

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 268/2018(D.B.)**

Shri Ramsare S/o Chaturi Yadav,  
Aged : 65 Years, Occu : Nil(Retired),  
R/o New Subedar Layout, Mahewada Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra through  
The Principal Secretary,  
Ministry of Home,  
Mantralaya, Mumbai -400 032.
- 2) Director General of Police,  
Maharashtra State,  
Shaheed Bhagat Marg, Kolaba,  
Mumbai-400 001(MS).
- 3) The Commissioner of Police,  
Civil Lines, Nagpur.
- 4) Accountant General Maharashtra,  
Civil Lines, Nagpur.

**Respondents**

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Shri A.H.Jamal, Ld. counsel for the applicant.  
Shri A.P.Potnis, Ld. P.O. for the respondents.

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

**Dated: - 28<sup>th</sup> September 2022.**

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**JUDGMENT****Per :Member (I).****Judgment is reserved on 08<sup>th</sup> September, 2022.****Judgment is pronounced on 28<sup>th</sup> September, 2022.**

Heard Shri A.H.Jamal, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the Respondents.

2. Facts leading to this O.A. are as follows.

In October, 2003 the applicant was attached to Lakadganj Police Station, Nagpur as A.S.I. One Nishikant Tiwari was also attached to the said Police Station as a Police Constable. One Ashatai Fulzele filed a complaint against them that they had demanded bribe from her. Trap was laid by the A.C.B. They were trapped. Crime No.3249/2003 was registered against them under Sections 7, 12, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. They were arrested. By order dated 16.03.2003 (Annexure A-1) they were placed under suspension. Special case no. 04/2004 was registered against them. They were tried, convicted and sentenced by the Special Court. Pursuant to this judgment and order dated 18.08.2008 they were served with a show caused notice. They submitted their explanation. It was found to be unsatisfactory. Hence, by order dated 04.08.2008 (Annexure A-2) they were dismissed. Period of their suspension till the date of dismissal was directed to be treated as such. Against their

conviction and sentence they filed Criminal Appeal No.98/2008 in the Hon'ble High Court. During the pendency of the appeal the applicant stood retired on 31.03.2012 on superannuation. By judgment and order dated 08.01.2015 (Annexure A-3) Criminal Appeal No.98/2008 was allowed by quashing and setting aside the order of conviction and sentence dated 18.08.2008. The Appellate Court held that the charge was not proved beyond reasonable doubt. On 24.06.2016 order (Annexure A-4) was passed as under in respect of the applicant-

-: आदेश :-

कार्यालयीन आदेश पोआना/१०(ब)/वि.चौ./सेवा काला यादव/४७२८/१०१६,  
दिनांक ०६/०४/२०१६ अन्वये माजी स.फौ./१८०७ रामआसरे चतुरी यादव, नेमणुक पो.  
स्टे.लकडगंज (दिनांक ३१/३/२०१२ रोजी सेवानिवृत्त) यांचा दिनांक ०४/०८/२००८ ते  
३१/३/२०१२ पर्यंतचा सेवाबाह्य कालावधी “फक्त सेवानिवृत्ती वेतनाकरिता सर्व प्रयोजनार्थ  
कर्तव्य काल” म्हणुन मंजुर करण्यांत आल्याने त्यांना दिनांक ०४/०८/२००८ ते  
३१/३/२०१२ पर्यंतच्या वेतनवाढी कालपनीक रित्या मंजुर करण्यांत येत आहे.

On 18.11.2017 the following order (Annexure A-5) was passed-

कार्यालयीन आदेश पोआना/१०(ब)/वि.चौ./सेवा काला यादव/४७२८/२०१६, दि.  
०६/४/२०१६ अन्वये माजी स.फौ./१८०७ रामआसरे चतुरी यादव, नेमणुक पो.स्टे.लकडगंज  
(दिनांक ३१/३/२०१२ रोजी सेवानिवृत्त) यांचा दिनांक ०४/०८/२००८ ते ३१/३/२०१२ पर्यंतचा  
सेवाबाह्य कालावधी “फक्त सेवानिवृत्ती वेतनाकरिता सर्व प्रयोजनार्थ कर्तव्य काल” म्हणुन मंजुर  
करण्यांत आल्याने महालेखाकार (लेखा व हकदारी) II महाराष्ट्र, नागपूर यांचे जावक क.पीआर  
-९/आर-५/१०१६१७०७७४/६०२७४९२५/१२०४ दि.१७/०१/२०१७ अन्वये त्यांची १०२३०+

२८०० = १३०३० पेंशन मध्ये तफावत दिसून येत असल्याचे नमुद केले असल्याने त्यांची या कार्यालयाचे आदेश क्रमांक पोआना /आस्था/सआलि-३/सुवेनि/सफौ-१८०७/२०१६/ नागपूर शहर दिनांक २४/०६/२०१६ अन्वये केलेल्या वेतननिश्चितीचा आदेश रद्द करून खालील प्रमाणे सुधारीत वेतन निश्चिती करण्यात येत आहे.

