

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.209 OF 2020

DISTRICT : RAIGAD

Shri Pranay Ramesh Pawar.)
Age : 35 years, (DOB : 31-07-1985),)
Occu.: Agriculture Assistant and residing)
at Usar-Khurd, Tal. : Tale, Dist.: Raigad.)...**Applicant**

Versus

The Joint Director (Agriculture),)
Agriculture Department, Konkan Division,)
Thane – 4.)...**Respondent**

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

Ms. S.P. Manchekar, Chief Presenting Officer for Respondent.

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

DATE : 09.02.2021

JUDGMENT

1. The Applicant has challenged the communication dated 13.09.2019 and 21.11.2019 whereby his period of suspension from 18.10.2010 to 28.09.2012 was treated 'suspension as such' and the period from 29.09.2012 to 11.06.2019 i.e. out of service period was treated 'without pay and allowances', invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was working as Agriculture Assistant at Mangaon, District Raigad. By order dated 22.12.2010, he was suspended w.e.f.18.10.2010 in view of crime for the offence under Section 302 read with 34 of Indian Penal Code, invoking Rule 4(2) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). He was accordingly prosecuted along with co-accused in Sessions Case No.42/2010 for the offences under Section 302 read with 34 of I.P.C. on the allegation of murder of one Mangesh Sawant. The Sessions Court, Mangaon convicted the Applicant and co-accused by Judgment dated 29.02.2012 and sentenced them to suffer life imprisonment. In view of conviction by Sessions Court, by order dated 28.09.2012, the Applicant was removed from service, invoking Rule 13(i) of 'Rules of 1979'. Being aggrieved by conviction and sentence, the Applicant had filed Criminal Appeal No.402/2012 before Hon'ble High Court, which was allowed by Judgment dated 12.06.2019 and accordingly, the Applicant as well as co-accused were acquitted by giving benefit of doubt. Consequent to it, the Applicant was reinstated in service by order dated 13.09.2019. While reinstating the Applicant in service itself, the Respondent – Joint Director, Agriculture, Konkan Division, Thane treated the period of suspension from 28.10.2010 to 28.09.2012 'suspension as such' and out of duty period i.e. from 29.09.2012 to 11.06.2019 was treated 'without pay and allowances as *dies-non*'. The Applicant made representation against the said communication on 30.10.2019 requesting to treat his both the periods as 'duty period for pay and allowances' in view of his acquittal in Criminal Case, but the same is rejected by Respondent by communication dated 21.11.2013 which is under challenge in this O.A.

3. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned communication on following grounds :-

- (i) As regard suspension period, no notice as mandated under Rule 72(5) of Maharashtra Civil Services (Joining Time, Foreign

Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Joining Time Rules of 1981' for brevity) has been given to the Applicant, and therefore, in absence of opportunity of hearing, the impugned order is bad in law.

(ii) In view of acquittal of the Applicant by Hon'ble High Court, it will have to be held that the Applicant was kept out of duty without any justifiable ground and in any case, since acquittal obliterates the stigma of conviction, he is entitled to pay and allowances for the entire period i.e. from 28.09.2012 to 11.06.2019.

4. Per contra, the learned Chief Presenting Officer Ms. S.P. Manchekar submits that mere acquittal itself does not entitle the Applicant for pay and allowances for the period from removal of service till reinstatement in service automatically. She has also pointed out that Hon'ble High Court gave benefit of doubt to the Applicant and it is not a case of clean or honourable acquittal, so as to consider the claim for back-wages. As regard non-issuance of notice and opportunity of hearing, she fairly concedes that no such opportunity was given to the Applicant before passing impugned order, as contemplated under Rule 72(5) of 'Joining Time Rules of 1981'.

5. It is *ex-facie* that after acquittal of the Applicant at the time of passing reinstatement order itself, the Respondent has passed the order treating the period of suspension as such. Whereas, Rule 72(3) of 'Joining Time Rules of 1981' provides that while reinstating the Government servant in service, the competent authority has to form its opinion as to whether the suspension was wholly unjustified or otherwise and then to proceed to pass further order regarding pay and allowances. Thus, negative test needs to be applied as to whether suspension was wholly unjustified or otherwise. Whereas, Rule 72(5) of 'Joining Time Rules of 1981' provides that in cases other than those

falling under sub-rules 2 and 3, a Government servant be paid such amount of pay and allowances subject to sub-rules 8 and 9 and such order is required to be passed after giving notice to the Government servant of the quantum proposed by him and after considering the representation, if any, submitted by him in that connection.

