

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.231 OF 2019

DISTRICT : PUNE

Shri Shantaram R. Taitawale.)
Occu.: Retired,)
Office at : Kale Colony, Kate Vasti,)
At Post : Chaholi Budruk, Tal.: Haveli,)
District : Pune.)...**Applicant**

Versus

1. The Settlement Commissioner &)
Director of Land Records, Pune.)
2. The Deputy Director of Land Records,)
Pune Region, Pune.)
3. The District Superintendent of Land)
Records, District : Pune.)
4. The Deputy District Superintendent of)
Land Records, Saswad, Tal. Purandar,)
District : Pune.)...**Respondents**

Mr. S.A. Chavan, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 08.07.2019

JUDGMENT

1. The challenge is to the impugned order dated 11.01.2018 passed by Respondent No.2 which has been confirmed in appeal by order dated 07.08.2018 by Respondent No.2 whereby the suspension period of the Applicant has been treated as 'Suspension Period' for all purposes except grant of pension.
2. The factual matrix is as follows :-

The Applicant was serving as Surveyor in the Office of Land Records, Indapur, District : Pune. On 07.11.1998, on receipt of complaint of demand of bribe by the Applicant, the Anti-Corruption Bureau, Pune led trap and apprehended the Applicant while accepting bribe of Rs.500/- from the complainant. In sequel, Crime No.3041/1998 for the offence under Section 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act was registered against him. He was kept under suspension from 01.02.2000. On completion of investigation, charge-sheet was filed against him vide Special Case No.2/2000 in the Court of Special Judge, Baramati, District : Pune. The learned Special Judge acquitted the accused by Judgment dated 30.09.2003 with the finding that the prosecution was failed to prove the offences beyond reasonable doubt. The State Government carried the matter by filing Criminal Appeal No.31/2004 before the Hon'ble High Court. The Hon'ble High Court dismissed the appeal on 27.11.2014. In the meantime, the Applicant continued in suspension and retired on 31.08.2008 on attaining the age of superannuation. The Respondents did not initiate the D.E. against the Applicant but kept him under suspension till his retirement. The Respondent No.2 viz. Deputy Director of Land Record issued notice to the Applicant on 27.10.2017 for calling his explanation as to why the period of suspension from 01.02.2000 to 31.08.2008 should not be treated as 'Suspension Period' under Rule 72(5) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules,

1982 (hereinafter referred to as 'Joining Time Rules 1981' for brevity). The Applicant submitted his explanation requesting to treat his suspension period as 'duty period'. However, the Respondent No.2 by letter dated 11.01.2018 treated the suspension period as "Suspension Period" for all purposes except pension under Rule 72(5) of 'Joining Time Rules 1981'. Being aggrieved by it, the Applicant has filed appeal before Respondent No.1 – Settlement Commissioner and Director of Land Records, Pune which came to be dismissed by order dated 07.08.2018 on the ground that the acquittal of the Applicant in Criminal Case was not honorable acquittal but benefit of doubt was given to him. Furthermore, the Appellate Authority noted the observations and findings recorded in his behalf by Hon'ble High Court in Criminal Appeal. The Applicant, therefore, approached this Tribunal and challenged the legality of order dated 11.01.2018 as well as 07.08.2018 whereby the period of suspension from 01.02.2000 to 31.08.2008 was treated as suspension period and claims that it be treated as 'Duty Period' and consequential service benefits.

3. The Respondents resisted the claim *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondents sought to contend that the Applicant was acquitted from criminal charges only on benefit of doubt and there is no "honourable acquittal". In this behalf, the Respondents sought to place reliance on the observations and findings recorded by Hon'ble High Court in Criminal Appeal to the effect that acceptance of bribe was proved beyond reasonable doubt but demand of bribe was not proved beyond doubt, and therefore, the acquittal was confirmed. The Respondents, therefore, denied that the Applicant is entitled for Pay and Allowances of the suspension period. Thus, the Respondents sought to justify the impugned orders dated 11.01.2018 and 07.08.2018.