Representations dated 16.05.2017 and 07.09.2017 (Annexure A-6) made by the applicant went unheeded whereunder the applicant had claimed all consequential benefits flowing from his acquittal in appeal. Such benefits were extended to similarly placed Police Personnel viz. Police Constable Sahadeo Baban Mohod and P.S.I. Santosh Dalpat Patil by orders which are at Annexures A-7 and A-8, respectively. Nishikant Tiwari who was the co-accused / co-convict /co-appellant who, like the applicant, had not attained the age of superannuation was reinstated on 29.02.2016 but while doing so the period of suspension and dismissal were directed to be treated as such by the Disciplinary Authority and reinstatement was made subject to the right of the respondent to initiate Departmental Enquiry. No Departmental Enquiry, however, was initiated either against Nishikant Tiwari or the applicant. In this factual background Nishikant Tiwari filed O.A.No.806/2015. It was allowed by this Tribunal by judgment and order dated 13.01.2020. The respondents were directed to pay the full salary for the period of suspension (after deducting subsistence allowance already paid therefrom) and the salary for the period during which order of his dismissal was in subsistence – till the date of his reinstatement. According O.A.No.268/2018

to the applicant, in the aforesaid factual background and also having regard to the legal position governing the issues involved in the matter, he would be entitled to the following reliefs-

**A] To quash and set aside the Orders dated 24-06-2016 and 18-11-2017 issued by the Assistant Commissioner of Police regarding fixation of pay and treating the said period 04-08-2008 to 31-03-2012 on duty without giving any benefits, back wages, consequential benefits, the said period will be counted for deciding the pension only and benefits viz. wages etc. will not be given for the said period.**

**B] Hold that the applicant is entitled to retiral benefits, revised pension, full backwages, increments, further promotions and all the consequential benefits as if the impugned suspension order dated 16-10-2003 issued by the respondent no.3 and order dated 04-08-2008 dismissing him from the service are not issued to the applicant.**

3. Respondent no.3 has resisted the O.A. by filing reply which is at pp.44 to 49, on the ground that acquittal of the applicant was on account of the benefit of doubt, it was not an honourable acquittal and considering the nature of allegations the competent authority was fully justified under the

relevant rules in directing that the period of suspension shall be treated as such.

4. Order dated 06.04.2016 (Annexure R-1) which gives the complete chronology, is as under-

माजी स.फौ. रामआसरे चतुरी यादव हे सेवेत असतांना त्यांचे विरुद्ध पो.स्टे.लकडगंज येथे अप.क्र.३२४९/०३ कलम ७,१२,१३(१)(ड)सह कलम १३ (२) ला.प्र.का.१९८८ अन्वये गुन्हा दाखल झाला होता. त्या अनुषंगाने त्यांना दिनांक ५.१०.२००३ पासून निलंबित करण्यात आले होते. सदर गुन्ह्याचा निकाल दिनांक १६.२.२००८ रोजी झाल्याने त्यांना मा. अतिरिक्त विशेष न्यायाधिश नागपूर यांनी कलम ७ मध्ये एक वर्ष शिक्षा व ५००/- दंड व दंड न भरल्यास ३ महीने शिक्षा, आणि कलम १३(१)(२) मध्ये दोन वर्ष शिक्षा व १०००/- रुपये दंड व दंड न भरल्यास ६ महीने शिक्षा अशी शिक्षा सुनावल्याने त्यांना या कार्यालयाचे अंतिम आदेश क्र.पोआना/१०(ब)/वि.चौ./१८०७/३९१/२००८, दिनांक ४.८.२००८ अन्वये शासकीय सेवेतून बडतर्फ हि शिक्षा देण्यात आली होती.

अपचारी यांनी मा.अतिरिक्त विशेष न्यायाधिश नागपूर यांनी सुनावलेल्या शिक्षेविरुद्ध मा.उच्च न्यायालय खंडपीठ नागपूर येथे क्रिमिनल अपील क्र.९८/०८ दाखल केली असता मा. उच्च न्यायालय मुंबई खंडपीठ नागपूर यांनी दिनांक ८.१.२०१५ रोजी दिलेल्या न्यायनिर्णयात त्यांना दोषमुक्त केले आहे. जर अपचारी यांना बडतर्फ केले नसते तर ते नियत वयोमानानुसार दिनांक ३१.३.२०१२ रोजी सेवानिवृत्त झाले असते.

