

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.264/2016.

(S.B.)

Ganesh Pandurang Tayade,
Aged about 54 years,
R/o Balaji Nagar, Chandak Layout,
Chikhli Road, Sudarkhed, Buldana.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Superintendent of Police,
Buldana.

Respondents

Shri Bharat Kulkarni, the learned counsel for the applicant.
Shri A.M. Ghogre, the Ld. P.O. for the respondents.

Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 16th day of November 2017).

Heard Shri Bharat Kulkarni, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondents.

2. The applicant in this case is claiming that the order dated 27.1.2016 issued by Superintendent of Police, Buldana (R.2) whereby

his suspension period has been treated as suspension as such, be quashed and set aside and respondent No.2 be directed to treat the period of suspension as duty period for all purposes and the applicant be paid all arrears of pay and allowances and increment. In the similar manner, the order dated 29.9.2011 whereby the suspension period of the applicant as suspension period, may also be quashed and set aside.

3. The applicant was working as Police Head Constable under the control of respondent No.2. Departmental enquiry was initiated against the applicant on the allegations of misconduct with the alleged landlord of the applicant. In the said departmental enquiry, respondent No.2 passed an order whereby the applicant was removed from service. During the pendency of enquiry, the applicant was kept under suspension. The applicant preferred an appeal against the order of punishment imposed by the Superintendent of Police, Buldana i.e. he respondent No.2. In the appeal, the order was modified and instead of removal from service, the applicant was made to retire compulsorily. This order was passed on 7.8.2015.

4. Being aggrieved by the order passed by the Superintendent of Police, Buldana and the order passed by the appellate authority in his appeal, the applicant had preferred O.A. No. 754/2012. The said O.A. came to be allowed by this Tribunal vide

order dated 28th July 2015. In the said O.A., this Tribunal was pleased to pass the following order:-

%O.A. is allowed in the following terms:-

- (i) Order dated 27th July 2012 (Annexure A-1) passed by respondent No.3 thereby imposing penalty of compulsory retirement on the applicant is quashed and set aside.
- (ii) It is directed that the applicant shall be reinstated in service forthwith, however with 50% back wages. He shall be entitled for continuity in service for all other purposes.
- (iii) No order as to costs.+

5. In spite the fact that the order of punishment has been quashed by this Tribunal, respondent No.2 did not treat the suspension period of the applicant as duty period and has passed the order dated 27.1.2016, whereby suspension period was treated as suspension period. The said relevant order is as under:-

%का कायालयाचे आदेशह ँ.पोअबु/वचौ/पी-६७ (१)/अं.आ/ पोहवा-१२०६/२०११-१४००६ द. २८.९.२०११ अवये ँयांना आदेश ँत झायाचे दनांकापासून शासकाय सेवेतून काढून टाकणे (Remove from service) ह ँा ँ वभागीय चौकशी ँहणजेच द. १२.१०.२०११ पावेतोचा ँलंबनकाळ हा जसाचा तसा गणयात आला होता.

परंतु १. पो. मुयालय, बुलडाणा जा. .४६६५/१५ द.१६.११.२०१५ अवये सादर पोहवा-३११ गणेश तायडे यांचा वनंती

अज २. ढ्याव ढन लेखाधकार ढो. अ. कायाल्लय, बुलडाणा यांचेकडून या कायाल्लयाचे ढनांक २१.१२.२०१५ चे ढाढवये ढांना सेवाबाढय काळाचे ५०% वेतन व भो हे ढांचे ढनयढत वेताढवाधीसह देय ठरतील काय ? याबाबत मागाढवढयात आलेले मागढशढ. ३. लेखाधकार ढांनी ढ. ७.१.२०१६ चे ढाढवये ढलेले मागढशढ व. ४. संबंढत ढोहवा. यांनी ढ. १ॢ.१.२०१६ रोजी ढलून ढलेले हढीढ यास अनुसढन वेतन ढडताळणी ढथकाचे तढासणीचे अधीन राहून ढांना आता १. ढ. १६.ॢ.२०१० ते ढ. १२.१०.२०११ ढावेतोचा ढलंबनकाळ हा ढर. ३ ढढये नढूद आदेशाढढाणे जसाचा तसा (As Such) गणढयात आलेला असढयाने सदरचा कालावधी वगळून ढांना ढतंभ-ब ढढये दशढढयाढढाणे सुधाढत आदेश ढगढत करढयात येत आहेत.”

6. The learned counsel for the applicant submits that once the enquiry has been quashed by the Tribunal and the applicant has been reinstated, the applicant's suspension period should have been treated as duty period. However, vide impugned order dated 7.8.2017, after reinstating the applicant, the impugned order dated 27.1.2016 has been passed.

7. Perusal of the order passé by this Tribunal in O.A. No.754/2012 shows that the applicant was falsely implicated in the enquiry. This Tribunal has observed in para No.12 in the said judgment as under:-

After having perused the entire material placed on record, we are of the view that just to get the house vacated, the landlord approached the superior of the applicant and in the course of enquiry, facts were

exaggerated to such an extent and to such a degree that it appears to be an act of misconduct on the part of the applicant. Further, the enquiry was in defiance of basic principles of natural justice. The Enquiry Officer exceeded his brief and virtually under the colour of reexamination, put questions, many of them were leading with a sole purpose of bringing on record incriminating material against the applicant.. We are further of the view that the conclusion arrived at by the authority *ex facie* appears wholly arbitrary, de hors the record and based on no evidence+and in that view of the matter, we consider this as fit case justifying interference with the conclusion in the enquiry+.

8. In view of the above observation, it will be clear that the departmental enquiry against the applicant was as regards his behaviour with his alleged landlord. It has been observed by the Tribunal that the landlord wanted to get his premises vacated from the applicant at any cost and, therefore, has filed complaint against the applicant. The very basis of enquiry thus seems to be false complaint against the applicant.

9. In the order passed by this Tribunal in O.A. No. 754/2012, the Tribunal has directed the respondent authority that the applicant shall be reinstated in service forthwith, however, with 50%

back wages and he shall be entitled for continuity in service for all other purposes. The words, %for all other purposes+ clearly show that the applicant should have been treated as on duty for all purposes including arrears of pay etc. subject to 50% back wages. In such circumstances, the impugned order treating the applicant as suspension as suspension as such is not legal and proper and the said period should have been treated as duty period. I, therefore, pass the following order:-

ORDER

- (i) The O.A. is allowed in terms of prayer clause 11 (I), (II) and (III), however, parties to bear their own costs.

Dt. 16.11.2017.

(J.D.Kulkarni)
Vice-Chairman(J)