IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.557 OF 2019

DISTRICT : RATNAGIRI

Shri Maruti Shankar Jadhav.)
Aged : Adult, Working as Police Naik,)
Attached to Guhaghar Police Station,)
District : Ratnagiri.)**...Applicant**

Versus

1. The Superintendent of Police.)
Ratnagiri.)

2. The Principal Secretary.)
Home Department, Mantralaya,)
Mumbai – 400 032.)**...Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 30.09.2019

JUDGMENT

1. In the present Original Application, the Applicant has challenged the impugned order dated 12.03.2019 whereby his suspension period from 03.01.2012 to 19.09.2014 has been treated as suspension period invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

At the relevant time, the Applicant was serving on the post of Police Naik at Guhaghar Police Station, District Ratnagiri. On 31.12.2011, two offences vide Crime No.36 of 2011 for the offences under Sections 504 and 506 of Indian Penal Code read with Section 30 of Indian Arm Act was registered against the Applicant. Whereas, on the same day, Crime No.221/2011 for the offences under Sections 497 and 292 of Indian Penal Code was also registered against him. Both the offences were registered in Khed Police Station and consequent to it, the Applicant was arrested.

3. By order dated 02.01.2012, the Applicant was suspended invoking Rule 3(1) read with (A-2) of Maharashtra Police (Discipline & Appeal) Rules, 1956 (hereinafter referred to as 'Rules of 1956' for brevity). The relevant portion about registration of Crime from suspension order is as follows :-

> "आदेश
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> ज्या अर्थी पोना/११२७ मारुती शंकर जाधव, नेमणूक पोलीस मुख्यालय, रत्नागिरी यांनी, खेड गु.र.नं. २१६ भा.दं.पि.कलम ३२४ प्रमाणे क्रिकेट खेळावरुन दाखल झालेल्या गुन्हयातील जामिनावर मोकळीक झालेला राजू लक्ष्मण पवार यास मोबाईलवरुन प्रविण मोहिते हा जास्त दादागिरी करतोय काय ? त्याला सोडणार नाही अशी धमकी देवून प्रविण मोहिते याला खेड स्नेह हॉटेल, शिवाजी चौक येथे भेटण्याकरीता पाठव असे सांगितलेवरुन, प्रविण मोहिते हा भेटण्याकरीता दि.३१.१२.११ रोजी १४.३० या दरम्याने गेला त्याचे पाठोपाठ त्याची आई श्रीमती शोभा जालंदर मोहिते, रा. दस्तुरी व इतर खेड स्नेह हॉटेल येथे गेले तेव्हा तुम्हाला श्रीमती शोभा जालंदर मोहिते यांनी मुलगा प्रविण याला का बोलावले असे विचारले असता, तुम्ही स्वत:कडील रिव्हॉल्वर काढून श्रीमती शोभा जालंदर मोहिते हिचे डोक्याला लावून "जास्त बोललीस तर ठार मारुन टाकीन" अशी धमकी दिली. त्याबाबत फिर्यादी श्रीमती शोभा जालंदर मोहिते यांनी खेड पो.ठाण्यात दिलेल्या फिर्यादीवरुन खेड पो.ठाणे भाग-६ गु.र.नं. ३६/२०११ भा.दं.वि.क. ५०४, ५०६ सह भारतीय हत्यार अधि.कलम ३० प्रमाणे दिनांक ३१/१२/२०११ रोजी दाखल होवून त्यामध्ये तुम्हाला २०.५५ वाजता अटक झालेली आहे.
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> तदनंतर श्री.दिपक बबन पवार, रा.रावढळ, ता.महाड, जि. रायगड यांनी तुम्ही पोना/मारुती शंकर जाधव माहे जून /जुलै २०११ महात श्री.दिपक पवार यांची पत्नी श्रीमती शिल्पा दिपक पवार हिचेशी वारंवार शारिरिक संबंध ठेवून हिचे मोबाईलवर अगर कॅमेराद्वारे नग्न स्थितीतील अश्लिल फोटो काढून पतीपासून विभक्त व्हावी या उददेशाने फोटो विकसित करुन वितरीत केले अशा दिलेल्या तक्रारीवरुन तुमचेविरुध्द खेड पो.ठाणे गु.र.नं. २२१/२०११ भा.दं. वि.क. ४९७,२९२,२(क) प्रमाणे दिनांक ३१/१२/२०११ रोजी २१.३० वाजता गुन्हा दाखल झालेला आहे.'

4. In so far as Crime No.36 of 2011 is concerned, the FIR was quashed by Hon'ble High Court in Criminal Writ Petition No.446/2013 by order dated 10th May, 2013. Whereas, in Crime

No.221 of 2011, after investigation, the charge-sheet was filed in the Court of Learned Magistrate, Khed and on trial, the Applicant was acquitted in Criminal Case No.97 of 2014 by Judgment dated 06.09.2017.

5. Simultaneously, the D.E. was conducted against the Applicant for both the incidents, but Enquiry Officer exonerated the Applicant from the charges levelled against him. However, the disciplinary authority disagreed with the opinion of Enquiry Officer and after giving opportunity of hearing, imposed punishment of reversion to the post of Police Constable for two years. The appeal filed by the Applicant against the order of punishment in D.E. was dismissed and the order in D.E. has attained finality.

6. The disciplinary authority after giving notice to the Applicant has passed the impugned order dated 12.03.2019 thereby treating the period from 03.01.2012 to 19.09.2014 as suspension period, which is under challenge in the present O.A.

7. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

8. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that the suspension order dated 02.01.2012 was passed in view of registration of Crime and not in contemplation of D.E. According to him, in view of this aspect, the punishment imposed in D.E. is not relevant and as the Applicant is acquitted in both the Crimes, the period of suspension should have been treated as duty period. I do not find any merit in this contention. True, in Writ Petition No.446/2013, the Hon'ble High Court quashed the FIR No.36/2011, which was registered for the offences under Sections 504 and 506 of IPC read with 30 of Indian Arm Act. However, the perusal

of the order dated 10.05.2013 passed by Hon'ble High Court makes it quite clear that the FIR was quashed because of settlement arrived between the Applicant and the complainant. As regard Crime No.221/2011, for the offences under Sections 497 and 292 of IPC, it is true that the Applicant is acquitted by the Learned Magistrate in Criminal Case No.97 of 2014 on 06.09.2017. However, the perusal of Judgment reveals that the witnesses turned hostile, and therefore, the prosecution could not prove the offences registered against the Applicant.

9. There is no denying that simultaneously, the D.E. was conducted regarding both the incidents and the disciplinary authority imposed punishment of reversion to the post of Police Constable for two years and the appeal has been dismissed. As such, the order of imposition of punishment has attained finality and the Applicant has accepted the punishment without taking recourse of filing further proceedings.

10. As such, in view of imposition of punishment upon the Applicant, which has attained finality, it cannot be said that there was no ground for suspension of the Applicant, when he was suspended on 02.01.2012. True, the punishment in D.E. itself cannot be the ground to treat the period of suspension as suspension period and the competent authority is required to apply its mind independently to see whether the suspension was justified.

11. Turning to the impugned order dated 12.03.2019, it is obvious from the order that the disciplinary authority has recorded categorical finding that the action of suspension was justified. Needless to mention that under Section 72(3) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity), the competent authority is required to determine

whether the suspension is 'wholly unjustified'. In other words, negative test needs to be applied, having regard to the facts of the case. The allegations leading to the FIRs are set out in suspension order dated 02.01.2012 as reproduced above. The allegations are that the Applicant has threatened the complainant Smt. Shobha Jalindar by putting Revolver on her head that if she speaks more, he would kill her. On this allegation, the offence under Sections 504 and 506 of IPC was registered in Khed Police Station on 31.12.2011. On the same day, the complainant viz. Dipak B. Pawar has also lodged report against the Applicant alleging that the Applicant has developed illicit physical relations with his wife took, nude photographs on his mobile and distributed photographs with an intention that she should be separated from her husband. These are the gist of the FIR No.36 of 2011 and 201 of 2011. As such, in view of serious allegations made by the complainant, cognizance of the serious misconduct of the Applicant was taken and he was immediately suspended. At the time of suspension, the disciplinary authority has categorically recorded reason that the act of the Applicant had maligned the reputation of Police in general. Suffice to say, having regard to the serious allegations against the Applicant and registration of Crime against him, the suspension was justified in the opinion of disciplinary authority and the opinion found by the authority, in fact situation, cannot be said unreasonable nor action of suspension can be termed malicious or arbitrary.

12. As such, subsequently, even if Applicant got discharge or acquittal in Criminal Cases, it cannot be said that the suspension was unjustified. Moreover, in D.E, the charges were held proved and the Applicant was subjected to punishment of reversion to the post of Police Constable for two years.

13. The learned Advocate for the Applicant further sought to contend that the suspension order was punitive, as there is reference

of Rule 3(1)(A-2) of 'Rules of 1956'. Obviously, this aspect is now insignificant as it is a case of *fait acompli* in the sense disciplinary enquiry has been already concluded against the Applicant.

14. Shri Bandiwadekar, learned Advocate for the Applicant raised a ground that the absence of the Applicant during suspension was also utilized as one of the ground for treating the period from 03.01.2012 to 19.09.2014 as suspension period. After suspension, the Applicant was required to attend Head Quarter and to mark his absence. The disciplinary authority in impugned order dated 12.03.2019 at one place observed that the Applicant has not abided the condition of attendance in Police Head Quarter during suspension. It is true that the Applicant did not get the opportunity to explain about his absence during suspension period. However, the perusal of impugned order makes it quite clear that the suspension was held justified in view of seriousness of the Crime and the punishment imposed in D.E. The absence of Applicant during suspension period was simply referred at the fag end of the order and it is not the basis of order of treating the period from 03.01.2012 to 19.09.2014 as suspension period.

15. The learned Advocate for the Applicant sought to place reliance on the decision of Hon'ble Supreme Court in SLP No.559 of 2019 with ***Civil Appeal No.11460 of 1995 (State of Punjab and Ors. Vs. Shambhu Nath Singla & Ors.) decided on 22.11.1995***. In that case, the delinquent was discharged from the Criminal prosecution and in that context, the Hon'ble Supreme Court held that the delinquent was entitled to full salary and allowances for the period during which he was kept under suspension. The perusal of Judgment reveals that the delinquent was discharged by Court for want of proper sanction and was reinstated in service. It is in that context, he was held entitled to full salary. Whereas, in the present case, there is punishment in D.E. which has attained the finality. Besides, having regard to the serious allegations made against the

Applicant by the complainants, it cannot be said that there was no material to suspend the Applicant or the suspension was arbitrary or illegal.

16. 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."*

17. In this behalf, this Tribunal is also guided by the Judgment of Hon'ble Supreme Court in ***(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 f 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 acuittal, 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."*

18. The totality of aforesaid discussion leads me to sum-up that the finding recorded by the disciplinary authority that the suspension was justified cannot be faulted with and the impugned order needs no interference. I, therefore, see no merit in the O.A. and it deserves to be dismissed. Hence, the following order.

O R D E R

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

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

Mumbai
Date : 30.09.2019
Dictation taken by :
S.K. Wamanse.
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