महाराष्ट्र शासन सामान्य प्रशासन विभाग, शासन निर्णय क्र. सीडीआर-१०८२/३३६२/६९/अकरा दि.१२ जून १९८६ अन्वये २ (अ) मध्ये दिलेल्या तरतुदीनुसार, तसेच महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीयेत्तर सेवा, आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे याच्या काळांतील प्रदाने) नियम १९८१ मधील नियम ७० (१)(२) नुसार माजी सहा. फौजदार रामआसरे चतुरी यादव याचा दिनांक ४.८.२००८ ते ३१.

३.२०१२ पर्यंतचा सेवाबाह्य कालावधी, फक्त सेवानिवृत्ती वेतनाकरिता सर्व प्रयोजनार्थ कर्तव्य काळ म्हणुन मंजूर करण्यांत येत आहे. तसेच त्यांची दोषमुक्तता सन्मानाय नसल्याने त्यांना सेवाबाह्य कालावधीचे कोणतेही वेतन व भत्ते मंजूर केले जाणार नाही.

5. In addition to the aforementioned chronology, there appears to be no dispute so far as the following facts are concerned-

- (1) The judgment and order dated 08.01.2015 passed in Criminal Appeal No.98/2008 has attained finality for want of challenge.
- (2) After the order of conviction passed against the applicant and Nishikant Tiwari was set aside in appeal, the order dated 06.04.2016(Annexure R-1) was directly passed.
- (3) There is nothing on record to show that before passing the order dated 06.04.2016 opportunity of hearing was given to the applicant.
- (4) During pendency of Criminal Appeal No.98/2008 the applicant stood retired on superannuation on 31.03.2012. However, the co-accused Nishikant Tiwari had not attained the age of superannuation at this point of time. Pursuant to the order passed in appeal he was reinstated on 29.02.2016 but his period of suspension and dismissal were directed to be treated as such. By this order the respondent had also kept their right of initiating Departmental Enquiry intact.

- (5) However, such Departmental Enquiry was never initiated either against the applicant or Nishikant Tiwari.
- (6) Nishikant Tiwari filed O.A.No.806/2015 in this Tribunal. It was his grievance that period of his suspension and dismissal ought not to have been treated as such. This Tribunal accepted said contention and allowed the O.A.
- (7) The judgment dated 13.01.2020 passed by this Tribunal in O.A.No.806/2015 filed by the co-accused Nishikant Tiwari appears to have attained finality. While allowing the O.A. this Tribunal observed and held-

**7. The legal position is that a Government servant, who is convicted by the Trial Court and later on acquitted by the Appellate Court, is entitled to claim backwages if the departmental inquiry is not conducted by the Department. As per the legal provisions, even though the applicant was acquitted in appeal by the Hon'ble High Court, it was open to the respondents to initiate the departmental inquiry, but it was not done. The learned P.O. has produced the letter dated 6/1/2020 forwarded by the Deputy Police Commissioner, Head Quarters, Police Commissionerate, Nagpur. In this letter, it is informed that preliminary inquiry initiated against the applicant was closed, consequently, there would be no disciplinary inquiry against the applicant. After reading this letter, it seems that two buckle numbers of the applicant are mentioned.**

The present buckle number is 5717 and old buckle number is 391. After reading the letter, it is clear that the respondents have now decided not to initiate the disciplinary inquiry. In view of this, what was the reason to change the buckle number of the applicant is not explained. Similarly, as decision is taken by the respondents not to initiate the disciplinary inquiry against the applicant, it was necessary for the respondents to decide the nature of the period of suspension and period of dismissal. As disciplinary inquiry was not conducted therefore, there is no material available with the respondents to justify that the applicant was rightly suspended from the service and his dismissal was also just.

8. The learned counsel for the applicant submitted that in this situation, in view of the law laid down in Civil Appeal No.3339/2019 arising out of SLP (Civil) No.100/2016 decided on 1/4/2019 by the Hon'ble Apex Court the applicant is entitled for the wages, for the period of suspension and also for the period of his dismissal and till his reinstatement in service.

9. We have gone through this Judgment and in para-7 of the Judgment, the Hon'ble Apex Court has observed as under -

*"7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on*

*21.10.1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.”*

10. The Hon'ble Apex Court held that in the matter before it, as the disciplinary inquiry was dropped, therefore, the Government servant was entitled for the full backwages. Once the applicant is acquitted by the Hon'ble High Court and decision is taken by the respondents not to conduct disciplinary inquiry, the consequence is that the action of the respondents treating period of suspension and period of dismissal as such is absolutely illegal. We, therefore, hold that the applicant is entitled for the full backwages as he was prevented by the respondents from joining duty even after his acquittal by the Hon'ble High Court.