4. Shri S.A. Chavan, learned Advocate for the Applicant referred to the Judgment of Trial Court and urged that the acquittal of the Applicant from

criminal charges was because of failure of the prosecution to prove the guilt of accused, and therefore, the Applicant deserves to be treated as innocent and cannot be deprived of the service benefits of suspension period. He further placed reliance on the Judgment passed by this Tribunal in ***O.A.1543 of 2009 (Sujat Ali Liyakat Ali Inamdar Vs. State of Maharashtra) decided on 06.02.2018*** wherein on acquittal of the Applicant therein because of the failure of prosecution to prove the charges beyond reasonable doubt, the order treating the period of suspension as 'Suspension Period' was set aside and service benefits were allowed. He further canvassed that though the Applicant was acquitted in criminal case on 30.09.2003, he was unnecessarily continued on suspension till his retirement without reinstating him in service and no steps were taken to initiate the D.E.

5. Per contra, Shri A.J. Chougule, learned P.O. urged that having gone through the Judgment of Trial Court as well as Hon'ble High Court, it cannot be said that the Applicant was innocent or honourably acquitted from the charges. He particularly referred to the findings recorded by Hon'ble High Court in Criminal Appeal to substantiate his submission that it is not a case of acquittal on merit but the benefit of doubt was given to the Applicant though the acceptance of bribe was proved beyond any doubt. He, therefore, submits that in such situation, the Applicant is not entitled to the service benefits during the period of suspension except pension purpose and the impugned orders are legal and valid.

6. Needless to mention that mere acquittal does not automatically entitle a person to back-wages, service benefits or pensionary benefits on his reinstatement. The Competent Authority needs to consider the Judgment in its entirety and to determine as to whether to treat suspension period as not spent on duty after following the principles of natural justice i.e. by issuing notice to the delinquent employee, as contemplated under Rule 72 of 'Joining Time Rules 1981'. In other words, Rule 72 gives discretion to the disciplinary authority and

of course the discretion needs to be exercised judiciously having regard to the facts of the case as well as the Judgment of acquittal vis-à-vis the finding recorded therein. Needless to mention that the observation in the Judgment that “the prosecution has failed to prove the case beyond a reasonable doubt” could not be read in isolation but had to be read with infirmities pointed out by Court while acquitting accused.

7. I have gone through the Judgment of Trial Court. The reading of Judgment as a whole goes to show that in the opinion of learned Judge, the evidence led by the prosecution was insufficient for want of corroboration and secondly, the demand of bribe was not established beyond reasonable doubt. As such, the benefit of doubt was given to the Applicant while acquitting him. Here, it would be appropriate to see the relevant observations of learned Trial Judge from its Judgment, which are as follows :-

“It is submitted on behalf of the accused that as above said third demand which was demand made prior to trap is not proved by the prosecution, the trap which laid on the accused on 7.11.98 is illegitimate trap. To support this accused has relied on the case of Tryambak Lilaji Binnar v/s State of Maharashtra, reported in 2002(3)Mh.L.M.293, wherein it has been held that. According to the prosecution at the time of the earlier demand 2 witness were present and one of whom viz. Kotwal was living. The prosecution had chosen not only not to examine him but it appears that even his statement was not recorded during the course of investigation and no attempt was made by the Investigation Officer to get himself satisfied regarding the complainant’s assertion of demand having come from the appellant for illegal gratification. While considering the evidence of prosecution it is necessary to bear in mind the importance of evidence of prior demand which if trust-worthy makes the trap legitimate to eradicate corruption otherwise it would be an illegitimate trap.

The complainant deposed that in the hotel accused said him whether he has brought money and he replied in the affirmative. He claims that then he gave Rs.500/- which were in his pocket to which anthracene powder was applied to the accused and then panch had given signal and then other panch and staff of ACB had come in the hotel and they caught-hold the accused. He deposed that the accused was then brought in the office of Land Record, Indapur, and the work of post trap panchanama was started. In the cross-examination he denied that in the hotel accused did not demand money but he attempted to put that money in his hand in that attempt currency notes were fallen on the table.

In such circumstances though as per the evidence of PW 3 PI Mane, after the trap when both the hands and fingers of the accused and the five currency notes of hundred denomination were examined in the ultra violet lamp and bluish shining was seen on fingers of both the hands of the accused and the currency notes, the same is not sufficient to draw conclusion that accused accepted the currency notes when in the circumstances present in the case that explanation of the accused of thrusting notes in his hand is probable as observed above. Therefore, it cannot be said that accused had voluntarily accepted bribe or the currency notes of Rs. 500/-. This conclusion is based on the ratio laid down in the case of Moti Ram Jai Singh Pawar v/s. State of Maharashtra, reported in 1985(2) crimes, 18, wherein the Bombay High Court has held that the prosecution has to show that the amount is accepted by the accused consciously.

