leads me to sum-up that acquittal in criminal cases for the reasons discussed above, *ipso-facto* does not entitle the Applicant to treat suspension period as duty period. The challenge to the impugned order thus holds no water. Hence, the following order.

### **ORDER**

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

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

Mumbai  
Date : 15.02.2022  
Dictation taken by :  
S.K. Wamanse.

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