

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 756 of 2016**

Suresh Natthuji Dayare,
Aged about 47 years, Occ. Service,
R/o Behind Municipal Hospital,
Mondha, Kamptee, Tahsil Kamptee,
District Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Additional Chief Secretary,
Home Department, Mumbai-32.
- 2) The Director General of Police,
M.S. Shahid Bhagatsingh Marg,
Colaba, Mumbai.
- 3) The Superintendent of Police,
Nagpur Rural, Civil Lines, Nagpur.

Respondents.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Khadatkhar, P.O. for the respondents.

WITH**ORIGINAL APPLICATION No. 757 of 2016**

Mahendrasing Udalsing Gaur,
Aged about 49 years, Occ. Service,
R/o Plot No.92/93, Jaidurga Nagar,
Zingabai Takali, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Additional Secretary,
Home Department,
Mantralaya, Mumbai-32.

- 2) The Director General of Police,
M.S., Shahid Bhagatsingh Marg,
Colaba, Mumbai.
- 3) The Superintendent of Police,
Nagpur Rural, Civil Lines, Nagpur.

Respondents.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Khadatkhar, P.O. for the respondents.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri Anand Karanjkar, Member (J).**

COMMON JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 11th day of March,2019)

Heard Shri D.M. Kakani, learned counsel for the applicants and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2. As both the applicants were co-accused in the criminal trial and the charges against them were same, both the applicants faced the departmental inquiry on same set of facts and the punishments awarded are the same, therefore, both these applications are decided by this common Judgment.

3. The material facts of the case are on 18/5/2003 one Bhushan Humane (who is referred hereinafter as deceased) was arrested by the applicants. On 19/5/2003 proceeding under section

110 of Cr.P.C. was initiated against the deceased, he was produced before the ACP/ Executive Magistrate and he was remanded to judicial custody. On 19/5/2003 the deceased was handed over to the Jail Authorities and later on the deceased died in the Jail on 22/5/2003.

4. On account of death of deceased there was agitation and demand of action against the police. It was alleged that the deceased died as a result of subdural haemorrhage and injuries to his internal organs and it was due to injuries caused by the applicants and other police officers when the deceased was in their custody. Thereafter the FIR was registered against the police officers, the applicants were also named in the FIR. Thereafter there was investigation and charge sheet was submitted against the applicants and other police officers.

5. The matter was reported to the disciplinary authority and as a result vide order dated 5/5/2003 (Annex-A-4) the applicants were suspended. Thereafter on 9/1/2004 the applicants were reinstated in service. The departmental inquiry was initiated, the Dy.S.P. conducted the inquiry, he submitted his report vide Annex-A-6 dated 28/9/2004. The second show cause notice was issued to the applicants dated 25/10/2004 (Annex-A-7). The applicants submitted reply to the second show cause notice and thereafter the Disciplinary

Authority respondent no.3 held that the applicants were guilty of the misconduct and awarded punishment to stop one increment of the applicants for a period of one year.

6. The applicants challenged this order passed by the Disciplinary Authority by preferring appeal before the Spl. IGP Nagpur. The Spl. IGP vide order dated 1/3/2006 allowed the appeal and observed that misconduct of the applicants was not proved and consequently set aside the punishment.

7. Thereafter the applicant Shri S.N. Dayare came to be promoted as Police Naik vide order dated 2/3/2009 (Annex-A-21). The criminal case was decided by the learned ad-hoc Additional Sessions Judge Court No.2, Nagpur and the applicants were convicted under sections 304 A part-II r/w 34 of IPC and they were sentenced to suffer RI for three years and to pay fine of Rs.5,000/- each. The applicants preferred appeal before the Hon'ble High Court, in the meantime after the conviction of the applicants by the learned ad-hoc Additional Sessions Judge Court No.2, Nagpur, the applicants were dismissed from service by the respondent no.3, vide order Annex-A-13 dated 17/6/2009.

