

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.935 OF 2017**

**DISTRICT : SOLAPUR**

Shri Swamirao R. Koli )  
R/at House No.80/8, Krushna )  
Colony, Vijapur Road, June Solapur, )  
Solapur – 413 255. )...**Applicant**

**Versus**

1. The State of Maharashtra, )  
Through Chief Secretary, )  
Mantralaya, Mumbai 400 032. )

2. The Commandant, SRPF )  
Group No.10, Solapur, )  
Soregaon Camp, )  
Solapur – 413 008. )...**Respondents**

**Smt. Punam Mahajan, Advocate for Applicant.**

**Shri A. J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 15.12.2020**

**JUDGMENT**

The Applicant has challenged the order dated 05.10.2016 whereby his out of service period from 05.05.2007 to 18.08.2013 was treated only for pension purpose and for further period from

19.08.2013 to 19.08.2016 50% pay and allowances was granted instead of granting full pay and allowances of the entire period for out of service invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Following are indisputable facts necessary to be borne in mind for the decision of the present Original Application :-

(i) The Applicant joined as Police Constable in SRPF on 06.11.1990.

(ii) He had allegedly submitted bogus caste certificate to the department and consequent to it offence under Section 417, 465, 468, 471 vide RCC No.47 of 2000 was registered against him and he was prosecuted.

(iii) The Applicant was convicted by learned Chief Judicial Magistrate, Solapur on 03.04.2007 and he was sentenced to suffer RI for three months and to pay fine of Rs.500/- and in default SI for 15 days for the offence under Section 417 of IPC and was also sentenced to suffer RI for one year and to pay fine of Rs.1000/- in default SI for one month for the offence under Section 471 of IPC.

(iv) After conviction, the department issued notice dated 21.04.2007 to the Applicant as to why he should not be dismissed from service in view of his conviction in Criminal Case to which the Applicant had submitted his reply on 30.04.2007.

(v) Consequent to conviction, the Applicant was dismissed from service by order dated 05.05.2007.

(vi) Being aggrieved by the judgment of conviction, the Applicant had filed Criminal Appeal No.44/2007 which was allowed by the learned Session Judge on 15.05.2015 and he came to be acquitted from both the charges.

(vii) After acquittal, the Applicant made representations on 21.08.2015, 01.02.2016 and 08.02.2016 to the Respondents for reinstatement in service (Page Nos.38, 39 and 41 of PB) but not responded.

(viii) The Applicant was reinstated in service by order dated 18.08.2016 in view of his acquittal in criminal case and joined on 20.08.2016.

(ix) The Respondent No.2 –Commandant, SRPF issued notice dated 17.09.2016 to the Applicant as to why the period from 05.05.2007 to 18.08.2013 should not be treated for the purpose of pension and why 50% pay and allowances only should not be granted to him for the period from 19.08.2013 to 19.08.2016 as contemplated under Rule 70(4) of Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 (Hereinafter referred as 'Rules of 1981' for brevity).

(x) The Applicant submitted his reply on 29.09.2016 contending that in view of his acquittal, he is entitled to treat entire period out of service as duty period for all purposes.

(xi) Respondent No.2 however, by order dated 05.10.2016 treated the period from 05.05.2007 to 18.08.2013 for pension purpose and granted 50% pay and allowance for the period from 19.08.2013 to 19.08.2016 invoking Rule 70(4) of 'Rules of 1981' which is under challenge in the present O.A.

