

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.16 OF 2020**

**(Subject:- Regularization of Suspension Period/Pensionary Benefits)**

**DISTRICT: - Jalna.**

**Sahebrao S/o Saluba Kale,** )  
Age :59 years, Occ- retired Police )  
Head Constable, )  
From Police Head Quarter Jalna, )  
District Jalna. )...**APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra,** )  
Through, Secretary, )  
Home Department, )  
Mantralaya, Mumbai-32. )
- 2. The Director General of Police** )  
Police Head Quarter, )  
Shahid Bhagatsingh Marg, )  
Colaba, Mumbai-400001. )
- 3. The Superintendent of Police,** )  
Jalna, District Jalna. )
- 4. The Special Inspector General of** )  
**Police,** Aurangabad Range, )  
Aurangabad. )..**RESPONDENTS**

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**APPEARANCE** : Shri J.S. Deshmukh, learned Advocate  
for the applicant.  
: Shri M.P. Gude, learned Presenting  
Officer for the respondents.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J)**

**DATE** : **28.06.2022**

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## **ORDER**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned communication dated 21.09.2019 (Annex. 'A-1') issued by the respondent No.3 i.e. the Superintendent of Police, Jalna, District Jalna whereby rejected the request of the applicant to treat the suspension period as duty period as well as seeking direction to the respondents to pay all pensionary benefits to the applicant till the decision of criminal appeal against his acquittal.

2. The facts in brief giving rise to these proceedings can be summarized as follows:-

- (i) The applicant was appointed as a Police Constable in the year, 1982. He was promoted as Police Naik in the year, 2000. Thereafter he was promoted as Police Head Constable in the year, 2003. He retired from that post from Police Head Quarter, Jalna w.e.f. 31.03.2016. While he was working as Police Head Constable, on the basis of complaint lodged with Anti Corruption Bureau against the applicant in respect of allegedly demanding bribe of Rs.3,000/- from one Nikhil Paliwal, Crime no.II-3030/2012 under Section

7,13(1)(d) with 13(2) of Prevention of Anticorruption Act, 1988 was registered against the applicant on 19.05.2012 at Sadar-Bazar Police Station Jalna, District, Jalna. The applicant was arrested in the said crime on 19.05.2012. In view of registration of said crime, the respondent No.3 issued suspension order dated 21.05.2012 (Annex. 'A-2') of the applicant as per Rule 3(1) (A-2) (1-A) (1) (b) of Bombay Police (Punishment & Appeals) Rules, 1956.

- (ii) In respect of abovesaid crime, Special Case No.06/2012 was pending against the applicant at Jalna. The applicant was reinstated in service w.e.f. 31.03.2016 subject to the decision in Criminal Case pending against him. The applicant was acquitted in the said criminal case vide judgment and order dated 11.02.2019 (Annex. 'A-3') passed by the Special Judge and Additional Session Judge, Jalna. The applicant retired on superannuation w.e.f. 31.03.2016. Thereafter, he received only provisional pension w.e.f. 01.04.2016. No other pensionary benefits were paid to him. The applicant made representations dated 22.05.2019 and 01.07.2019 (Annex. 'A-4' collectively) to the respondent No.3 and requested to treat his

suspension period from 19.05.2012 to 24.02.2016 as duty period and release pensionary benefits. The respondent No.3 rejected the said representations of the applicant vide impugned communication dated 21.09.2019 (Annex. 'A-1') and thereby refused the request of the applicant to treat his suspension period as duty period as the Criminal Appeal is pending against the applicant before the Hon'ble High Court. The applicant is also not paid pensionary benefits on the ground that Criminal Appeal is pending.

- (iii) It is contended that the respondent No.1 Government in similarly situated circumstances regularized the suspension period of an Additional Government Pleader Shri Ashok Sasne vide order dated 06.09.2018 (part of Annex. 'A-5' collectively) and paid him all the consequential retiral benefits by taking undertaking from him that if the Government succeeds in criminal appeal filed against him before Hon'ble High Court, he will return the amounts paid to him. So also the Superintendent of Police, Ahamadnagar vide order/communication dated 27.08.2018 regularized the suspension period of Police Constable named Balkrishna Daund, who is similarly situated person.

- (iv) In identical matter bearing O.A. No.511/2018, this Tribunal vide order dated 29.11.2018 (Annex. 'A-6') directed respondents to pay all retirement benefits to the applicant therein along with consequential benefits with interest and also directed to take decision in respect of suspension period of the applicant therein.
- (v) In the circumstances as above, it is the contention of the applicant that this is a fit case to direct the respondents to treat his suspension period as duty period and release all pensionary benefits.

3. Affidavit-in-reply is filed on behalf of the respondent Nos.3 and 4 by one Abhay Bhaskar Deshpande working as Home Deputy Superintendent of Police, Jalna, District Jalna. Thereby he denied all the adverse contentions raised in the Original Application. It is specifically stated that the applicant was arrested in Crime No.3030/2012 registered under Section 7,13(1) (d) with 13 (2) of Prevention of Corruption Act, 1988 on 19.05.2012 at Police Station, Ambad. The impugned communication/ order dated 21.09.2019 (Annex. 'A-1') is passed only in view of pendency of Criminal Appeal filed by the State against the order of acquittal of the applicant. In view of that only, the applicant has not been paid regular pay and allowances during suspension period and pensionary benefits. It will be difficult for the respondents to

recover the amount if paid in the eventuality of succeeding in the Criminal Appeal.

4. I have heard at length the arguments advanced by Shri J.S. Deshmukh, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer for the respondents on other hand.