8. The Hon'ble High Court allowed the criminal appeal preferred by the applicants on 11/3/2015, vide Judgement Annex-A-14 and acquitted the applicants of the charges and after acquittal the

applicants requested the respondents to reinstate them in service and to treat the period of suspension and dismissal as duty period and give them benefit of continuity, back wages etc. In these applications it is grievance of the applicants that the respondent no.3 without considering the legal provisions passed the order dated 21/8/2015 (Annex-A-1) and observed that the case was covered under rule 70 (4) & (5) of Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 (in short "MCS (Joining time...) Rules,1981") and it was held that the applicants were entitled for 50% of back wages and allowances for a period preceding three years before their reinstatement in service. The applicants challenged this order before the Spl. IGP, Nagpur but the authority did not consider the contention of the applicants and dismissed the appeal, therefore, it is submitted that the impugned orders passed by the respondents are illegal, they be quashed and set aside. The suspension period and dismissal period be treated as duty period and all consequential benefits be given to them. The applicant Dayare in addition submitted that he was already promoted on the post of Police Naik but after setting aside the dismissal he was reinstated on a post of Police Constable and therefore it is apparent illegality in this matter. It is submitted that the applicant Shri Dayare be reinstated on the post of Police Naik.

9. We have gone through the reply submitted by the respondent no.3 on behalf of all respondents. The reply is at page no.178 of the P.B. The respondents have justified the action and it is submitted that after acquittal of the applicants they are reinstated in service and as per the provisions of the MCS (Joining time...) Rules,1981 the respondent no.3 has rightly passed the order and there is no error in it . It is submitted that there is no substance in the applications as the orders are passed by the respondent no.3 are in pursuance of rule-70 (4) & (5) of the MCS (Joining time...) Rules,1981, therefore, applications are liable to be rejected.

10. We have heard submissions on behalf of the applicants and on behalf of the respondents. After perusing all the documents it seems that as the charge sheet was submitted against the appellants, the applicants were suspended and the departmental inquiry was commenced. In the departmental inquiry it was held that the misconduct of the applicants was proved and consequently the disciplinary authority passed the order dated 24/11/2004 and directed to stop one increment for a period of one year and it was also held by the disciplinary authority that the suspension period be treated as suspension.

11. Here it is pertinent to note that the departmental appeal was preferred by the applicants and it was decided by the Spl. IGP,

Nagpur. The learned Spl.IGP, Nagpur has observed in Annex-A-10 order dated 1/3/2006 that the charges against the applicants were not proved and therefore the punishment awarded by the respondent no.3 was liable to be set aside as it was not in accordance with law. The learned Spl. IGP, Nagpur consequently quashed the punishment awarded by the respondent no.3.

12. It further appears that the learned ad-hoc Additional Sessions Judge, Court No.2, Nagpur convicted the applicants on 2/5/2009 for offence punishable under section 304 part-II of IPC. In view of this order the disciplinary authority without conducting the inquiry, as the applicants were convicted by the Court dismissed both the applicants from service vide order dated 17/6/2009. The applicants preferred appeal before the Hon'ble High Court, the criminal appeal was decided on 11/3/2015 and both the applicants were acquitted. After acquittal by the Hon'ble High Court the requests of the applicants were accepted and both the applicants were reinstated in service. It is important to note that vide order dated 10/7/2015 at Annex-A-15 both the applicants were reinstated in service. In the order it was observed that the decision will be taken regarding the period of dismissal independently in view of rule-70 of the MCS (Joining time...) Rules,1981. Thereafter the respondent no.3 passed the impugned order and directed that the applicants services be treated as continuous only for the purposes of pension

and not for any other benefits. It was directed that the applicants were entitled to 50% of back wages and allowances for the period of three years preceding their reinstatement in service.

13. It is submission of the learned counsel for the applicants that this approach of the respondent no.3 was contrary to the provisions under rule 70 of the MCS (Joining time...) Rules,1981. It is wrongly held by respondent no.3 that the case was covered under rule 70 (4). It is submitted that on the contrary the case was covered under rule 70 (2). It is submitted that as per rule 70 (2) as in consequence of the conviction the applicants were dismissed from the service without conducting disciplinary authority the applicants were entitled to be reinstated in service on the same post together with all the benefits as provided under rule 70 (2).

14. In order to examine the correctness of the submissions it is necessary to read the provisions under 70 (2), rule 70 (4) & (5) of the MCS (Joining time...) Rules,1981.

“70. 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 re-instated.

