

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.805 OF 2019**

**DISTRICT : MUMBAI**

Shri Vijay Bapu Kamble. )  
Police Sub-Inspector, Azad Maidan Police )  
Station, Mumbai and residing at 102, )  
'A' Wing, New Police Officers Quarters, )  
Behind Ghatkopar Police Station, )  
Ghatkopar (W), Mumbai – 400 086. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )  
2. Commissioner of Police. )  
Having Office at Crawford Market, )  
Fort, Mumbai. )  
3. Joint Commissioner of Police. )  
(Law & Order), Crawford Market, )  
Fort, Mumbai. )...**Respondents**

**Mr. M.D. Lonkar, Advocate for Applicant.**

**Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 16.06.2020**

**J U D G M E N T**

1. Being aggrieved by the order dated 06.07.2019 thereby granting the pay and allowances to the extent of 50% and monetary benefits restricting to three years only for out of service period, the Applicant has filed the present O.A. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Uncontroverted facts necessary for the decision of the O.A. can be summarized as under :-

(i) The Applicant was serving as Police Sub-Inspector and attached to Dharavi Police Station. The offence vide Crime No.365/2005 under Section 302 of Indian Penal Code was registered against him on the allegation of murder of his wife viz. Alka and was arrested on 31.12.2005.

(ii) Consequent to arrest in Crime No.365/2005, the Applicant came to be suspended by order dated 03.01.2006 (Page No.15 of Paper Book).

(iii) After investigation of crime, the accused was tried for the offence under Section 302 of IPC in Session's Case No.220.2006 and convicted to imprisonment for life and fine of Rs.1000/- in default RI for six months by Judgment dated 13.04.2007 (Page Nos.16 to 70 of P.B.).

(iv) In view of conviction, the Applicant was dismissed from service by order dated 16.09.2009 (page no.71 to 73) invoking Article 311(2)(a) of Constitution of India and his period of suspension from 31.12.2005 till the date of dismissal was

treated as suspension period under Rule 72(6) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to a 'Joining Time Rules 1981' for brevity).

(v) Being aggrieved by order of conviction, the Applicant has filed Criminal Appeal No.416/2007 before the Hon'ble High Court which was allowed by Judgment dated 01.09.2014 and the Applicant was acquitted with specific finding that prosecution has failed to establish the offence beyond reasonable doubt (Page Nos.74 to 96 of P.B.).

(vi) In view of acquittal in Criminal Case, the Applicant was reinstated in service by order date 08.09.2015 (Page Nos.97 and 98 of P.B.).

(vii) The departmental enquiry (D.E.) was, thereafter, initiated against the Applicant by issuance of Charge-sheet on 24.06.2016, on following charges :-

“१) तुमचा, दिनांक ०४/०५/१९९४ रोजी अलका हिच्याशी विवाह झाला, तदनंतर तुम्ही सतत अलका हिच्या चारित्र्याशी संक्षय घेवुन तिच्याशी सतत भांडण करुन तिचा अमानुष छळ केला.

२) तुम्ही, पहिली पत्नी अलका ही जिवंत असतानासुद्धा लिला नावाच्या अन्य एका नातेवाईक मुलीशी विवाहबाहय संबंध ठेवलेत व दि. ०८/०५/९५ रोजी पहिली पत्नी जिवंत असताना सदर लिला नावाच्या मुलीशी विवाह केला.

३) तुम्ही दिनांक ३१/१२/२००५ रोजी पत्नी अलका ही मृत झाली असुन, त्याबाबतची वस्तुस्थिती माहीत असताना देखील, पत्नी ३०/१२/२००५ पासून हरविली आहे अशी खोटी तक्रार नेहरू नगर पोलीस ठाणेस दुरध्वनीवरुन केली.

तुमचे उपरोक्त गैरवर्तणुकी बदल तुम्ही मुंबई पोलीस (शिक्षा व अपिल) अधिनियम १९५६ च्या अंतर्गत नियम ३ नुसार कोणत्याही शिक्षेस पात्र आहात.”

(viii) In D.E, by order dated 22.11.2017, the punishment of reduction to lower time scale of pay on the post of PSI for one year was imposed against the Applicant (Page Nos.247 and 248 of P.B.)

(ix) The Applicant has challenged the punishment imposed in D.E. by filing appeal before the Government which came to be allowed by order dated 03.07.2018 whereby the punishment given by Disciplinary Authority was modified and punishment of strict warning (सक्त तर्कीद) was imposed (Page Nos.253 and 254 of P.B.).

(x) The Disciplinary Authority issued Show Cause Notice on 05.04.2019 to the Applicant as to why his out of service period from 17.09.2009 to 08.09.2015 should not be treated as out of service period (Page Nos.255 and 256 of P.B.).

