

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.442 OF 2019

DISTRICT : Mumbai

Shri Tulshidas Fakir Nagvekar)
Age : 49 years, Occ : Police Constable,)
Chunabhatti Police Station, Chunabhatt (E),)
Mumbai. R/at 92/3233, Nehru Nagar, S. G.)
Barve Road, Kurla (E), Mumbai 400 070.)...**Applicant**

Versus

1. The State of Maharashtra, through)
The Additional Chief Secretary (Home),)
Mantralaya, Mumbai 400 032.)
2. The Director General of Police, M.S.)
Mumbai.
3. Dy. Commissioner of Police, Armed)
Police Tardeo, Tardeo, Mumbai 400034.)...**Respondents**

Shri U. V. Bhosale, Advocate for Applicant.

**Ms S. P. Manchekar, Chief Presenting Officer with Shri S. D. Dole,
Presenting Officer for Respondents.**

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 18.06.2020.

JUDGMENT

1. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 14.09.2018 and claiming 100% pay and allowances for the period of suspension as well as for out of duty period and consequential service benefits.

2. Uncontroverted facts necessary for the disposal of present O.A. are as under:-

- (a) The Applicant has joined service on the post of Police Constable on 27.07.1993.
- (b) Three separate crimes vide Crime No.08/2003 for the offence u/s 342,363, 395, 416, 419 and 171 of I.P.C., Crime No.09/2003 for the offence u/s 323, 395, 419, 506 of I.P.C. and Crime No.12/2003 for the offence u/s 170, 420, 452, 34 of I.P.C. were registered against the Applicant and seven other co-accused in Police Station, Bhiwandi on 13.01.2003.
- (c) In view of the registration of these three crimes, the Applicant was suspended by order dated 23.01.2003 w.e.f. 14.01.2003 i.e. since the date of his arrest in crime (Page 24 of P.B.).
- (d) The department has initiated disciplinary action by issuance of charge sheet dated 23.07.2004 (Page 26 of P.B.) for following charges.

“१) तुम्ही सन २००१ मध्ये ७ वेळा ५९ दिवस गैरहजर राहीलात. त्यापैकी १ वेळेचा २ दिवसांचा कालावधी नियमित झालेला आहे.

२) सन २००२ मध्ये २४ वेळा ५३ दिवस गैरहजर राहीलात. त्यापैकी १४ वेळेचा ३५ दिवसांचा कालावधी नियमित झालेला आहे.

३) सन २००२ मध्ये दि.१०.१.०३ ते दि.१३.१.०३ पर्यंत ४ दिवस गैरहजर राहीलात.

४) उपरोक्त कर्तव्यावर विनापरवाना गैरहजर राहण्याच्या वर्तणुकीबाबत तुम्हांला विनावेतन, दंड, जावा कवायत, सक्त-ताकीद यासारख्या १२ वेळा शिक्षा देवूनही तुमच्या वर्तणुकीत सुधारणा झालेली दिसून आली नाही.

५) तसेच तुम्ही गैरहजर कालावधीत दि.१३.१.२००३ रोजी भिवंडी पोलीस ठाण्याच्या हददीत एकाच दिवशी इतर आठ साथीदारांच्या मदतीने तीन निरनिराळ्या ठिकाणी जबरीने पैसे लुबाडले. म्हणून तुमच्या विरुद्ध भिवंडी शहर पोलीस ठाणे येथे १) गु.र.क्र.८/०३, कलम ३९५,३६३,३४२, ४१९,४१६ भादवि व २) गु.र.क्र.९/०३, कलम ३९५,४१९,३२३,५०६ असे दोन गुन्हे व नारपोली पोलीस ठाणे भिवंडी येथे गु.र.क्र.१२/०३,कलम

४५२,४२०,१७०,३३४ असे एकुण ३ गुन्हे दाखल झालेले आहेत. त्यापैकी गु. र.क.८ /०३ व ९/०३ ची सत्र न्यायालय ठाणे येथे कोर्ट केस क्र. ३१२/०३ व २१३/०३ अन्वये सुनावणी होवून त्यातून आपली निर्दोष मुक्तता झालेलीच आहे. आणि नमूद नारपोली पोलीस ठाणे गु.र.क.१२/०३ ह्या गुन्ह्याची सुनावणी सध्या महानगर दंडाधिकारी, भिंवडी कोर्ट येथे चालू आहे.

