

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.311/2017. (S.B.)

Arvind Vishwanath Meshram,
Aged about 57 years,
Occ-Service,
R/o Govt. Jail Quarters, Open Jail,
Gadchiroli.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Addl. Chief Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Additional Director General of Police and
Inspector General of Prisons, Pune.
3. The Dy. Inspector General of Prisons,
East Zone, Nagpur.

Respondents

ORIGINAL APPLICATION NO.381/2017.

Sudam Daulat Sahare,
Aged about 61 years,
Occ-Retired,
R/o Kharbi Chowk, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Addl. Chief Secretary,
Department of Home,
Mantralaya, Mumbai-32.

2. The Additional Director General of Police and Inspector General of Prisons, Pune.
3. The Dy. Inspector General of Prisons, East Zone, Nagpur.

Respondents

Shri S.C. Deshmukh. Advocate for the applicants.

Shri S.A. Sainis, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 17th day of September 2018.)

Heard Shri S.C. Deshmukh, the learned counsel for the applicants and Shri S.A. Sainis, the learned P.O. for the respondents.

2. The applicant in O.A. No. 311/2017 (Arvind Vishwanath Meshram) was appointed as Rakshak at Nagpur Prison in 1980 for a period from 1.2.1990 to 30.4.1992 and thereafter from 9.6.1992 to 31.5.2005, he was under suspension and he was dismissed from service for the period from 12.6.2008 to 20.3.2009. Vide order dated 16.5.2016, respondent No.2 treated the suspension period as well as dismissal period of the applicant as duty period for all purposes and accordingly said order was passed on 20.7.2015. The applicant, therefore, made representations on 27.5.2016 and

9.10.2016 and claimed first and second time bound promotion, but it was not granted and, therefore, he has filed this O.A. and claimed grant of consequential benefits i.e. for first and second time bound promotion and also full pay and allowances during the said period w.e.f. 1.10.1994 to 1.10.2006 respectively as per the G.Rs dated 8.6.1995 and 1.4.2010.

3. The applicant in O.A. No. 381/2017 (Sudam Daulat Sahare) was appointed as Rakshak on 14.8.1982 and he was under suspension for a period from 11.5.1990 to 29.4.1992 and 1.1.1993 to 7.7.2005. The respondent No.2 on 4.7.2015 decided to treat the suspension period of the applicant as duty period for all purposes. He made representations on 2.1.2016 and 14.11.2016 and claimed first and second time bound promotion by the applicant in O.A. No.311/2017.

4. In both the O.As, the respondent No.2 i.e. Additional Director General of Police and Inspector General of Prisons, Pune has filed affidavit in reply. It is stated that, number of cases were pending against both the applicants So far as the applicant in O.A. No. 311/2017 (Arvind Vishwanath Meshram) is concerned, Crime No. 437/1992 and 1013/1992 was registered and pending for the offences punishable under sections 332 and 353 of

I.P.C. He was, therefore, suspended and was consequently dismissed from service. His name was recommended for the first time bound promotion and that such promotion was granted to him on 13.1.2011 w.e.f. 30.10.2010 and, therefore, he will be entitled to second time bound promotion. After completion of 12 years from the date on which he received first time bound promotion i.e. in the year 2000. From the reply affidavit, it seems that as many as 18 cases were pending against the applicant. But admittedly, the applicant was acquitted in all these cases.

5. So far as the applicant in O.A. No. 381/2017 (Sudam Daulat Sahare) is concerned, in the reply affidavit, it is stated that three cases were pending against him in the Court of Chief Judicial Magistrate, Chandrapur and in all these cases, he was acquitted. He was under suspension for about 13 years and he was also recommended for time bound promotion for the first time on 13.1.2011 and same was granted to him on 13.1.2010. Now, he will be considered for second time bound promotion after 12 years.

6. From the facts discussed as aforesaid, it will be clear that there is no doubt that both the applicants were under suspension for a prolonged period and the applicant in O.A. No.311/2017 was even dismissed. This all happened because of

criminal cases were pending against the applicant. However, it is also a fact that both the applicants were found eligible for first time bound promotion after their acquittal in 2011. The question, therefore, arises as to whether the applicants' cases should have been considered retrospectively for first time bound promotion and consequently for second time bound promotion.

7. The learned counsel for the applicants invited my attention to the order dated 13.5.2014 in O.A. No. 311/2017 (Arvind Vishwanath Meshram). Same is at Annexure A-1, pages 10 to 14. Relevant order reads as under:-