(xi) The Applicant has tendered his reply to Show Cause Notice on 23.04.2019 whereby claiming full pay and allowances for the period of suspension as well as for out of duty period (Page Nos.257 to 263-A of P.B.).

(xii) The Disciplinary Authority, however, by order dated 06.07.2019 treated out of duty period from 17.09.2009 to 18.09.2015 as suspension period as such and granted 50% pay and allowances restricted to the monetary benefits of preceding three years invoking Rule 70(4)(7) of 'Joining Time Rules 1981' (Page Nos.264 and 265 of P.B.).

3. The Applicant has challenged the order dated 06.07.2019 in the present O.A. contending that the same is unsustainable in law and he is entitled to full back-wages during the period of suspension

as well as for out of service period in view of obliteration of conviction consequent to acquittal by Hon'ble High Court.

4. The Respondents resisted the claim of the Applicant by filing Affidavit-in-reply *inter-alia* denying the Applicant's entitlement to the relief claimed and sought to justify the impugned order.

5. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the impugned order and made following submissions :-

(a) Once the conviction is set aside by the Appellate Court, it wipes out the stigma of conviction as well as disqualification flowing from conviction stand obliterated and Disciplinary Authority ought to have, therefore, granted 100% Pay and Allowances for out of duty period.

(b) Though the Applicant was acquitted by Hon'ble High Court on 01.09.2004, he came to be reinstated belatedly after one year by order dated 08.09.2015 and for no reason, the Applicant was kept out of duty for the period of one year which had caused loss of pay and allowances to the Applicant.

(c) Once the conviction was set aside, the Disciplinary Authority was under obligation to reconsider the issue of regularization of the period of suspension the Applicant undergone. According to him, the period of suspension till the date of reinstatement in service was also required to be treated as duty period, but no such order pertaining to period of suspension has been passed.

(d) Though in D.E, the punishment of strict warning was imposed upon the Applicant by Appellate Authority, such minor punishment have no adverse consequences upon the

Applicant for regularization of out of duty period for full pay and allowances, since the suspension was ordered only on the basis of registration of offence under Section 302 of IPC in which the Applicant is ultimately acquitted.

(e) Reliance is placed on **1999(3) Mh.L.J.351 (S.P. Naik Vs. Board of Trustees, Mormugao Port Trust, Goa & Anr.)**

It pertains to minor penalty in departmental proceeding, wherein the period of suspension was treated as duty period and full pay and allowances was granted for the period of suspension.

6. Thus, the sum and substance of the submission of the learned Advocate for the Applicant is that in view of acquittal in appeal, the conviction is obliterated and the Applicant is entitled to 100% pay and allowances. He, therefore, submits that the impugned order is unsustainable in law and deserves to be quashed.

7. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer sought to justify the impugned order. Adverting to the Judgment of Hon'ble High Court in Criminal Appeal, the learned CPO submits that the Applicant was acquitted by giving benefit of reasonable doubt and it is not a case of clean or honourable acquittal. She has further pointed out that admittedly, in departmental proceeding initiated after reinstatement of the Applicant in service, the punishment of strict warning is imposed upon the Applicant. She, therefore, submits that even if the Applicant is acquitted in Criminal Appeal, it was for the Disciplinary Authority to consider the facts and circumstances of the matter and acquittal *ipso-facto* does not make the Applicant entitled to full pay and allowances for the period of suspension as well as for out of duty period. She submits that considering the serious nature of

offence of murder levelled against the Applicant, the punishment imposed in D.E. and the fact that the accused was acquitted by giving benefit of doubt, the Disciplinary Authority exercised its discretion properly and granted 50% pay and allowances for out of duty period.

8. 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.

9. 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.

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

Whether the Applicant is entitled to treat period of suspension from 31.12.2005 to 16.09.2009 as duty period (from date of suspension to dismissal) for all purposes and secondly whether 2<sup>nd</sup> span of period from 17.9.2009 to 18.09.2015 for which he was out of duty (from the date of dismissal to reinstatement), can be treated as duty period for grant of 100 % pay and allowances.

11. Initially, at the time of dismissal from service owing to conviction of criminal case by order dated 16.09.2009 (page 71 to 73 of P.B.) period from 31.12.2005 to the date of dismissal was treated as suspension period under Rule 72(6) of 'Joining Time Rules 1981'. Later in view of acquittal in Criminal Appeal, Applicant was reinstated in service and out of duty period from 17.09.2009 to 08.09.2015 was treated duty period by granting 50% pay and allowances restricted to three years. It appears while passing order dated 06.07.2019 his out of duty period from 17.09.2009 to 08.09.2015 was referred as suspension period though in fact it was out of duty period. Be that as it may, the question posed for consideration is whether the applicant is entitled to treat his entire period from the date of suspension till reinstatement as duty period for 100% pay and allowances and in my considered opinion, the answer is in negative.