3. Smt. Punam Mahajan, learned Advocate for the Applicant submits that once the Applicant was acquitted in appeal, he is entitled to full back-wages and there is no justification to bifurcate the said period in two phases. According to her, acquittal relate back to the date of dismissal from service and the Respondent No.2 cannot sit over the judgment of criminal court as appellate authority and the Applicant is entitled to 100% pay and allowances for the entire period i.e. from 05.05.2007 to 19.08.2016. Learned Counsel for the Applicant placed reliance on the decision of the Hon'ble Supreme Court in **1984(2)SCC 433 Brahma Chandra Gupta V/s Union of India and 2002 (3) Mh.L.J.390 Baban Shriram Wafare V/s Zilla Parishad, Ahmednagar.**

4. The learned Advocate for the Applicant further pointed out that though the Applicant was acquitted on 15.05.2015 despite his representations dated 21.08.2015, 01.02.2016 and 08.02.2016, he was allowed to join only on 20.08.2016 for no fault on his part. She, therefore, submits that in view of this belated action on the part of Respondents, the Applicant should not suffer.

5. Per contra, Shri A.J. Chogule, learned P.O. submits that even if the Applicant was acquitted in Criminal Case, he is not entitled to full back-wages as he was kept out of service due to conviction in criminal case and on the principle of 'no work no pay'. He sought to justify the impugned order contending that it is in consonance of Rule 70(4) of 'Rules of 1981', as the back-wages are limited to three years period preceding to the date of reinstatement. Learned P.O. also placed reliance on certain judgments which will be dealt with during the course of discussion.

6. The factual aspects about the date of registration of offence, conviction, consequent dismissal and reinstatement in service after

acquittal in appeal are not in dispute. Undisputedly, the Applicant was out of duty from 05.05.2007 to 19.08.2016. The Respondents by impugned order bifurcated this period and granted 50% pay and allowances for preceding three years prior to reinstatement in service.

7. The issue posed for consideration is whether the Applicant is entitled to full back-wages and all service benefits during the period he was out of service and in my considered opinion, the answer is in negative.

8. In view of catena of decisions of Hon'ble Supreme Court, the legal position about the entitlement of the employee for full back-wages for which he was out of service because of conviction is well settled. It is no more *res-integra* that the acquittal in criminal appeal *ipso facto* does not entitle the employee to claim back-wages for which he was out of service on account of his conviction. Needless to mention, subsequent acquittal though obliterates his conviction, it does not operate retrospectively to wipe out the legal consequences of the conviction. In this behalf, it would be useful to refer the following decisions.

“(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 therein 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 convicted and as a consequence thereof, he was reinstated in service. 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 on 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.”*

9. The learned P.O. also referred to **(2017) 2 SCC 382 (H.V.P.N. Limited & Ors. Vs. Bal Govind)** and **1990 SCC(3) 472 (Virendra Kumar Vs. Avinash Chandra Chadha & Ors.)** wherein the claim of employees for 100% back-wages during the period in which he was out of service on conviction in criminal case was rejected on the principle of no work no pay and particularly when acquittal was rendered giving benefit of doubt.

10. Now turning to the facts of present case, the perusal of Judgment of appeal reveals that the Appellate Court held that the prosecution has failed to establish the guilt of the Applicant beyond reasonable doubt, and therefore, the benefit of doubt was given to the Applicant. It is not a case of clear or honourable acquittal. As such, this is not a case where the Applicant was kept out of service without any reason or it is not a case where the Applicant was wrongfully prevented from joining duties. As stated above, subsequent acquittal only obliterates conviction but it does not operate retrospectively to wipe out the legal consequences of the conviction. This being the position, the submission advanced by the learned Advocate for the Applicant that after acquittal, the Applicant is entitled for full back-wages holds no water.

11. This takes me to deal with the legality of the impugned order whereby 50% back-wages were restricted to three years' period



preceding to the date of reinstatement invoking Rule 70(4) of 'Rules of 1981' which is as under :-

**“70(4) :** In cases other than those covered by sub-rule (2), [including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held] the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice :

Provided that any payment under this sub-rule to a Government servant [other than a Government servant who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936)] shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant was passed by the appellate authority or reviewing authority, or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.”

