

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 75/2021 (S.B.)**

Shri Deepak S/o Hanumant Medakkar,  
Aged about 65 years,  
Occ. Retired, R/o H.No.232,  
Sahyog Nagar, Behind S.T. Regional Workshop,  
Nanded, Dist. Nanded.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through it's Secretary,  
Home Department,  
Mantralaya, Mumbai- 400 032.
- 2) The Director General Homeguards,  
Old Secretariat Extension,  
3<sup>rd</sup> Floor, Mahatma Gandhi Road,  
Fort, Mumbai - 32.
- 3) The District Commandant,  
Homeguards, In front of D.ed College,  
Chikhali Road, Buldhana.

**Respondents**

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**Shri A.R.Kalele, Id. Advocate for the applicant.**

**Shri A.P.Potnis, Id. P.O. for the respondents.**

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

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**JUDGMENT**

**Judgment is reserved on 21<sup>st</sup> March, 2024.**

**Judgment is pronounced on 15<sup>th</sup> April, 2024.**

Heard Shri A.R.Kalele, ld. counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the Respondents.

2. Undisputed facts are as follows. The applicant was working in the respondent department as Senior Clerk. On the basis of a complaint against him A.C.B. laid a trap. After registration of an offence under Sections 7 and 13 of the Prevention of Corruption Act he was arrested on 16.01.2003. He was placed under suspension w.e.f. 16.01.2003 (A-3). Special Case No. 03/2003 was registered against him. Special Judge, Parbhani acquitted him by judgment dated 24.06.2005 (A-4). Against this order A.C.B. preferred Criminal Appeal No. 699/2005 in the Hon'ble Bombay High Court. By charge-sheet dated 06.10.2006 departmental inquiry was initiated against him in which he submitted his defence. The inquiry was kept in abeyance due to pendency of criminal appeal which was decided by judgment dated 28.08.2008 (A-10). Thereafter, by order dated 10.01.2011 (A-11) order of suspension dated 16.01.2003 was revoked. The applicant retired on superannuation on 31.03.2013. By order dated 19.03.2019 (A-1) period of suspension of the applicant was directed to be treated as leave without pay. By the said order departmental inquiry initiated against the applicant by charge-sheet dated 06.10.2006 was dropped. By representation dated

31.05.2019 (A-13) the applicant claimed benefits of Modified Assured Carrier Progress Scheme. By representation dated 17.06.2019 (A-14) he requested respondent no. 2 to treat period of his suspension as duty period. By order dated 18.11.2019 (A-2) both these representations were rejected. On 16.02.2021 respondent no. 1 passed the following order (A-16) :-

तरी सदर मुद्दांबाबत आपणास खालीलप्रमाणे मार्गदर्शन करण्यात येत आहे.

(i) महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीयेत्तर सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे यांचे काळातील प्रदाने) नियम १९८१ च्या नियम ७० (५) प्रमाणे श्री. मेदककर यांचा दि.१६-१-२००३ ते १३-१-२०११ पर्यंतचा निलंबन कालावधी देय रजा म्हणून नियमित करण्यात आला असून सदर कालावधी देय रजा व असाधारण रजा कालावधी म्हणून गणण्यात यावा.

(ii) होय, श्री. मेदककर यांचा निलंबन कालावधी देय रजा कालावधी म्हणून नियमित केला आहे.

(iii) निलंबन कालावधी देय रजा व असाधारण रजा म्हणून नियमित करण्यात आल्यानुसार त्यांना अनुज्ञेय होणारे वेतन व भत्ते व इतर बाबी अनुज्ञेय राहतील.

(IV) श्री मेदककर यांचा निलंबन कालावधी देय व असाधारण रजा म्हणून मंजूर करण्यात यावा,

मा. महासमादेशकांचे मान्यतेनुसार.

Hence, this Original Application for following reliefs:-

*i. to quash and set aside the order dated 19.03.2019 (Annexure-1) and the communication dated 18.11.2019 passed by the respondent no. 2 holding it to be illegal and contrary to law;*

*i-a. to quash and set aside the order dated 16.02.2021 (Annexure-16) and the communication dated 16.02.2021 passed by the respondent no. 2 holding it to be illegal and contrary to law;*

*ii. Issue an appropriate writ, order or direction and thereby be pleased to hold that the applicant is entitled to full salary and all other emoluments during the period from 16.01.2003 to 10.01.2011 and direct the respondents to pay all the consequential benefits including pay and pay fixation as if the applicant was never suspended and was continued in the service.*