Once the prosecution has failed to prove third demand dated 03.11.98 and fourth demand dated 7.11.98 of Rs.500/- by accused from complainant for fixing the boundaries of the land and the prosecution has failed to prove that accused has voluntarily accepted said amount, no presumption under section 20 of the Prevention of Corruption Act that public servant accepts gratification other than legal remuneration which is available as regards the charge under section 7 of the Prevention of Corruption Act, can be raised.

For the reasons discussed above, I hold that prosecution has failed to prove beyond reasonable doubt about the first two demands of Rs. 1,000/- on each occasion for measurement of land and acceptance of the same by the accused. So also, prosecution has failed to prove beyond reasonable doubt regarding third demand dated 3.11.98 and fourth demand dated 7.11.98 of the accused of Rs. 500/- for fixing boundaries of land Gat. No. 560 in the exercise of his official function. Moreover, the prosecution had failed to prove that by corrupt or illegal means or by abusing his position as a public servant accused obtained for himself pecuniary advantage to the extent of Rs. 500/- on 7.11.98 and Rs. 2000/- from time to time from complainant Gajanan Wayal. Thus, prosecution has failed to prove both offence under Section 7,13(1)(d) read with section 13(1) of the Prevention of Corruption Act, against accused beyond reasonable doubt. As such, accused is entitled to benefit of doubt. Therefore, I answer both point nos. 1 and 2 in the negative.”

8. As such, it is quite clear that though there was evidence of traces of anthracene powder on the fingers of the Applicant, the case of prosecution was disbelieved mainly on the ground that the demand of bribe was not established beyond reasonable doubt. The defence of the Applicant was of thrusting of notes in his hand. Except the evidence of complainant about the demand of money, there was no further corroboration to the demand of bribe. The learned Trial

Judge ultimately gave the benefit of reasonable doubt to the Applicant and acquitted him.

9. Now, let us see the finding recorded by the Hon'ble High Court in Criminal Appeal. True, the Hon'ble High Court dismissed the appeal but material to note the findings from the Judgment of Hon'ble High Court. Here, it would be apposite to reproduce Para Nos.5 and 6, which are as follows :

“5. The evidence of PW-1 indicates that the respondent had asked PW-1 whether he had brought the money. It can be seen from the evidence of PW-2 that he did not say anything about the demand. What he has stated is that there was some talk between PW-1 and the respondent regarding money. As such, there is no unimpeachable evidence with regard to demand of bribe on 7.11.1998. It was, therefore, obligatory on the part of the prosecution to prove that the demand was made by the respondent on the earlier date when PW-1 had visited his office. In this regard it may be mentioned here that to prove a charge under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, it is necessary to prove the demand. Acceptance of money by itself will not prove that the money was demanded by way of bribe.

6. Though the learned trial Judge has rejected the whole evidence and has come to conclusion that neither demand nor acceptance had been proved, I accept the argument of learned Additional P.P. Mrs. Mhaispurkar that acceptance was proved beyond reasonable doubt. However, the factum of demand could not be proved. It was highly risky to rely upon the evidence of PW-1 that on one occasion oral demand was made by the respondent for himself and for his boss. In the circumstances, it was, in my opinion, necessary for the Investigating Officer to verify as to whether money was demanded. This verification could have been done by sending PW-1 again to the office of the respondent with a hidden tape recorder installed in the clothes of PW-1. A bare word of PW-1 appears to be doubtful.”

10. As such, the Hon'ble High Court re-assessed and scrutinized the evidence of prosecution witnesses and has recorded categorical finding that the acceptance of bribe of the Applicant has been proved beyond reasonable doubt. However, the factum of demand being not proved, finding it risky to rely upon the solitary evidence of the complainant for want of corroboration in the form of type-recorded version, etc., the acquittal was maintained. As such, the Hon'ble

High Court accepted the evidence of prosecution about the acceptance of bribe by the Applicant. This aspect clinch the issue in favour of Respondents.

