

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 200 / 2017 (S.B.)**

Asha Wd/o Gajanan Chaudhary,  
Aged about 49 years, Occupation:-Household,  
R/o Pimpalgaon,  
Raja, Police Quarter No. 4, Tq.  
Khamgaon, District : Buldana.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Home,  
Mantralaya, Mumbai- 32.
- 2) Inspector General of Police,  
Camp Area, Amravati.
- 3) The Superintendent of Police,  
Buldana Tah. & Distt. Buldana.

**Respondents**

---

**Shri H.D.Futane, Id. Advocate for the applicant.**

**Shri V.A.Kulkarni, Id. P.O. for the Respondents.**

---

**Coram :- Hon'ble Shri M.A.Lovekar, Member (J).**

---

**JUDGMENT**

**Judgment is reserved on 09<sup>th</sup> June, 2022.**

**Judgment is pronounced on 13<sup>th</sup> June, 2022.**

Heard Shri H.D.Futane, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the Respondents.

2. In this application order dated 22.08.2012 (A-1) passed by Superintendent of Police, Buldhana is impugned. By this order said authority directed that period of suspension of Police Naik Gajanan Choudhary be treated as period of suspension.

3. Facts leading to this application are as follows. Gajanan Chaudhary (since deceased) was working as Police Naik in Local Crime Branch, Buldhana. Police Naik, Anil Deshmukh was also attached to L.C.B. Buldhana. Against both of them Crime No. 169/2004 was registered at Khamgaon, City Police Station under Sections 363, 342, 376 (g) of Indian Penal Code and u/s 3(1)(XII) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act. Both of them were placed under suspension by order dated 01.10.2004 w.e.f. 06.10.2004. Session case no. 52/2005 arising out of Crime No. 169/2004 registered at Khamgaon City Police Station was decided by Adhoc Additional Sessions Judge-II, Khamgaon on 19.03.2009. The Court acquitted both the accused by extending them benefit of doubt as the offences allegedly committed by them were held not to have been proved beyond reasonable doubt. Consequent upon the said order of acquittal Superintendent of Police, Buldhana reinstated both the accused viz Police Naik Anil Deshmukh and Police Naik Gajanan Chaudhary by order dated 25.02.2010 (A-1). Thereafter, by order dated 22.08.2012 Superintendent of Police Buldhana (who is arrayed as R-2) directed that period of suspension of Police Naik Gajanan Chaudhary (between 06.01.2004 to 25.02.2010) shall be treated as period of suspension and not duty period. Communication dated 23.10.2013 (at page no. 21) shows that against the order dated 22.08.2012 Police Naik Gajanan Chaudhary as well as Police Naik Anil Deshmukh had preferred an appeals before Inspector General Police (R-3) challenging the order whereby period of their suspension was directed to be treated as such, and the appeals preferred by them were rejected by respondent no. 3. Thus, order dated 22.08.2012 was sustained.

The applicant is widow of Police Naik Gajanan Chaudhary. Her grievance in this application is that there were no justifiable grounds for treating period of suspension of her deceased husband as such and hence the order dated 22.08.2012 passed by respondent no. 2 and confirmed by respondent no. 3 cannot be sustained. Hence, this application.

4. Reply of respondent no. 3 is at page nos. 55 to 58. According to the respondent no. 3 the impugned orders do not call for interference. Specific contention raised by respondent no. 3 to resist this application is as follows:-

*“6. It is pertinent to mention here that Shri Choudhary has not taken any efforts to challenge the order of the Special Inspector General of*

*Police, Amravati during his life time, though the order was duly communicated to him. Thus it can be presumed that he is satisfied with the order and therefore now the present applicant has no authority to file the present proceedings again and again. The approach of the applicant is not appropriate and it will not give end to any dispute.”*

5. It is a matter of record that this Original Application was also resisted by respondent no. 3 on the ground of delay. However, by order dated 04.10.2021 this Tribunal allowed the application for condonation of delay.

6. It was submitted by Adv. Shri Futane, Id. Counsel for the applicant that the co-delinquent/ co-accused Police Naik Anil Deshmukh had challenged the order dated 22.08.2012 passed by respondent no. 3 in O.A. No. 460/2015 and this Tribunal was pleased to partly allowed said O.A. by considering *inter alia* Rule 72 of the Maharashtra Civil Service (Joining Time, Foreign Services and Payment during suspension, dismissal and removal) Rules, 1991. It is his submission that the present applicant who is widow of co-delinquent/co-accused Gajanan Chaudhary would be entitled to identical relief. This submission has substance. Relevant portion of judgment dated 10.01.2019 passed by this Tribunal in O.A. No. 460/2015 is as follows:-