*iii. Direct the respondents to fix the pay of the applicant in the appropriate pay scale upon calculation of increments, etc. w.e.f. 16.01.2003 and further direct the respondents to give all consequential benefits with arrears of salary as per the 6<sup>th</sup> Pay Commission as well as in terms of the Modified Assured Career Progression Scheme.*

*iv. Direct the respondents to release the benefits of leave encashment for the remaining period of 107 days which were standing to the credit of the applicant at the time of his retirement.*

*v. Issue an appropriate writ, order or direction and thereby direct the respondents that upon granting higher pay scale and increment, revise the pension of the applicant by re-fixing the pay of the applicant and grant arrears arising out of said revision of pay and pension.*

*vi. Issue an appropriate writ, order or direction and thereby direct the respondents to pay revised pension to the applicant upon adding the increment.*

*vii. Grant any other or further relief including costs as may be deemed fit and proper in the facts and circumstances of the case and in the interest of the justice.*

3. In his reply respondent no. 2 narrated the facts about which there is no dispute, and pleaded that these facts shall suffice to dismiss the O.A..

4. The applicant had made representations dated 13.01.2016, 18.01.2017, 07.07.2017, 11.12.2017 and 17.09.2018 (A-12, collectively) to regularize period of his suspension and extend consequential benefits to him.

5. In judgment dated 24.06.2005 the Special Court, while acquitting the applicant, held:-

*(a) Accused was not authorised to issue an order of appointment of homeguard or driver of Shri Choudhary.*

*(b) Accused has disclosed in the note-sheet Exh.20 how Shri Choudhary was liable to deposit the wages of Rs.600/-.*

*(c) Accused in his immediate statement (Exh.78) after trap has reiterated aforesaid defence.*

*24. On all these counts, I am inclined to conclude that the evidence of the prosecution does not inspire credence and confidence, in the light of the aforesaid well founded defence of the accused. With the result, I discard it with no much hesitation and thereby record my findings on these points at once in the negative.*

6. In appeal the Hon'ble High Court held:-

*In so far as merits of the matter is concerned, the accused had immediately given explanation after the trap, that an excess payment was made to the complainant. A complaint was also made by some persons and as such, the complainant was directed to refund excess amount of Rs. 600/- paid to him and that the said amount of Rs. 600/- was towards refund of excess payment. The trial court has found that there was sufficient material regarding last appointment of the complainant for the period from 25-9-2002 to 24-10-2002. A complaint was made by one Shri V.D. Kadam alleging that the complainant was absent from duty from 1-10-2002 to 5-10-2002 and he had illegally obtained wages of Rs. 600/-. A note sheet to the said effect was also prepared by the accused proposing to recover the amount of Rs. 600/-*

*from the complainant. In view of this material on record, the trial court has found that the defence of the accused was a plausible defence and as such, found that the prosecution has failed to prove the case beyond reasonable doubt.*

7. It may be reiterated that by order dated 19.03.2019 (A-1) departmental inquiry proceeding against the applicant was dropped.

8. It was submitted by Shri Kalele, ld. counsel for the applicant that in view of admitted facts of the case period of suspension of the applicant ought to have been treated as duty period, and consequential benefits ought to have been extended to him. In support of this submission reliance is placed on **Uday Ramchandra Potdar Vs. State of Maharashtra 2006 (2) CLR 1084**. In this case it was observed:-

*The learned Counsel appearing on behalf of petitioner also relied upon a judgment of this Court in the case of Dattatraya Vasudeo Kulkarni vs. Director of Agriculture, Maharashtra and others, 1984 Mh.LJ 406 where this Court has observed that the concept of honourable acquittal or full exoneration on benefit of doubt is irrelevant for considering the entitlement of pay for the period of suspension. We need not go to this aspect of the case for the simple reason that factually we have observed that the acquittal of the petitioner in the criminal case was on merits and he was not given any benefit of doubt. In the result therefore petition must succeed and is allowed. The order of the Tribunal as also the order dated 15.2.2001 is set aside and the respondents are directed to pay full wages for the period of suspension i.e. between 10.9.1993 to 11.3.1999.*

I have narrated admitted facts of this case. The Special Court found defence of the applicant plausible. This finding was upheld by the

High Court. Neither the Special Court nor the Appellate Court held that the applicant was to be acquitted by extending him the benefit of the doubt. Consequentially, the ruling in the case of **Uday (Supra)** will apply.

Hence, the order:-

### **O R D E R**

The O.A. is allowed in the following terms:-

The impugned orders are quashed and set aside. Period of suspension of the applicant shall be treated as duty period. He is held entitled to all consequential benefits which shall be paid to him **within three months** from today. No order as to costs.

**Member (J)**

**Dated :- 15/04/2024**

aps

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 : 15/04/2024  
and pronounced on

Uploaded on : 16/04/2024