

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.343 OF 2015

DISTRICT : MUMBAI

Shri Shrikant Shankar Rahate,)
 Aged 59 years, Occ. Nil,)
 Retired as Sales Tax Inspector)
 From the office of the Special)
 Commissioner of Sales Tax)
 (Recovery Branch), Margaon,)
 Mumbai – 10.)
 R/o. Abhyudaya Nagar, Kalachowky,)
 Mumbai 33.)

Address for Service of Notice :-

Shri B.A. Bandiwadekar, Advocate)
 Having office at 9, "Ram-Kripa",)
 Lt. Dilip Gupte Marg,)
 Mahim, Mumbai 400 016)

.... APPLICANT

VERSUS

The Deputy Commissioner of Sales Tax,)
 (Estb)-7, in the office of the Special)
 Commissioner of Sales Tax, M.S., Mumbai,)
 Having office at Vikrikar Bhawan,)
 Mazgaon, Mumbai 10)

....RESPONDENT

24

Shri B.A. Bandiwadekar, learned Counsel for the Applicant.

Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 11.03.2016.

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Counsel for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondent.

2. This Original Application has been filed by the Applicant challenging the order dated 28.04.2015 denying the retirement benefits to the Applicant on the ground that he was not acquitted by the Learned Sessions Judge, Mumbai, while allowing his appeal against the conviction. The Applicant is also seeking quashing of his dismissal order dated 07.09.2013, as he was dismissed consequent upon his conviction in the criminal case, in which he has been acquitted in appeal.

3. Learned Counsel for the Applicant argued that the Applicant was convicted under Section 138 of the Negotiable Instruments Act read with Section 255(2) of the Code of Criminal Procedure, 1973 in Criminal Case Nos.406/55/2007, 407/55/2007, 409/55/2007 by Learned Metropolitan Magistrate, Court No.55, Mazgaon, Mumbai. He was

dismissed from service by order dated 07.09.2013. Learned Counsel for the Applicant stated that the Applicant filed separate appeals in the three cases against his conviction and by order dated 31.10.2014 in all three appeals the Applicant's convictions were set aside and he was set as liberty by the Sessions Court, Mumbai. The offences against him were compounded. The Applicant then made a representation to the Respondent on 04.12.2014 that he may be granted pensionary benefits. By order dated 28.04.2015, the Respondent had rejected the request of the Applicant for grant of pensionary benefits, as he has not been cleanly acquitted by the Learned Session Court. Learned Counsel for the Applicant argued that the composition of an offence has the effect of an acquittal of the accused with whom the offence has been compounded as per Section 320 of the Code of Criminal Procedure, 1973. As the Applicant's offence under Section 138 of the Negotiable Instruments Act were compounded, he was therefore, acquitted. His conviction was set aside. As per Government Circular dated 12.06.1986, if the appeal filed by a Government servant in higher court against his conviction succeeds and he is acquitted, the order imposing a penalty on him on the basis of conviction, which no longer stands, and it becomes liable to be set aside. Learned Counsel for the Applicant argued that the impugned order dated 28.04.2015 has been passed ignoring the provisions of this circular and is therefore, liable to be quashed and set aside. This circular does not provide that

24

acquittal must be clean. The Government can start a Departmental Enquiry. In the present case, the case in which the Applicant was convicted did not have anything to do with his official duties. As such, it is not possible to hold any D.E. against him. Learned Counsel for the Applicant prayed that dismissal order dated 07.09.2013 may be quashed along with the impugned order dated 28.04.2015.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that the Applicant was convicted in three criminal cases under the Negotiable Instruments Act. The Applicant filed appeals against his conviction. Learned Sessions Judge, Mumbai allowed compounding the offences and acquitted the Applicant. However, the Applicant was not given a clean acquittal, and therefore, there is no need to review the order of dismissal dated 07.09.2013. The Applicant is, therefore, not eligible to be given any pensionary benefits.

5. It is seen that the Applicant was dismissed from service on account of his convictions in criminal cases by order dated 07.09.2013. Rule 13(i) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 permits imposition of penalty of dismissal (or other penalties) on the ground of conduct which has led to his conviction on criminal charges. The Applicant was acquitted by Additional Sessions Judge, City Civil Court, Greater Bombay by orders dated 31.10.2014 (all three orders are identically worded, except case numbers) which read :-

"1. The offence u/sec 138 of Negotiable Instruments Act is now compounded and the order of conviction dated 24.04.2013 in Criminal Case No.409/ 55 / 2007 is hereby set aside.

2. The accrued Shrikant Shankar Rahate is now acquitted of the offence punishable u/Sec 138 of Negotiable Instruments Act and he is set at liberty."

Section 320 (8) of the Cr. P.C. also provides that :

"(8) The composition of an offence under this Section shall have the effect of an acquitted of the accused with whom the offence has been compounded."

The orders in appeal have accordingly, acquitted the Applicant. The impugned order has not quoted any provision which will permit disciplinary authority to maintain the order of dismissal, which was passed on account of conviction of a Government servant if he is subsequent acquitted. The Applicant has relied on Government Circular dated 12.06.1986.

Paragraph (2) the aforesaid circular reads :

"2(a) If an appeal / revision filed by the Government servant in a higher court against his conviction succeeds and he is acquitted the order imposing a penalty on him on the basis of conviction, which no longer stands, becomes liable to be set aside. A copy of the judgment of the higher court should, therefore, be immediately procured and examined with a view to deciding :

of

- (i) *Whether the acquittal should be challenged in a still higher court ; or*
- (ii) *Whether, despite the acquittal, the facts and the circumstances of the case are such as to call for a departmental enquiry against the Government servant on the basis of the allegations on which he was previously convicted.*

6. In the present case, there is no question of either filing an appeal in the still higher court or to start a Departmental Enquiry as the subject matter of the conviction had nothing to do with the official duties of the Applicant. This provision talks only of acquittal and not of clean acquittal. The Applicant was dismissed from service on account of his conviction in a criminal case. Once that conviction is set aside, the dismissal order also has to be set aside. The impugned order dated 28.04.2015 is clearly unsustainable. The Applicant was dismissed by order dated 07.09.2013. He reached the age of superannuation on 30.09.2013. The Respondent may decide about treatment of this period. However, as the dismissal order dated 07.09.2013 is liable to be set aside in terms of Government Circular dated 12.06.1986, the Applicant is clearly eligible to get pensionary benefits on the basis of his qualifying service.

7. Having regard to the aforesaid facts and circumstances of the case, the impugned order dated 28.04.2015 is quashed and set aside. Order of dismissal dated 07.09.2013 is also

quashed and set aside. The Respondent is directed to grant all pensionary benefits to the Applicant on the basis of his qualifying service within a period of six months from the date of this order. This O.A. is allowed in these terms with on order as to costs.

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 11.03.2016
Typed by : PRK