6. Now turning to the facts of the present case, admittedly, neither there is opinion formed by the competent authority that the suspension was wholly unjustified or otherwise as contemplated in proviso of Rule 72(2) of 'Joining Time Rules of 1981' nor competent authority has issued prior notice as mandated under Rule 72(5) of 'Joining Time Rules of 1981'.

7. This being the position, the impugned order to the extent of treating the period from 13.09.2019 to 21.11.2019 'suspension as such' being not in compliance of Rules is unsustainable in law and matter needs to be remanded to the competent authority to pass order afresh in the light of provisions of Rule 72 of 'Joining Time Rules of 1981' as discussed above.

8. In so far as refusal for pay and allowances for out of service period from 29.09.2012 to 11.06.2019 is concerned, in my considered opinion, no exception can be taken to this part of the order. Admittedly, the Applicant was out of service in view of his conviction by competent Court of law, but later he was reinstated in view of his acquittal in appeal. I find no substance in the submission advanced by Shri K.R. Jagdale, learned Advocate for the Applicant that it was a case of absolutely no evidence or clean acquittal. On the contrary, the perusal of Judgment of Criminal Appeal reveals that it was a case of circumstantial evidence and at more than one place, the Hon'ble High Court observed that there is no complete chain of the circumstances from which conclusion of guilt can be fully established. The Hon'ble High Court, therefore, extended the benefit of doubt to the Applicant and acquitted him. There is specific finding that the prosecution has not been able to establish a case beyond

all reasonable doubt. Suffice to say, this is not a case of no evidence or clean acquittal.

9. In such situation, the acquittal in Criminal Case ipso-facto does not entitle the employee to claim back-wages for the period in which he was out of service on account of conviction in Criminal Case. It is well settled that subsequent acquittal though obliterates the conviction, it does not operate retrospective to wipe out the legal consequences of the conviction.

10. The learned CPO rightly referred to the following decisions to substantiate that the Applicant is not entitled to pay and allowances for the period he was out of service on account of his conviction by Trial Court.

(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 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.*”

(V) (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 no 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.”

11. Thus, the legal principles enunciated in the aforesaid authorities are squarely attracted and the Applicant's claim for pay and allowances for out of service period is totally unsustainable.

12. Shri K.R. Jagdale, learned Advocate for the Applicant sought to refer the decision rendered by this Tribunal in **O.A.No.255/2012 (Appasaheb R. Hatti Vs. State of Maharashtra & Anr.) decided on 03.08.2012** and confirmed by Hon'ble High Court in **Writ Petition No.2780/2013 decided on 25th July, 2013**. This Judgment pertained to the regularization of suspension period after acquittal in Criminal Case and of no assistance in respect of treatment to the period from out of service. Similarly, the decision of Hon'ble Supreme Court **(1984) 2 SCC 433 (Brahma Chandra Gupta Vs. Union of India)** is also of no assistance, since it also pertain to the regularization of suspension period.

13. As stated above, in view of decision rendered by Hon'ble Supreme Court referred to above on the point of pay and allowances for out of service period, he is not entitled to relief claimed. The Applicant was removed from service in view of conviction from the competent Court of law though later he was acquitted, albeit by giving benefit of doubt. In such situation, it would be deleterious to the maintenance of discipline, if such person is given fully back-wages for the period on which he was not on duty as held by Hon'ble Supreme Court in **Krishnakant Bibhavnekar** (cited supra) as a matter of course on his acquittal. Suffice to say, the impugned order denying pay and allowances for out of duty period is unexceptionable and needs no interference.

14. The cumulative effect of the aforesaid discussion leads me to conclude that the O.A. deserves to be allowed partly to the extent of suspension period and matter needs to be remanded to Respondent to decide the issue of regularization of suspension afresh, as observed in the Judgment. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent is directed to consider the issue of pay and allowances to the Applicant for the period of suspension from 18.10.2010 to 28.09.2012 afresh after giving notice to the Applicant and to pass appropriate order in accordance to Rule 72 of Joining Time Rules of 1981' within two months from today.
- (C) The claim of Applicant for pay and allowances of out of duty period from 28.09.2012 to 11.06.2019 stands rejected.
- (D) No order as to costs.

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

Mumbai
Date : 09.02.2021
Dictation taken by :
S.K. Wamanse.

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