

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 640 of 2013 (D.B.)

Dilip S/o Mahadeo Dhote,
Aged about 43 years,
R/o Morshi, Tq. Morshi, Dist. Amravati.

Applicants.

Versus

- 1) The State of Maharashtra
through it's Secretary, Revenue Department,
Mantralaya, Mumbai-400 032.
- 2) The Collector,
Amravati Division, Amravati.
- 3) The Sub Divisional Officer (Revenue),
Chandur Railway, District Amravati.

Respondents.

S/Shri Bharat Kulkarni, Sunil Pande, Advocates for the applicant.

Shri A.M. Ghogre, learned P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member(A).**

JUDGMENT

(Delivered on this 13th day of April,2018)

Heard Shri Bharat Kulkarni, Id. counsel for the applicant
and Shri A.M.Ghogre, Id. P.O. for the respondents.

2. In this O.A. the applicant has claimed following reliefs :-

“(ii) Be pleased to direct the respondent nos. 2&3 to modify the order dated 01/03/2013, i.e., Annex-A-14 passed by the respondent no.2, i.e., Collector, Amravati and the order dated 12/03/2013, i.e., Annex-A-15 passed by respondent no.3 as to apart from issuing fresh appointment to the applicant on the post of Talathi with effect from 07/03/2013, the applicant be reinstated on the post of Talathi with effect from 31/12/1991.

(iii) Further be pleased to direct the respondents to grant all other consequential benefits including seniority, promotional benefits, pension, pay fixation and all other admissible benefits with effect from the day he has joined the service, i.e., since 07/12/1991.

(iv) As the applicant was out of the service since 31/12/1991 and thereof was deprived of service benefits, the present application be decided at the admissible stage itself.”

3. From the admitted facts on record, it seems that the applicant was appointed as a Talathi vide order dated 07/12/1991 and was posted at Mauza Temburni, Tq. Chandur Railway, District Amravati. It is admitted fact that due to pendency of some criminal case, the applicant was terminated from the service, but subsequently the applicant got acquitted in the criminal case. He was acquitted on 16/05/1996.

4. The Government vide order dated 7/2/2013 was pleased to direct the competent authority to reinstate the applicant on getting affidavit to the effect that the applicant will not claim back wages and arrears thereon. The said relevant order is at page-44 (Annex-A-12) which reads as under :-

^egkn;] fo" k; kfdr i dj .kh vki Y; k dk; ky; kP; k l mHkZkhu i =kP; k vuqkxkusdGfo. ; kr
; rs dlj Jh- fnyhi egkn /kkv] cMrQZ rykBh] fgoj [kM] rk-eks kh] ft-vejkorh ; kauk
R; kP; kojhy QkStnkjh xlg; krap ek-ftYgk o I = U; k; ky;] vejkorh ; kauk fnukad
16@05@1996 P; k vkns kUo; sfunkk ePrnk dsh vks R; keGsR; kauk 'kkI u I or rykBh
i nkoj #twd#u ?; koj r l p R; kauk ekxhy oru o HkRrsI kMr vl Y; kI mHkZ I knj dsh; k
vMhMghVP; k vuqkxkusi qhy vko'; d dk; Bkgh djkoh**

5. In view of the aforesaid order, the applicant has filed affidavit on 7/2/2013 and gave undertaking that he will not claim arrears of back wages. It was however stated in the affidavit that his seniority shall be maintained.

6. In view of the directions given by the Government, the applicant seems to have been reinstated in the service vide impugned order dated 01/03/2013 (Annex-A-4) at P.B. page nos. 49 to 51 issued by Collector, Amravati and order dated 12/03/2013 (P-52,Annex-A-15) issued by the SDO, Amravati. Both these orders are challenged on the ground that instead of reinstating the applicant, the respondents are treating the applicant as a fresh appointee. The learned Counsel for the applicant submits that the applicant cannot be appointed afresh, merely because he alleged to have given up his arrears of wages during pendency of the criminal case and the only option to the respondents was to reinstate the applicant maintaining his seniority.

7. The learned counsel for the applicant has referred to Rule-70 of the Maharashtra Civil Services (Joining time, Foreign

Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 which clearly states about regularization of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside as a result of appeal or review and such government servant is reinstated. As per this rule on acquittal the Government servant is to be reinstated with retrospective effect and seniority is to be granted with retrospective effect. However, if the competent authority desires that the employee shall be reinstated from a particular date, then a reasoned order is required to be passed. In the present case the impugned order seems to be passed only because the applicant was acquitted and therefore there was no alternative for the respondent authorities but to reinstate the applicant. However under the garb of reinstatement the applicant seems to have been appointed afresh and this has resulted in losing seniority of the applicant.

8. The impugned order passed by the SDO, Amravati and the Collector, Amravati clearly shows that the applicant has been given a fresh appointment and he was not reinstatement as directed by the Government. Both these orders are therefore bad in law and are required to be quashed and set aside. The applicant is required to be considered as reinstated and his seniority is required to be maintained. In view thereof the following order :-

ORDER

The O.A. is allowed in terms of prayer clause (ii) and (iii). The applicant however will not be entitled to any back wages and arrears thereon even if he is considered for promotion. His seniority to the post shall be maintained w.e.f. his earlier date of appointment, i.e., 07/12/1991. The applicant will be entitled to notional pay fixation accordingly, but not to the arrears. The respondents are directed to take further steps in this regard in view of the prayer clause (iii) if eligible, otherwise, for promotion within a period of three months from the date of this order. No order as to costs.

**(Shree Bhagwan)
Member(A).**

**(J.D. Kulkarni)
Vice-Chairman (J).**

Dated :- 13/04/2018.

dnk.