6. The respondents, on the other hand, have relied on "Vasant Krushnaji Kamble versus State of Maharashtra and Another 2003] Maharashtra Law General 606 (Bombay High Court)". In this case the facts were set out as under-

*2. The case of the petitioner was that he was appointed as a primary teacher in 1960. He was served with a show cause notice on August, 19, 1986 inter alia alleging therein that he had issued forged passing certificates in favour of certain students who had in fact failed and received certain amounts from them. The petitioner was, therefore, called upon to give reply. The petitioner admitted the charge levelled against him. He was also placed under suspension. No departmental inquiry, however, was instituted against the petitioner. A criminal case was filed against him being Criminal Case No. 19 of 1988. He was, however, allowed*

*to resume duty in 1996 subject to the result in criminal case. In 1996, the petitioner was acquitted by a criminal Court.*

*3. On march 8, 2000, again, a notice was issued to the petitioner to show cause why the period of suspension of the petitioner, should not be treated "as such" i.e. period of suspension. In reply to the said notice, the petitioner clarified that though he had admitted the allegations levelled against him and receipt of the amount from students, it was under duress and coercion and the admission was not voluntary. By the impugned order, the period of suspension of the petitioner had been ordered to be treated as such. It was stated that since the show cause notice was issued and the petitioner had admitted the allegation, the period of suspension between 1986 and 1996 must be treated 'as such'. It was also observed that the petitioner was acquitted as there was no sufficient evidence to connect him with the crime.*

It was then held-

**5. So far as criminal case is concerned, it is no doubt true that petitioner was acquitted by a competent Court. But in our opinion, it was open to the authorities to pass an appropriate order keeping in mind the provisions of Maharashtra Civil Services (Joining Time, Foreign Service, and Payment during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as "the Rules"). The relevant Rule is Rule 72 which provides for reinstatement of a Government servant after suspension. A specific order of the competent authority regarding payment of**

allowances etc. and computation of period as spent on duty is required to be passed. Sub-rules (3) and (5) of Rule 72 are relevant and may be quoted in extenso:

*(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provision of Sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended.*

*Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty 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 Government 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.*

*(5) In cases other than those falling under Sub-rules (2) and (3) the Government 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 Government 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 sixty days from the date on which the notice has been served, as may be specified in the notice". (Emphasis supplied)*

7. In the facts and circumstances, though a criminal case was instituted against the petitioner, and he was acquitted by the court, keeping in mind the admission in response to the show cause notice that the allegations were true, if an order was passed, it cannot be said that such an order could not have been made by the authority or suspension was "wholly unjustified".

7. The respondents have also relied on *"Krishnakant Raghunath Bibhavnekar Vs State of Maharashtra and Others."* (Judgment dated 28.02.1997 delivered by the Hon'ble Supreme Court) wherein it is held-

*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 backwages etc. cannot be as a matter of course. We think that it would be 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 is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principles 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 a discretion to the disciplinary authority.*

8. In both the judgments sought to be relied upon by the respondents it is *inter alia* reiterated that before passing the order of treating the period of suspension as such opportunity of hearing must be given so as to ensure observance of principles of natural justice. This has not been done in the instant case. Therefore, said rulings will not help the respondents. In addition, the judgment dated 31.01.2020 in O.A.No.20/2016 filed by the co-accused Nishikant Tiwari appears to have attained finality. The applicant

cannot, under the circumstances, be denied benefit of parity. These circumstances and the admitted/undisputed facts of the case lead us to conclude that the O.A. deserves to be allowed in the following terms. Hence, the order.

**ORDER**

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

Order dated 06.04.2016 (Annexure R-1) as well as consequential orders dated 24.06.2016 (Annexure A-4) and 18.11.2017 (Annexure A-5) are quashed and set aside. The applicant is held entitled to get full salary for the period of his suspension (after deducting the subsistence allowance already received /paid) as well as full salary for the period during which order of dismissal was subsisting i.e. till the date of his retirement on superannuation. This payment shall be made within 3 months from today. No order as to costs.

(M.A.Lovekar)  
Member (J)

(Shree Bhagwan)  
Vice Chairman

Dated – 28/09/2022

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

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Vice Chairman &  
Court of Hon'ble Member (J) .  
Judgment signed on : 28/09/2022.  
and pronounced on  
Uploaded on : 28/09/2022.