*“4. Admittedly, no departmental enquiry was conducted against the applicant. The learned counsel for the applicant invited my attention to the judgment in Sessions Case No. 52/2005 wherein the applicant alongwith another accused were prosecuted for the offences already stated above. The learned counsel for the applicant pointed out to the findings given by the Sessions Judge particularly para Nos. 8, 11, 18, 22 and 23 and submits that the Sessions Judge was pleased to observe that there was no evidence against the applicant and prosecution has miserably failed to produce evidence and, therefore, the applicant was acquitted. It is stated that the said acquittal was on merit and not on benefit of doubt. He also invited my attention to the provisions of Rule 72 (3), (5) and (6) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal And Removal) Rules, 1981 (hereinafter referred to as, “Rule of 1981”).*

5. *Perusal of the impugned order dated 22.8.2012 shows that the competent authority has considered the judgment delivered by the Sessions Judge and came to the conclusion that the applicant was acquitted on technical ground and on benefit of doubt. The learned P.O. submits that this is sufficient compliance.*

6. *Rule 72 (3) (4), (5) and (7) of the Rules of 1981 reads as under:-*

*“Rule 72 (3). Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Govt. shall, subject to provision of sub-rule (8), be paid full pay and allowances to which he would have been entitled, had he not be suspended: Provided that, where such authority is of the opinion that the termination of the proceedings instituted against the Govt. servant had been delayed due to reasons directly attributable to the Govt. servant, it may, after giving him an opportunity to make his representation within 60 days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Govt. servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.*

*Rule 72 (4). In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.*

*Rule 72 (5). In cases other than those falling under sub-rules (2) and (3) the Govt. servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Govt. servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in*

*no case shall exceed 60 days from the date on which the notice has been served, as may be specified in the notice.*

*Rule 72 (7). In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose;*

*Provided that, if the Govt. servant so desires, Such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Govt. servant.*

*Note:- The order of competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—*

*(a) extraordinary leave in excess of 3 months in the case of a temporary Govt. servant; and*

*(b) leave of any kind in excess of 5 years in the case of permanent Govt. servant.*

7. *The learned counsel for the applicant submits that plain reading of the aforesaid rules together clearly shows that the competent authority has come to the conclusion as to whether the suspension was wholly justified/unjustified and then to take action as per relevance of rules. Applicant's case falls within the ambit of subrule (5) of Rule 72 of the Rules of 1981 and for taking such action, it was necessary for the competent authority to give an opportunity to the applicant to make representation within 60 days from the date of communication of order.*

8. *Perusal of communication dated 22.8.2012 (A-2) shows that the suspension period of the applicant was treated as suspension as such. But for that purpose, the applicant was neither heard nor any opportunity was given to him and on what basis the competent authority came to conclusion that the applicant was acquitted on technical ground or by giving benefit of doubt, has not been explained and straightway order dated 5.11.2012 was passed. As per sub-rule (3) of Rule 72 of the Rules of*

1981, the competent authority has also to consider as to whether the delay in criminal prosecution was due to reason directly attributed to the Government servant.

9. In my opinion, the competent authority ought to have considered the judgment as a whole and should have recorded reasons as to whether the applicant's suspension was justified or not and then should have issued a show cause notice alongwith said reason to the applicant stating as to why his suspension period shall not be treated as suspension as such. After issuing said show cause notice and after obtaining explanation from the applicant necessary order should have been passed. However, this has not been done in the present case.

10. In view thereof, communication dated 22.8.2012 and the suspension communication dated 5.11.2012 is required to be quashed. Hence, I proceed to pass the following order:-

#### **ORDER**

(i) The O.A. is partly allowed.

(ii) The communications dated 22.8.2012 (A-2) and (A-1) are quashed and set aside.

(iii) The respondent No.2 i.e. Superintendent of Police, Buldana is given an opportunity to go through the judgment properly and to record its own findings as to whether the suspension of the applicant was justified or not and if it comes to the conclusion that the suspension is justified, may issue show cause notice to the applicant as to why his suspension period shall not be treated as a period of suspension as such. After receiving explanation of the said show cause notice, the competent authority may pass necessary order as per Rule 72 of the Rues of 1981.

(iv) All such exercise shall be done within a period of two months from the date of this order.

(v) No order as to costs."

Hence, the original application is partly allowed. The order dated 22.08.2012 and communication dated 23.10.2013 (at page no. 21) are quashed and set aside. Superintendent of Police, Buldhana (R-2) shall, after going through the Judgment dated 19.03.2009 record his own findings as to whether suspension of deceased Police Naik Gajanan Chaudhary was justified and if the said authority comes to the conclusion that it was justified it shall issue a show case notice to the applicant. The applicant would be entitled to submit reply to this show cause notice. After considering the facts of the case and reply of the applicant, the competent authority shall pass necessary order as per Rule 72 of the Rule 1981. Such exercise shall be done **within a period of two months from the date of receipt of this order**. No order as to costs.

**(Shri M.A.Lovekar)**  
**Member (J)**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.  
Court Name : Court of Hon'ble Member (J).  
  
Judgment signed on : 13/06/2022.  
and pronounced on  
  
Uploaded on : 14/06/2022.