12. Thus, for giving 50% back-wages restricted to three years' period preceding to the date of reinstatement, the Respondents invoked Rule 70(4) of 'Rules of 1981' which cannot be faulted with. Rule 70 of 'Rules of 1981' empowers the competent authority to regulate the period of suspension or the period for which Government servant was out of duty because of conviction in criminal case. As per proviso to Rule 70(4), the Government servant is entitled to pay and allowances restricted to a period of three years immediately preceding the date on which he is reinstated. As such, the Respondents correctly resorted to Rule 70(4) and grant of 50% allowances restricted to preceding three years' of reinstatement and action is in consonance with the Rules.

12. Reliance placed by the learned Advocate for the Applicant on **(1984) 2 SCC 433 (Brahma Chandra Gupta Vs. Union of India)** and **2002(3) MH.L.J. 390 Baban Wafare Vs. Zilla Parishad** are misplaced. In **Brahma Gupta's** case (cited above), the question was about the payment for suspension period. In fact situation, the Hon'ble Supreme Court granted full salary. Whereas, in **Baban Wafare's** case (cited supra), it was a case pertaining to matter of Z.P. employee governed by Maharashtra Zilla Parishad District Services (Discipline & Appeal) Rules, 1964. True, in this Judgment, the Hon'ble High Court observed that Rules 70 and 71 of 'Rules of 1981' deal with different situation and do not deal with situation where the Government servant is required to be reinstated on account of his acquittal by the Appellate Court. This Judgment, in my humble opinion, in the light of subsequent latest Judgment of Hon'ble Supreme Court as adverted to above is of little assistance to the Applicant.

13. In view of the aforesaid discussion, I find no illegality in the impugned order and it needs no interference.

14. However, as rightly pointed out by the learned Advocate for the Applicant that though the Applicant was acquitted on 15.05.2015, he was reinstated on 20.08.2016 only despite the representations made by the Applicant on 21.08.2015, 01.12.2016 and 08.02.2016 (Page Nos.38 to 41 of P.B.). Even thereafter, the Applicant had to file O.A.No.298/2016 for reinstatement in service and it is only during the pendency of that O.A, the Applicant was reinstated. Therefore, the O.A. was allowed to withdraw with liberty to file fresh O.A. challenging the denial of full wages. There is no denying about the factum of the representations made by the Applicant from time to time. As the appeal was allowed on 15.05.2015, the Respondent was under obligation to reinstate the Applicant within reasonable time,

but he failed to do so despite various representations. As such, for considerable period, the Applicant was kept out of service for no fault on his part. The laxity and inaction on the part of Respondents for not immediate reinstatement is obvious and for that Applicant should not suffer. The Applicant, therefore, cannot be deprived of full back-wages of the said period.

15. In similar situation, the Hon'ble Supreme Court in **(2013) 11 SCC 67 (State Bank of India and Anr. Vs. Mohammed Abdul Rahim)** having noticed that despite the representation made by the employee, he was not reinstated, the Hon'ble Supreme Court granted back-wages from the date of his representation. As such, in view of this decision and negligence on the part of Respondents, the Applicant is definitely entitled to pay and allowances from 21.08.2015. This is the only relief to which the Applicant is definitely entitled in the present O.A.

16. The totality of aforesaid discussion leads me to conclude that there is no illegality in impugned order and it needs no interference. However, the Applicant is entitled to pay and allowances from the date of representation till the date of reinstatement. Hence, I proceed to pass the following order.

### **ORDER**

- (A) The Original Application is partly allowed.
- (B) The impugned order treating the period from 05.05.2007 to 18.08.2013 for pension purpose and granting 50% pay and allowances for the period from 19.08.2013 to 19.08.2016 is upheld.
- (C) The Respondent is directed to pay salary and other allowances to the Applicant from the date of his

representation i.e. 21.08.2015 to 19.08.2016 within two months from today.

(D) No order as to costs.

Sd/-

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

Mumbai

Date : 03.12.2020

Dictation taken by :

S.K. Wamanse.

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