IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.343 OF 2016

DISTRICT : NASHIK

1. Shri Shivaji K. Gunjal.
Aged : 47 Yrs, Working as Police
Naik, Attached to Satana Police
Station, Tal. : Satana, Dist : Nashik
and R/at. Police Vasahat, Satana,
Dist : Nashik.

2. Shri Popat R. Satpute.
Aged : 59 Yrs, Occu. Nil, Retired as
Assistant Sub Inspector with last
Posting at Police Head Quarter,
Nashik (R) at Village Adgaon,
Dist : Nashik and R/at. Shubhalaxmi
CHS, Flat No.11, Jagtap Mala,
Nashik Road, Nashik. ...**Applicants**

Versus

The Superintendent of Police.
Nashik (R), Having Office at Village Adgaon)
District : Nashik. ...**Respondent**

Mr. G.A. Bandiwadekar, Advocate for Applicants.

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

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 25.01.2017

JUDGMENT

1. The Applicants are still haunted by their past. They faced and got acquittal in a case under Prevention of Corruption Act being Special Case (ACB) No.14/2003 (State of Maharashtra Vs. Popat R. Satpute and one another decided by the learned Special Judge, Nashik on 10th February, 2010) pending which they had been placed under suspension and later on though reinstated, but by the order herein impugned dated 11th February, 2013, their period of suspension was treated as a period of suspension itself which is why, they are up before me by way of this Original Application (OA) seeking all service benefits for the said period and quashing and setting aside of the impugned order.

2. The Applicants were working as Head Constable and Constable respectively when they got embroiled into the facts giving rise to the prosecution detailed at the outset. Post acquittal, they were reinstated but still the period of suspension was continued to be treated as that of suspension. The impugned order sets out the facts giving rise to the prosecution above referred to. It was mentioned that the order of the Special Judge, Nashik did not give the

Applicants what can be described as 'clean acquittal' but it was on the basis of benefit of doubt, and therefore, the period of suspension was treated as such. This order is being impugned herein.

3. I have perused the record and proceedings and heard Mr. G.A. Bandiwadekar, the learned Advocate for the Applicants and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondent.

4. The facts must have become quite clear. The Applicants were acquitted and the said order of acquittal became conclusive and binding which fact is exemplified by a communication of 1.7.2010 from the Deputy Commissioner/Police Superintendent, Anti Corruption Bureau to which the opinion of the learned Additional Public Prosecutor who conducted the case for the State was also annexed. Thereunder, an advice was given against any appeal being preferred against the order of the learned Special Judge, Nashik.

5. Now, the submissions at the Bar present two dimentions to this entire controversy. According to the Applicants, they were given clean acquittal while according to the Respondent, they got benefit of doubt. Broadly so

speaking, one can work for the purposes of this OA on the principle that if it was a case of benefit of doubt, then although reinstatement would follow acquittal but it would not be necessarily so that the other benefits like treating of the period of suspension as period spent on duty, etc. must be given to the Applicants. Therefore, the heart of the matter would be as to whether upon a proper reading of the Judgment of the learned Special Judge, Nashik, it can be concluded that it is a case of clean acquittal or otherwise. For that, I will have to peruse the said Judgment, but I must make it very clear that in these proceedings, it is not open to me to scrutinize the Judgment of the learned Judge in the Special Case above referred to. I have to take the said Judgment as it is without making any comments thereon which is the domain of an Appellate Court and not mine. But still the Judgment will have to be read in order to determine as to whether it was really a case of clean acquittal or a Judgment giving benefit of doubt and in order to ascertain that position, the said Judgment will have to be read as it is without adding to or subtracting from the said Judgment anything.