2. Where the authority competent to order re-instatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired

or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of 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, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

4. In a cases other than those covered by sub-rule (2), (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held the Government servant shall, subject to the provisions of sub-rules (6) and (7) ,be paid such proportion of the full pay and allowances to which he would have been entitled., had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement,. as the case may be, 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.

Provided that payment under this sub-rule to a Government servant (other than Government who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936) shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority, or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.

5. In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not 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 Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant”.

15. After reading the rules reproduced above, it must be mentioned that the present applicants were dismissed only on the basis of the conviction, they are now reinstated in service as a result of their acquittal in appeal. The important question is whether this amounts to full exoneration of the applicants. In this case facts are that the departmental inquiry was completed before the decision of the criminal case which was pending against the applicants. In the departmental inquiry the respondent no.3 accepted the report of the Inquiry Officer and awarded punishment to stop one increment for a period of one year. In the departmental appeal the Spl.IGP specifically observed that there was no evidence for holding that the applicants were guilty of any misconduct and consequently he allowed the departmental appeal and quashed the order passed by the respondent no.3. It is pertinent to note that the respondents never disputed this order at any time.

16. It is important to note that after conviction of the applicant by the learned ad-hoc Additional Sessions Judge, Court no.2, Nagpur the applicants were dismissed from the service. Thereafter the

Hon'ble High Court allowed the appeal and acquitted the applicants, consequently the applicants are again reinstated in service by the department. It is pertinent to note that even after acquittal of the applicants the disciplinary authority did not make any issue whether it was necessary to conduct further inquiry against the applicants, therefore, now the fact remains that the applicants are fully exonerated of the misconduct for which punishment was awarded in the departmental inquiry and for which the applicants were prosecuted in the criminal court. In view of this we are of the view that case was fully covered under rule 70 (2) of the MCS (Joining time...) Rules,1981.

17. Though it is observed by the respondent no.3 in the order that the case was covered under rule 70 (4) & (5) of the MCS (Joining time...) Rules,1981 but after reading those rules we are unable to accept that the case was covered under rule 70 (4) & (5).

18. Now the material question is whether the applicants are entitled for all the reliefs which are claimed. It is pertinent to note that once it was held by the Appellate Authority that there was no evidence against the applicants and quashed the punishment awarded by the respondent no.3, the effect is that there was no justification to say that the suspension of the applicants was for just cause. Secondly even though the applicants were convicted and

now they are acquitted, but there is nothing on record to show that there was any justification for the conviction or the dismissal. The rule of double jeopardy is also applicable to departmental inquiries by application of this rule once the departmental inquiry was conducted, the witnesses were examined and decision was taken in the inquiry and consequently the decision taken by the disciplinary authority was quashed and set aside by the appellate departmental authority, now it is not permissible to re-open the same questions of fact i.e. the same misconduct, therefore, we are of the view that this case was apparently covered under rule 70 (2) and the applicants were entitled for the benefits i.e. full wages and allowances of the suspension period, the continuity in service for all the purposes.

19. So far as back wages are concerned, in view of language used in rule 70 (8), we are of the view that it was necessary for the applicants to plead and prove that during period of dismissal the applicants were out of employment, but the applicants failed to establish this fact. There is no allegation in the applications that the applicants were not in employment during period of dismissal, therefore, we are of the view that the principle 'no work no pay' is very much attracted to present situation, consequently the applicants are not entitled for any back wages for the period of dismissal.

20. So far as contention of Shri Dayare regarding his promotion as Police Naik is concerned, we would like to point out that the applicant Shri Dayare was promoted on temporary basis, he was dismissed from the service, therefore, he cannot claim the promotional post as of right. In view of the above discussion, we hold that the applicant Shri Dayare is not entitled for this relief. In result, we pass the following order –

ORDER

- (i) Both the O.As. are partly allowed.
- (ii) The impugned orders dated 17/8/2015, 18/1/2016 are hereby set aside. We direct that the applicants are entitled for the full pay and allowances during the suspension period.
- (iii) The applicants are entitled for continuity of their service for all benefits including fixation of pay. The period of suspension and period of dismissal be treated as duty period for all the purposes. However, the applicants are not entitled to claim back wages of the period of dismissal from the service. The rest of the claims of the applicants stand dismissed.
- (iv) No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 11/03/2019.