12. Undisputedly, the Applicant was kept under suspension on account of registration of serious offence under Section 302 of IPC for murder of his wife and later in Criminal case he was convicted and sentenced to imprisonment for life. In other words, it is on account of serious incriminating conduct Applicant was suspended and later dismissed from service in view of conviction in Criminal Case. As such this is not the case where the Applicant was kept out of service or kept under suspension without any fault on his part, nor this is the case where it can be said that the Applicant was wrongfully prevented from joining duties. True, later in criminal appeal, the Applicant came to be acquitted. However, it is well settled that subsequent acquittal only obliterate conviction, it does not operate retrospectively to wipe out the legal consequences of the conviction. The legal proposition of law expounded in catena of discussed above leaves no manner of doubt and it is no more *res*

*integra* that there could be no automatic entitlement to full back wages because of subsequent acquittal in criminal case. All that it obliterate conviction but that *ipso facto* does not entitle the applicant to full back wages, as held by Hon'ble Supreme Court 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. Suffice to say, submission advanced by learned Advocate for the Applicant that on account of acquittal the Applicant is entitled to full back wages is misconceived and totally unsustainable in law.

13. Furthermore, after reinstatement in service regular Departmental Enquiry was initiated against the Applicant for misconduct under service rules, wherein he was held guilty and punishment of reduction of lower time scale for one year was imposed. Later in Appeal punishment was modified by issuing strict warning. However, the fact remains that the Applicant was held guilty in D.E. Had it been the case that the Applicant was acquitted on positive findings that he did not commit offence at all or completely exonerated in D.E, perhaps in fact the situation claim of 100% back wages could be said justified. However, in present case, it is not so as the acquittal was by giving benefit of doubt and secondly in D.E. also the Applicant was held guilty for misconduct under service laws.

14. Submission advanced by learned Advocate for the Applicant that after acquittal Respondents ought to have reconsidered the issue of treatment of suspension period and should have treated it for 100% pay and allowance is devoid of merit and holds no water. During the period of suspension Applicant was granted subsistence allowance and in view conviction, order was passed to treat the

period of suspension. As such it was legal consequence flowing from the conviction recorded against him. Therefore, only because later the Applicant was acquitted in criminal appeal that *ipso facto* cannot wipe out legal consequences of the conviction as consistently held by Hon'ble Supreme Court in catena of decision cited supra.

15. Learned Advocate for the Applicant referred to the decision of Hon'ble Supreme Court in **AIR 2015 SC 2904, Ramesh Kumar V. Union of India**, which pertains to the entitlement of the employee to benefit of 100% pay and allowances of promotional post, where the employee was not at fault and was kept out of promotional post due to fault on the part of employer for not considering his case for promotion. This analogy is hardly relevant to the facts and circumstances of the present case, where the Applicant was initially suspended due to registration of serious crime under Section 302 of IPC and later also held guilty by the court. Suffice to say, submission advanced by learned Advocate that the Applicant is entitled to 100% pay and allowances holds no water.

16. True, there is some delay in reinstatement of the Applicant after acquittal in criminal appeal. The Applicant was acquitted in criminal appeal on 01.09.2014, but he was reinstated in service by order dated 08.09.2015. As such there was delay of about one year in reinstatement in service. However, there is nothing to indicate that the Applicant had made representation for reinstatement after his acquittal in criminal appeal. Applicant too remained silent for one year. Had the Applicant made any such representation after acquittal in criminal case perhaps he could be said justified in claiming back wages from the date of representation. This being the position, the Applicant cannot be held entitled to back wages for this period of one year and delay in reinstatement in service on the principle of 'No work, No pay'.

17. Turning to the decision in **S.P. Naik's case** cited supra it, is of no assistance to the Applicant, in the present situation. In **S.P. Naik's case** the employee was subjected to minor penalty in departmental proceedings and therefore his suspension period was treated as duty period for full pay and allowance. Whereas in present case the facts are totally distinguishable. The Applicant was suspended due to registration of offence under 302 of IPC and later convicted by the court. It is only in appeal on benefit of doubt the acquittal was recorded. Apart in D.E. initiated after reinstatement in service the applicant was held guilty for the misconduct under service Rules. Suffice to say, this is not the case where the Applicant has been fully exonerated from the charges levelled against him.

18. The totality of aforesaid discussion of law and facts leads me to sum up that the impugned order needs no interference and O.A. is devoid of merit. Hence order :-

### **ORDER**

Original Application stands dismissed. No order as to costs.

SD/-

**(A.P. KURHEKAR)**  
**MEMBER-J**

Mumbai  
Date : 16.06.2020  
Dictation taken by :  
S.K. Wamanse.