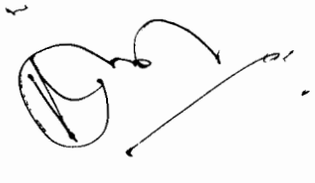
6. The facts giving rise to the said prosecution and the manner in which the trap, etc. came to be laid was set

out by the learned Judge in detail. The four points for determination were framed. The first point was with regard to whether the Applicants were public servants within the purview of the Prevention of Corruption Act, 1988 and as to whether a case of demand and acceptance was established and the facts attended therewith. That point was found against the prosecution by the finding, "not proved". The second point was as to whether the present Applicants being the accused there abetted each other in the commission of the offence therein which again was found as, "not proved". The third point was as to whether the Applicants being the accused there committed criminal misconduct and that was also held, "not proved". All those points were held against the prosecution. Reading the said Judgment as to its reasoning, the learned Judge summarized the submissions of both the parties before him and discussed the evidence. The case law was also discussed. It was considered in depth as to how the evidence of the prosecution was subjected to fierce criticism on behalf of the accused being the Applicants herein. Some excerpts from the evidence also came to be reproduced. In Para 18, the learned Judge observed that he found much substance in the defense version (Applicants' version) that the complainant was found to be incorrect in alleging that he had been put in the Police

Lock-up on that day. In Para 19, the learned Judge found that the evidence of the prosecution was vague in so far as who accepted the amount of Rs.1,800/- from the complainant. In Para 21, the learned Judge held that the defence (present Applicants) had proved the extract of the Station Diary of 25.7.2003 and it was further observed that despite cross-examination of those witnesses, the prosecution could make no dent into their evidence. In effect, the said evidence was believed and at the same time, it was observed that it created doubt with regard to version of the first witness for the prosecution that he made both the accused (present Applicants) as deposed by him. In Para 22, it was held that the accused (present Applicants) were able to discharge the burden cast on them and then concluded thus :

> "In such circumstance, it is difficult to accept that accused demanded and accepted Rs.1,800/- on material dates."

It is pertinent to note that the learned Judge clearly held that it was not possible to accept the case of the prosecution with regard to the demand and acceptance by the present Applicants. In Para 23, the legal position with regard to the distinction in the matter of burden on the



prosecution and the onus on the accused came to be discussed with the guidance from case law.

7. As to the another limb of the prosecution case, after a detailed discussion in Para 24, the learned Judge held, "looking to the admissions and facts discussed to above, I find much substance in the defence version". In Para 25, the learned Judge held that after a certain point of time, nothing remained to be done by the Accused (present Applicants) and the possibility cannot be ruled out that the complaint sprang from the grudge that the complainant bore against the Accused. In Para 26, the learned Judge pointed out to the contradiction on record with regard to just where the allegedly tainted money was found. In Para 27, the evidence was discussed with regard to the traces of anthracene powder being found in the backdrop of the evidence of the prosecution. A very detailed discussion about the law enshrined in the Prevention of Corruption Act will be quite out of place. It may only be mentioned that during investigation, especially in trap cases, the powder such as the just named has some significance. In good measure, it is to corroborate the oral evidence of the complainant and panch witnesses. The currency notes are smeared with that powder and whichever object comes into contact with

those currency notes including the clothes of the Accused and other objects also catch the traces of that powder. It lends or fails to lend corroboration to the case of the prosecution. On that count, the learned Judge held against the prosecution.

8. It will have become clear by now that on total appraisal of the evidence adduced before him, the learned Judge categorically held that the prosecution had failed to prove its case against the Accused before him being the present Applicants. Till that time, he did not make any observation with regard to the benefit of doubt aspect of the matter. It was in this fact scenario that in the concluding Paragraph 28, it was observed as follows and which is being strongly capitalized by the learned PO Mrs. A.B. Kololgi.

> "**28**. Considering all these facts and submission, the over all prosecution story is not free from suspicion and creates a doubt. As discussed earlier, both the accused have also created a reasonable doubt in prosecution story by examining Dw 1 who has proved station diary extracts Ext. 53, 54, etc. In such circumstance, I think this is a fit case to give benefit of doubt and

both accused entitled to be acquitted. In the result, I answer Points no.1 to 3 in the negative and proceed to pass following order :

ORDER

The accused are acquitted of the offences punishable under section 7, 12 and under section 13(1)(d) r.w. 13(2) of Prevention of Corruption Act, 1988.

Their bail-bonds stand cancelled.