६) तुम्ही जनतेचे संरक्षक असूनही जनतेकडून पैसे लुबाडण्यासारखे पोलीस खात्याला काळीमा लावणारे कृत्य केले आहे. म्हणून तुम्हांला दि. १४.१.२००३ पासून निलंबित केले आहे.

तुमची गैरहजर राहण्याची सबब व गैरहजेरीच्या कालावधीत केलेल्या गुन्ह्याकरिता तुम्ही मुंबई पोलीस नियम १९५{६ शिक्षा व अपिल} अंतर्भूत नियम ३ अन्वये कोणत्याही शिक्षेस पात्र आहात.”

- (e) In departmental proceeding in view of the positive report of enquiry officer, the Applicant was dismissed from service by order dated 22.09.2005 invoking Section 25 of Maharashtra Police Act, 1951 which was served upon the Applicant on 25.09.2005 (Page 67 of P.B.).
- (f) The Applicant has preferred appeal before the Respondent No.2-Director General of Police which came to be dismissed on 10.03.2006 (page 75 of P.B.).
- (g) Being aggrieved by it, the Applicant had preferred revision before the Government which was allowed by order dated 03.11.2009 whereby dismissal of the Applicant was set aside and directions were issued to reinstate him in service. The order of dismissal was set aside solely on the ground that in meantime in all those three Criminal Cases the Applicant has been acquitted by the Court (Page 86 of P.B.).
- (h) Accordingly, the Applicant joined service on 06.01.2010. He made representation on 09.12.2014 to regularize his entire period of suspension as well as out of service period (Page 89 of P.B.).
- (i) The Government by order dated 18.01.2018 (Page 90 of P.B.). issued show cause notice to the Applicant as contemplated u/r 70 of Maharashtra Civil Services (Joining

Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 (Hereinafter referred as 'Joining Time Rules 1981' for brevity).

- (j) The Applicant submitted reply on 19.03.2018 thereby claiming full pay and allowances of entire period of suspension as well as for out of service period (Page 92 of P.B.).
- (k) The Government by order dated 14.09.2018 granted 50% pay and allowances for out of service period restricted to monetary benefits of three years in terms of Rule 70 (4) of 'Joining Time Rules 1981' and further held that the said period will be considered as a service period only for the purpose of pension (Page 95 of P.B.).
- (l) As regard regularization of period of suspension from 14.01.2003 to 22.09.2005, the Government directed that Respondent No.3 -Deputy Commissioner of Police, Armed Force, Tardeo, Mumbai being competent authority will take appropriate decision in this behalf.

3. The Applicant has challenged the order dated 14.09.2018 in the present O.A. claiming full pay and allowances for the period of suspension as well as for out of duty period.

4. The Respondents have resisted the application by filing Affidavit-in-Reply (Page Nos.163, 174 and Page No.177 to 189 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed and prayed to dismiss the Original Application.

5. Shri U.V.Bhosale, learned Counsel for the Applicant sought to assail the impugned order and made following submissions:-

- (I) The Applicant was suspended only because of registration of crimes against him but since on trial, he is acquitted and later reinstated in service, the order of granting 50% Pay and Allowances only for out of duty period is unsustainable in law.
- (II) Since the Applicant was suspended because of registration of crime in view of acquittal in Criminal Cases, the period undergone under suspension i.e. from the date of suspension till dismissal from service is required to be considered as duty period.

6. Learned Counsel for the Applicant has pointed out that in impugned order passed by the Government, the directions were given to Respondent No.3 in Para No.5 of the order to pass appropriate order under Rule 70(4) of Joining Time Rules, 1981 but no such decision is taken by the Respondent No.3.

7. Thus, the sum and substance of the submission advanced by the learned Counsel for the Applicant is that acquittal in Criminal Cases obliterate the stigma, and therefore, there was no reason to grant 50% Pay and Allowances only for out of service period i.e. from 26.09.2005 to 05.01.2010. On similar line, he prayed to treat the suspension period from 14.01.2003 to 22.09.2005 as a duty period for all purposes.

8. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer supported the impugned order. She has pointed out that in Criminal Case, the Applicant was acquitted on benefit of doubt and it is not a case of full exoneration or honourable acquittal. She, therefore, submits that even if the Applicant was acquitted from the Criminal Case, the disciplinary authority has rightly exercised its

discretion by granting 50% Pay and Allowances for out of duty period. As regard, treatment to suspension period from 14.01.2003 to 22.09.2005, she fairly concedes that the Respondent No.3 is required to pass an order to that effect in view of directions given by the Government in Para No.5 of impugned order dated 14.09.2018. She, therefore, submits that to this extent directions be issued to the Respondent No.3 so that appropriate order can be passed.

9. The learned C.P.O. referred the following decisions in support of her contention that the Applicant is not entitled to full pay and allowances for the period, he was out of service.

(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 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 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.”*

(VI) (2013) 11 SCC 67 (State Bank of India & Anr. Vs. Mohammed Abdul Rahim). In this case, an offence under Section 498-A of IPC read with Section 4 of Dowry Prohibition Act was registered against the employee of State Bank of India. He was convicted, and therefore, discharged from service. However, in appeal, he was acquitted with the finding that prosecution has failed to prove its case beyond reasonable doubt. Consequent to acquittal, he was reinstated in service. However, back-wages for the period he was out of service were not granted and issue posed whether the employee is entitled to back-wages. The Hon'ble Supreme Court held that subsequent acquittal though obliterates his conviction does not operate retrospective to wipe out the legal consequences of the conviction and the entitlement to back-wages has to be judged on this basis. In that case, he was acquitted on 22.02.2002 and made representation for reinstatement on 22.04.2002. However, he was reinstated in service on 07.11.2002. The Hon'ble Supreme Court, therefore, granted back-wages from the date he had made representation for reinstatement following his acquittal i.e. from 22.04.2002, but no back-wages were granted for the period for which he was out of service.

10. Thus, from the aforesaid Judgments of Hon'ble Supreme Court, the following principles can be culled out.

- (a) The acquittal in Criminal Case ipso-facto does not entitle the employee to claim back-wages for the period for which he was out of service on account of conviction in Criminal Case.
- (b) Even if the employee is acquitted in appeal, the Department can initiate D.E. and question of back-wages would be considered only where the action was found to be unsustainable in law and the employee was unlawfully prevented from discharging the duties.
- (c) Rule 72 of 'Joining Time Rules 1981' gives discretion to the disciplinary authority to regulate the payment during the period of suspension.
- (d) No hard and fast rule can be laid down in regard to the claim of back-wages i.e. the period for which the employee was kept out of service on account of conviction, which is later reversed in appeal and each case has to be determined on its own facts.
- (e) Subsequent acquittal though obliterates his conviction, it does not operate retrospectively to wipe out the legal consequence of the conviction.

11. In view of the submissions advanced at bar following issue falls for consideration :

- (1) Whether the Applicant is entitled to 100% Pay and Allowances for out of duty period i.e. from 26.09.2005 to 05.01.2010.
- (2) Whether the Applicant is entitled to treat suspension period from 14.01.2003 to 22.09.2005 as duty period for all purposes.

12. As to issue No.(1) : True, the Applicant was suspended because of registration of crime against him and later he was acquitted in all three Criminal Cases. It may be noted that simultaneously D.E. was also initiated against the Applicant by

issuance of charge sheet dated 09.07.2004. In D.E. apart from the charge of registration of crime for various offences, there was additional charge of frequent unauthorized absence. The Enquiry Officer in his report observed that out of three Criminal Cases, in two Criminal Cases, the Applicant was acquitted on benefit of doubt but one more Criminal Case was subjudice. The Enquiry Officer further observed that, the Applicant was acquitted on benefit of doubt, and therefore, it cannot be treated as full exoneration. The Enquiry Officer accordingly holds the Applicant guilty for charge No.1 to 3. As regard charge No.4, the Enquiry Officer recorded findings in negative. Accordingly, the Enquiry Officer proposed the punishment of dismissal contemplated u/s 25(1) of Maharashtra Police Act, 1951. Accordingly, the Disciplinary Authority by order dated 22.09.2005 dismissed the Applicant from service. Appeal preferred against the order was also dismissed. However, in revision, the Government by order dated 03.11.2009 set aside the order of dismissal and passed the order of reinstatement of the Applicant. The perusal of order dated 03.11.2009 reveals that after passing the order of dismissal, third Criminal Case pending before the Judicial Magistrate First Class, Bhivandi was decided on 26.06.2009 acquitting the Applicant. The Government in order dated 03.11.2009, therefore, observed that since in all Criminal Cases the Applicant is acquitted, no charge subsist and on this premises allowed the revision giving directions of reinstatement in service. Notably, there is no whisper or any reference of charge of absenteeism which was held duly proved in domestic enquiry. The said aspect was completely forgotten and revision was allowed only on the premises that in view of acquittal in Criminal Case, no charge subsist ignoring about the charge of absenteeism which was held proved in domestic enquiry. Be that as it may, the fact remains that the order of dismissal was set aside in revision without considering the charge of absenteeism which was duly proved in D.E.