11. It is in the light of observations and finding recorded by the Hon'ble High Court, the suspension period from 01.02.2000 to 31.08.2008 was treated as 'Suspension Period' for all purposes except pension as the suspension was found not "wholly unjustified".

12. At this juncture, it would be apposite to refer the Judgment of Hon'ble High Court in **(2003) 4 Mh.L.J. 606 (Vasant Kamble Vs. State of Maharashtra)** where in Para No.6 in similar situation, the Hon'ble High Court held as follows :-

"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."

13. In this behalf, this Tribunal is guided by the Judgment of Hon'ble Supreme Court **(1997) 3 SCC 636 (Krishnakant R. Bibhavnekar Vs. State of Maharashtra)** wherein ratio is laid down that mere acquittal of the employee because of insufficient evidence in Criminal Case does not automatically entitle him to back-wages and the Competent Authority is empowered to treat the suspension period as not spent on duty. The principles and observations made by the Hon'ble Supreme Court are fully attracted to the present case. Para Nos.4 & 5 of the Judgment is material, which are as follows :-

"4. Mr. Ranjit Kumar, learned counsel for the appellant, contends that under Rule 72(3) of the Maharashtra Civil Services (Joining Time, foreign Services, and Payment during suspension, dismissal and Removal) Rules, 1991 (for short 'the Rules'), the Rules cannot be applied to the appellant nor would the respondents be justified in treating the period of suspension of appellant, as the period of suspension, as not being warranted under the Rules. We find no force in the

contention. It is true that when a Government servant is acquitted of offences, he would be entitled to reinstatement. But the question is: whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period, as contended by Shri Ranjit Kumar? The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts, conduct of a public servant has to be an open book: corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or fool proof. The act of <http://JUDIS.NIC.IN> SUPREME COURT OF INDIA Page 2 of 2 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. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to the prosecution of him for the offences under the Indian Penal Code. 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 self-same 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 a 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 paragraphs 5 and 6 of the additional affidavit.

5. Under these circumstances, we do not think that the Tribunal has committed any error."

14. In so far as the reliance on the decision rendered by this Tribunal in ***Sujat Ali Liyakat's*** case (cited supra), it is quite distinguishable as in the present case, there is categorical finding of the Hon'ble High Court about the acceptance of bribe by the Applicant. In ***Sujat Ali Liyakat's*** case, there was no such finding, and therefore, the O.A. was allowed and period of suspension was treated as 'Duty Period' for all purposes. Needless to mention that it is well settled that the ratio of any decision must be understood in the background of the facts of that case. It has said long ago that, a case is only an authority what it actually decides and not what logically follows from it. Little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. One should avoid the temptation to decide cases by matching the colour of one case against the colour of another.

15. True, though the Applicant was acquitted in 2003, the Respondents did not initiate the D.E. against him nor did take any steps to reinstate the Applicant in service. It seems that, as the State Government had carried the matter to Hon'ble High Court, the Respondents perhaps thought it inappropriate to initiate the D.E. against him, as the matter was again subjudice before Hon'ble High Court. The Criminal Appeal was decided by the Hon'ble High Court on 27.11.2014. However, in the meantime, the Applicant attained the age of superannuation on 31.08.2008. In such situation, only because the Respondents did not reinstate the Applicant immediately after the acquittal of Applicant by Trial Court in 2003 that *ipso-facto* does not entitle the Applicant to treat the suspension period as "Duty Period" particularly in the teeth of findings recorded by Hon'ble High Court that the acceptance of bribe has been duly established

beyond doubt. The acquittal was confirmed because of insufficiency of evidence of the complainant on the point of demand of bribe.

16. In view of above discussion, it would be deleterious to the maintenance of discipline to grant the relief of back-wages to the Applicant where the suspension found not “fully unjustified” and particularly where the acceptance of bribe held proved beyond any doubt. The principles of law enunciated in **Vasant Kamble** (supra) and **Krishnakant Bibhavnekar** (supra) are squarely attracted to present matter.

17. The necessary corollary of aforesaid discussion leads me to sum-up that the Applicant is not entitled to the relief claimed and O.A. deserves to be dismissed. Hence, the following order.

ORDER

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

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

Mumbai

Date : 08.07.2019

Dictation taken by :

S.K. Wamanse.

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