The valuable muddemal property (V.M.R.No.60/03) at Sr.No.1 i.e. Cash Rs.450/- be returned to Police Inspector, ACB, Nashik, after the expiry of appeal period.

Sd/-
(S.T. Naik)
Special Judge, Nashik."

9. In my opinion, it is very clear that the Para above quoted can certainly not be read in isolation. It will have to be read in the context of whatever has been observed by the learned Judge before that. Therefore, the words

"benefit of doubt", "doubt", etc. have been used more to highlight the failure of the prosecution. By no stretch of imagination, can it be said that the learned Judge wanted to imply that there was anything short of total failure of the prosecution, and therefore, the benefit of doubt was being extended to the Accused. In my opinion, the above quoted Paragraph read with the earlier ones would make it very clear that the learned Judge never wanted to use those words like "benefit of doubt" etc. to even remotely suggest that the offence was proved but for insurmountable doubt acquittal was being recorded. In fact, it was clear from the tenor of the Judgment that the prosecution had failed, and therefore, those words have been used more as a manner of expression rather than the judicial conclusions. I have, therefore, got no hesitation in holding that as per the said Judgment, the learned Judge gave what can be called clean acquittal to the Accused being the present Applicants.

10. In this very OA, there is an order made by the Hon'ble Chairman on 9th August, 2016. In Para 2 thereof, the substance of the submissions divided into (a) to (h) was set out. In the 3rd Paragraph, it was observed that the Hon'ble Chairman examined the ground, averments and observations in the Judgment of the Special Judge above

discussed. In Para 4, the Hon'ble Chairman observed thus:

> "**4.** It appears that, prima facie the observation recorded in the impugned order to the effect that acquittal is not "clear acquittal" seems to be an observation based on improper and incomplete reading of the judgment of the Special Judge and improper appreciation and understanding of law on the question."

11. In Para 6, the Hon'ble Chairman was pleased to call upon the Respondent to show cause on a limited question as to how the finding in the impugned order was sustainable, more particularly, when the competent authority did not initiate any disciplinary proceedings and relied only on the Judgment of the said Judge. It is a matter of great moment that here the disciplinary enquiry was not held against the Applicants and the authorities went by their own interpretation of the Judgment of the learned Special Judge. I have already observed as to how on an appropriate reading of the said Judgment, it will have to be held that it was a case of clean acquittal.

12. In Para 7 of the above order, in fact, the Hon'ble Chairman clearly observed that the Respondents would be free to withdraw the impugned order which would exemplify the fact as to how much strength or rather absence of it was found by the Hon'ble Chairman in the case of the Respondent even at that stage.

13. No doubt, the above observations of the Hon'ble Chairman were made at the interim stage, however, the above discussion must have made it quite clear that even now, after having fully heard both the sides, not only has there been no difference to the state of affairs such as it was when the Hon'ble Chairman made those observations and now. If anything, the conclusions of the Hon'ble Chairman would be further reinforced as the OA is just about to conclude by way of this Judgment.

14. Mr. Bandiwadekar referred me to an unreported Judgment of the Division Bench of the Hon'ble Chief Justice of Bombay High Court in **Writ Petition No.4178 (or 4170) of 2001 (Shri Vithal A. Shinde Vs. State of Maharashtra and Others, dated 25th October, 2001**. That was a Writ Petition arising out of an order of the nature which is similar to the present one. Thereunder, the Petitioner – Sub-Inspector was prosecuted for alleged

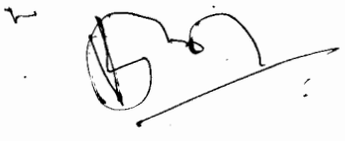
commission of some offences under the IPC. He was acquitted. A show cause notice was then issued to him calling upon him as to why the period of suspension be not treated as such because his acquittal was on account of benefit of doubt. The Petitioner of the Hon'ble High Court claimed it to be a clean acquittal because the Court had held that the allegations against him had not been duly established. But the stand of the Petitioner was not accepted and an order more or less like herein under challenge came to be made. His appeal was rejected on technical ground. His OA came to be dismissed by this Tribunal on the ground that the acquittal was not a clean acquittal.