13. Perusal of judgment of Criminal Case reveals that in Sessions Case No.212/2003 decided by Assistant Session Judge on 14.01.2004, the Applicant was acquitted because of non examination of independent witness by persecution and by giving benefit of doubt to the Applicant. Whereas, perusal of judgment in Sessions Case No.213/2003 decided on 14.01.2004 reveals that witnesses turned hostile, and therefore, the Applicant was acquitted. As regard regular Criminal Case No.840/2003 decided by Judicial Magistrate First Class on 26.06.2009, the Applicant was acquitted for want of evidence as all the witnesses examined by persecution turned hostile.

14. In view of catena of decisions (cited supra), it is no more *res-integra* that there could be no automatic entitlement to full back wages because of acquittal in Criminal Case. In other words, acquittal in Criminal Case *ipso facto* does not entitle the Applicant to full back-wages as held by the Hon'ble Supreme Court particularly in **Krishnakant R. Bibhavnekar's** case (cited supra). In such situation, it would be deleterious to the maintenance of discipline if the person suspended for such serious crime on valid consideration is given full back wages as the matter of course on his acquittal. Even under Labour law where the termination of the employee is held illegal, employee is not entitled to 100% back wages. Whereas in present case, the Applicant was suspended on account of serious crimes but acquitted by the court by giving benefit of doubt and because of hostility of the witnesses. Suffice to say, this is not a case where the Applicant was acquitted on positive finding that he did not commit any offence at all and completely exonerated in D.E. This being the position, mere acquittal in Criminal Case in present situation *ipso facto* does not entitle the Applicant full back wages. Neither this is the case where the Applicant was kept out of service without any fault on his part. This being the position, acquittal

though obliterates the Criminal Case, it does not operate retrospectively to wipe out the legal consequences.

In view of above, the impugned order granting 50% pay and allowances for out of service period suffers from no infirmity and the Applicant is not entitled to full back wages.

15. As to issue No.(2) : In so far as treatment to the period of suspension i.e. from the date of suspension till dismissal is concerned, the Government while passing order dated 14.09.2018 gave direction to Respondent No.3 to pass appropriate order about the same in accordance to Rules. However, admittedly no such orders are passed by the Respondent No.3. After reinstatement of employee in service, competent authority is required to pass separate order regarding pay and allowances and regularization of the period of suspension in terms of Rule 72 of Joining Time Rules, 1981. As per Rule 72(3) of Joining Time Rule, 1981, the competent authority is required to form opinion as to whether suspension was wholly unjustified or otherwise and to pass appropriate orders about the period of suspension. In the present case, though the Government issued directions in order dated 14.09.2018 directing the Respondent No.3 to pass appropriate orders about suspension period, no such orders are admittedly passed. Therefore, to this extent, I find substance in the submission advanced by the learned Counsel for the Applicant that Respondent No.3 is under obligation to pass appropriate orders in accordance to Joining Time Rules, 1981 about the period of suspension from 14.01.2003 to 22.09.2005.

16. The totality of the aforesaid discussion leads me to sum-up that the Applicant is not entitled to full back wages for out of duty period and the impugned order granting 50% pay and allowance restricting it to three years needs no interference. In so far as regularization of

suspension period from 14.01.2003 to 22.09.2005 is concerned, the Respondent No.3 needs to decide the said issue in accordance to law. Hence the following order :-

ORDER

- (1) Original Application is allowed partly.
- (2) Respondent No.3 is directed to pass appropriate orders about the period of suspension from 14.01.2003 to 22.09.2005 in accordance to Joining Time Rules, 1981 within two months from today.
- (3) The Respondent No.3 shall communicate the order to the Applicant within two weeks thereafter.
- (4) If the Applicant felt aggrieved by the decision, he may avail further remedy in accordance to law.
- (5) No order as to cost.

Sd/-

(A.P. KURHEKAR)
Member-J