5. Undisputedly the applicant was suspended vide order dated 21.05.2012 (Annex. 'A-2') as per 3(1)(A-2)(1-A)(1)(b) of Bombay Police (Punishment & Appeals) Rules, 1956 in the background of registration of Crime No.II-3030/2012 at Sadar-Bazar Police Station, Jalna against the applicant under Section 7,13 (1) (d) with 13 (2) of Prevention of Corruption Act, 1988. The said suspension was revoked and the applicant was reinstated in service w.e.f. 31.03.2016 subject to the decision in Criminal Case pending against him. In this Original Application, the relief is sought for regularization of suspension period and payment of pay and allowances by quashing and setting aside the impugned communicated dated 21.09.2019 (Annex. 'A-1') issued by the respondent No.3 whereby the request of the applicant to treat his suspension period as duty period in view of his acquittal in Criminal case by judgment and order dated 11.02.2019 passed in Special Case No.06/2012 (Annex. 'A-3') was turned down.

6. The regularization of suspension period and payment of pay and allowance is governed by Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 as well as Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Rule 72 (3) thereof specifically provides regularization of suspension period with full pay and allowances, if the competent authority is of the opinion that the suspension is wholly unjustified. Rule 72 (4) provides that in a case falling under Sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes. Relevant interpretation of abovesaid Sub-Rules is, however, denied by the impugned communication dated 21.09.2019 (Annex. 'A-1') issued by the respondent No.3 contending that Criminal Appeal filed by the State against the judgment and order of acquittal of the applicant dated 11.02.2019 in Special Case No.06/2012 is pending. I have to examine whether this impugned communication/order is legal and proper.

7. Perusal of concerned Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 as well as Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 would show that there is no provision thereof withholding regularization of suspension period and payment of pay and allowances and

requisite pensionary benefits in case the Criminal Appeal against the order of acquittal is pending.

8. Learned P.O. for the respondents, however, resisted the contention of the applicant and submitted that the appeal is a continuation of original proceeding and therefore, it cannot be said that the suspension was wholly unjustified as contemplated under Rule 72 (3) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 in order to release full pay and allowances to the applicant treating suspension period as period spent on duty.

9. Learned Advocate for the applicant in this regard submitted that there is no specific provision vesting powers in respondents to withhold the benefit of full pay and allowances and the pensionary benefits when the applicant is acquitted in Criminal Case. By taking requisite undertaking from the applicant, the respondents can be directed to release the full pay and allowances for suspension period treating suspension period as period spent on duty and requisite pensionary benefits in view of acquittal of the applicant in a Criminal Case. To drive home the said submissions, he placed reliance on following citations:-

- (1) **Writ Petition No.6540 of 2018** decided on 26.10.2018 by the Hon'ble High Court of Judicature at



Bombay Bench at Aurangabad in the matter of **Govind Baliram Gurav Vs. the State of Maharashtra & Ors.**

In the said citation case, the pensionary benefits of the applicant therein, who was serving in Police Department were withheld as the Criminal Appeal against the order of acquittal was pending. The applicant filed Original Application claiming interest on delayed payment and pensionary benefits before Maharashtra Administrative Tribunal Bench at Aurangabad. The said Original Application was partly allowed granting pensionary benefits but the interest on delayed payment was not granted. In Writ Petition, the interest on delayed payment was granted attributing administrative lapse.

(2) **Writ Petition No.6650 of 2020** decided on 25.10.2021 by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in the matter of **Ashfakali Khan Abdulali Khan Vs. the State of Maharashtra & Ors.**

In the said citation case, pensionary benefits were withheld in view of pending Criminal Case under Prevention of Corruption Act, 1988 against the applicant therein. The applicant was subsequently acquitted and the State filed Criminal Appeal against the order of acquittal. It is held that the pensionary benefits can be released to the applicant by taking requisite undertaking from

the applicant of refunding the amount in case acquittal is converted into conviction in appeal proceeding.

10. In view of abovesaid citations case, if the facts of the present case are considered, it is seen that in the first place there is no specific bar in releasing requisite pay and allowances for suspension period when the suspension period is said to be wholly unjustified and requisite pensionary benefits based on acquittal on the ground that Criminal Appeal is pending. Moreover, the ratio in the abovesaid citation is that such pay and allowances can be released by taking requisite undertaking from the applicant for refund of the same in case the appeal against the acquittal is converted into conviction while deciding the Criminal Appeal.

11. In the circumstances the impugned communication/order dated 21.09.2019 (Annex. 'A-1') issued by the respondent No.3 is liable to be quashed and set aside and this petition can be disposed of by giving suitable directions to the respondents. I therefore proceed to pass the following order:-

### **ORDER**

The Original Application is allowed in following terms:-

- (A) The impugned order dated 21.09.2019 (Annex. 'A-1') issued by the respondent No.3 i.e. the Superintendent of Police, Jalna is hereby quashed and set aside.

- (B) The respondent No.3 is directed to consider the claim of the applicant of regularizing the suspension period from 19.05.2012 till 24.02.2016 and to order payment of pay and allowances in accordance with law and more particularly according to Rule 72(3) and (4) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 in view of the applicant's acquittal vide judgment and order dated 11.02.2019 passed in Special Case No.06/2012 and also to release all the admissible pensionary benefits together with interest admissible under Rule 129 (A) and 129 (B) of the Maharashtra Civil Services (Pension) Rules, 1982 within three months from the date of this order by taking requisite undertaking of refund of the amount of such amount in case of conversion of acquittal into conviction in pending Criminal Appeal.
- (C) No order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place :- Aurangabad**  
**Date :- 28.06.2022**  
SAS O.A.16/2020