15. Their Lordships were pleased to observe that it was often noticed that even in the matter where the Accused was acquitted on the ground of complete lack of evidence, the tenor of the orders passed by the Court was as if it was benefit of doubt. It was further observed that even after acquittal, a DE could be held which in that matter just like the present one was not held. It was found by Their Lordships in that matter also that the Judgment of the Trial Court acquitting the Petitioner disclosed that upon examination of the evidence, the Court did not find the evidence acceptable and the acquittal of the Petitioner

was, therefore, not on the ground that the prosecution had failed to adduce evidence in support of the charge but on the ground that the evidence was not reliable and acceptable.

16. The observations of Their Lordships in Para 5, in fact, need to be fully reproduced because they are completely applicable to the present matter in view of the observations of the learned Special Judge and the manner in which they have been made in the Paragraph already quoted above.

> "We may also observe that in many cases where Courts come to the conclusion that the evidence on record does not prove the charge, the operative part is worded in different terms and in many judgments we have found that even if the prosecution has miserably failed to proved its case, the acquittal is pronounced on the principles of benefit of doubt. Not much depends upon how the operative part of the order is worded. In such cases, the Court may be justified in looking to the findings recorded by the trial Court, rather than going merely by the language of the operative part of the order. In



the instant case we find that the evidence examined in the trial did not proved the case against the Petitioner and further that the evidence was not reliable and acceptable, and it appears that the prosecutrix on her own had accompanied the Petitioner."

On the basis of above observations, Their Lordships were pleased to uphold the Writ Petition and set aside the orders made by the authorities below including this Tribunal.

17. Mr. Bandiwadekar also relied upon unreported Judgments in the matter of **Writ Petition No.6260/2010 (State of Maharashtra Vs. Shri Vijay Krishna Ahir, dated 5th October, 2010)(Bombay)(DB); Baban Vs. Zilla Parishad, Ahmednagar, 2002 (3) MLJ 390; Writ Petition No.4600/1984 (P.D. Rathi Vs. R.L. Bhinge and one Another, dated 4th October, 1986 (Bombay)(DB) and Writ Petition NO.8552/2012 (The State of Maharashtra Vs. Ashok, dated 20th November, 2012)**. The principles discussed hereinabove were laid down by Their Lordships which I have already applied hereinabove.

18. The learned PO relied upon unreported Judgments of the Hon'ble Supreme Court in **Civil Appeal**

No.6014/2011 (The Secretary, Hyderabad Municipal Corporation Vs. M. Prabhakar Rao, dated 28th July, 2011) and **Reserve Bank of India Vs. Bhopal Singh Panchal, AIR 1994 SC 552** and also on **Krishnakant Raghunath Vs. State of Maharashtra, dated 28.2.1997**. Two other Judgments of this Tribunal in **OA 1562/2004 (R.S. Nandimath Vs. State of Maharashtra, dated 18.7.2005)** and **OA 526/2015 (Yashwant Jagtap Vs. State of Maharashtra, dated 7.10.2015)** were also relied.

19. Now, as far as the submissions based on the authorities cited by her, the learned PO obviously wanted to state a principle that in all facts and circumstances post reinstatement, it would not be necessarily so that the full benefit must accrue to the erstwhile delinquent. It is a matter which is fact specific. Even as there can be no quarrel with the principles tried to be stated by the learned PO, but as already discussed above, in deciding this particular OA, I have to be aware of the present state of facts and if that be so, a case for interference is quite clearly constituted for the reasons hereinabove detailed because until and unless there was some material inter-alia in the form of a regularly held DE, there is no other-go but to read the Judgment of the learned Special Judge and

which is the task already performed and if the outcome is against the learned PO so be it.

20. For the foregoing, it is hereby held that the period of suspension, regard being had to the order of the learned Special Judge both as to reasoning and conclusion ought to have been treated as a period spent on duty and the impugned order, therefore, is quashed and set aside. The Respondents are directed to treat the said period as period spent on duty with all service benefits attended thereto. Compliance within two months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
25.01.2017

Mumbai
Date : 25.01.2017
Dictation taken by :
S.K. Wamanse.
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