MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.573 OF 2022

DISTRICT : JALGAON

Anandsing s/o. Bhaurao Patil,
Age : 60 years, Occu. : Retired,
R/o. Plot No.37, Krushna Nagar, Jamner,
Dist. Jalgaon. **...APPLICANT**

V E R S U S

1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.

2) The Director General of Police,
Maharashtra State, Mumbai,
Police Head Quarter, Near Old MLA Hostel
And Regal Cinema, Mumbai.

3) Inspector General of Police,
Nasik Region, Nasik.

4) District Superintendent of Police,
Jalgaon.

5) The Principal Accountant General (A & E),
Maharashtra, Mumbai-20. **...RESPONDENTS**

APPEARANCE : Shri P.B.Patil, Counsel for Applicant

: Shri I.S.Thorat, Presenting Officer
for the respondent authorities.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.

DECIDED ON : 13.02.2023.

O R A L O R D E R:

1. Heard Shri P.B.Patil, learned Counsel for the applicant and Shri I.S.Thorat, learned P.O. appearing for the respondent authorities.

2. Applicant entered into Government Service on the post of Police Constable in the year 1983, more particularly, on 15-09-1983. In due course, he was promoted to the post of Police Naik. In the year 2005, applicant was suspended since a criminal case was registered against him for the offences punishable u/s.7, 13(1)(d) r/w S.13(2) of the Prevention of Corruption Act, 1988. Applicant got acquitted in the Special Case bearing No.10/2010 on 18-10-2011. After the acquittal, order of suspension was revoked and the applicant was reinstated w.e.f. 02-01-2012. The applicant retired on attaining age of superannuation on 31-12-2017. It is the grievance of the applicant that even after his acquittal from the aforesaid criminal prosecution way back in the year 2011 while he was in service, the respondents have withheld the amount of gratuity, leave encashment as well as his regular pension on the ground that a criminal appeal filed

by the State against the order of acquittal recorded in favour of the applicant by the learned Special Judge in the aforesaid Special Case is pending before the Hon'ble High Court after its admission. The learned Counsel submitted that mere pendency of the criminal appeal against the acquittal of the applicant or admission of such appeal by the Hon'ble High Court cannot be a ground for withholding the aforesaid benefits. Learned Counsel further submitted that the respondents have also not taken any decision as about the period of suspension between 10-07-2005 to 02-01-2012. According to the applicant, the period of suspensions has to be treated as period spent on duty by the applicant having regard to the conditions imposed in the order of suspension. Applicant in the circumstances has prayed for allowing the present O.A.

3. Shri Thorat, learned P.O. appearing for the respondent authorities has resisted the contentions raised on behalf of the applicant reiterating the defence raised in the affidavit in reply filed on behalf of the respondents. Learned P.O. submitted that in view of the admission of the appeal by the Hon'ble High Court against the acquittal of the applicant by the Special Court, applicant is not entitled

for any amount as has been claimed by him till the appeal is decided by the Hon'ble High Court. Learned P.O. submitted that the applicant is being paid provisional pension and he is entitled only for the said relief. Learned P.O. in the circumstances has prayed for rejecting the O.A.

4. I have considered the submissions advanced on behalf of the applicant as well as the respondents. The facts which have been mentioned hereinabove are not in dispute. I need not to indulge in making any more discussion on the arguments so advanced in view of the fact that the aforesaid issue is no more res-integra. Merely because criminal appeal is pending before the Hon'ble High Court against the order of acquittal in favour of the present applicant recorded in Special Case No.10/2010 by the Special Judge, applicant cannot be deprived of the retiral benefits. At the most, the department can require the applicant to furnish a bond to the effect that in case the decision of the Hon'ble High Court in Criminal Appeal goes against the applicant and if he is convicted in the said Appeal, he will refund the amounts already paid to him within the time as may be prescribed. In the facts and circumstances as above, O.A. deserves to be allowed.

5. In so far as the period of suspension is concerned, from the documents filed on record and the pleadings of the parties, it appears that the authority has not taken any decision as about the period of suspension i.e. how the said period will be treated or has been treated by the respondent authorities. Learned Counsel pointed out that the applicant has already preferred a representation in that regard but that has not been decided. In the circumstances, it would be proper to direct the respondent authorities to take a decision on the said aspect within 4 weeks from the date of this order.

6. In the result, following order is passed:

O R D E R

[i] By obtaining the necessary undertaking in the form of bond of indemnity from the applicant for refund of the amounts which may be paid to him in the event the applicant is held guilty and convicted by the Hon'ble High Court in the criminal appeal pending against him, respondents shall release in favour of the applicant the amounts of pension, gratuity, leave encashment, commutation etc. within the period of 12 weeks from the date of this order.

[ii] Respondents shall take a decision as about the period of suspension during the period between 10-07-2005 to 02-01-2012 and decide the representation submitted by the applicant in that regard within 6 weeks from the date of this order.

[iii] O.A. stands allowed in the aforesaid terms without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 13.02.2023.