“श्री अरविंद विश्वनाथ मेश्राम, हवालदार, भंडारा जिल्हा कारागृह, यांचे विरुद्ध आज रोजी कोणतीही विभागीय चौकशी किंवा न्यायालयीन प्रकरण प्रलंबित नसल्याने जिल्हा चौकशी अधिकारी, विभागीय चौकशी, वर्धा यांचे अंतिम चौकशी अहवालानुसार श्री अरविंद विश्वनाथ मेश्राम, हवालदार, यांचे विरुद्ध ठेवण्यात आलेले दोषारोप क्र. १,२,३ व ४ हे मुळीच सिद्ध होत नसल्याचे जिल्हा चौकशी अधिकारी, विभागीय चौकशी, वर्धा यांचे अंतिम चौकशी अहवालात नमूद केले आहे. तसेच त्यांचे विरुद्धच्या सर्वच न्यायालयीन प्रकरणामध्ये सन्मां- न्यायालयाने त्यांना निर्दोष मुक्त केले असल्याने श्री अरविंद विश्वनाथ मेश्राम, हवालदार यांचे विरुद्धच्या विभागीय चौकशीमध्ये त्यांचेवर ठेवण्यात आलेल्या

दोषारोपातून त्यांना निर्दोष मुक्त करण्यात येत असून महाराष्ट्र नागरी सेवा (पदग्रहण कालावधी, परकीय सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे या काळातील प्रदाने) नियम, १९८१ मधील नियम ७१ (१) अन्वये त्यांचा निलंबन कालावधी दि. १.१.१९९३ ते ३१.५.२००५ पर्यंत व बढतर्फे कालावधी दि. १२.६.२००८ ट दि. २०.३.२००९ पर्यंत हा सर्व प्रयोजनासाठी कर्तव्य कालावधी म्हणून धरण्यात यावा."

8. He also invited my attention to the order dated 20.7.2015 (Annexure A-2, pages 15 to 17) (both inclusive), from which it seems that the applicant was reinstated in service. Relevant order reads as under:-

"श्री अरविंद विश्वनाथ मेश्राम, हवालदार, यांचे विरुद्धच्या सर्वच न्यायालयीन प्रकरणामध्ये सन्मां- न्यायालयाने त्यांना निर्दोष मुक्त केले असल्याने त्यांना, त्यांचे विरुद्धच्या विभागीय चौकशीमध्ये ठेवण्यात आलेल्या दोषारोपातून दोषमुक्त करण्यात आले असल्याने महाराष्ट्र नागरी सेवा (पदग्रहण कालावधी, परकीय सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे या काळातील प्रदाने) नियम, १९८१ मधील नियम ७१ (१) अन्वये त्यांचा निलंबन कालावधी दि. १.२.१९९० ते दि. ३०.४.१९९२ व ९.६.१९९२ ते ३१.१२.१९९२ पर्यंत सर्व प्रयोजनासाठी कर्तव्य कालावधी म्हणून धरण्यात यावा."

9. In respect of applicant in O.A. No. 381/2017 (Sudam Daulat Sahare), the relevant order of treating the suspension period as duty period is at Annexure A-1, pages 10 to 15 (both inclusive) and relevant order reads as under:-

“श्री. सुदाम दौलत सहारे, हवालदार हे नियत वयोमानानुसार दि. ३१.५.२०१४ रोजी शासकीय सेवेतून अधीक्षक, भंडारा जिल्हा कारागृह यांचे कर्तव्याचे आस्थापानेवरून सेवानिवृत्त झाले असल्याने त्यांचे सेवानिवृत्ती प्रकरण निकाली काढणे आवश्यक आहे. सन्मां. न्यायालयाकडील फौजदारी कोर्ट केस क्र. २६८/९० या प्रकरणाच्या अनुषंगाने अधीक्षक, चंद्रपूर जिल्हा कारागृह यांनी त्यांच्या विरुद्ध सुरु केलेल्या विभागीय चौकशीतून त्यांना निर्दोष मुक्त करून महाराष्ट्र नागरी सेवा (पदग्रहण कालावधी, परकीय सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे या काळातील प्रदाने) नियम, १९८१ मधील नियम ७१ (१) अन्वये त्यांचा निलंबन कालावधी दि. ११.५.१९९० ते दि. २९.४.१९९२ व दि. १.१.१९९३ ते ७.७.२००५ पर्यंत हा सर्व प्रयोजनासाठी कर्तव्य कालावधी म्हणून गणना करण्यात यावा.”

10. The aforesaid orders will clearly show that the suspension period of both the applicants have been treated as duty period for all purposes and, therefore, it will have to be presumed that

they were on duty during this period and, therefore, cases of the applicants are required to be re-considered for the purpose of first and consequently second time bound promotion, if admissible as per the relevant G.Rs considering them as if on duty during that period. It is, therefore, necessary to direct the respondents to re-consider the cases of the applicants and hence the following order:-

ORDER

- (i) Both the O.As stand partly allowed.
- (ii) The respondents are directed to keep the cases of both the applicants before the competent committee for re-consideration of their names for the first and second time bound promotion as per the G.Rs dated 8.6.1995 and 1.4.2010 respectively, considering the fact that the suspension / dismissal period of the applicants have been considered as duty period.
- (iii) If the applicants are found fit otherwise for such promotion, first and second time bound promotion be given to them in view of G.R.dated 1.10.1994 and 1.10.2006.

- (iv) In O.A.No.311/2017, respondents have already regularized the period of suspension as duty period and hence necessary decision be taken regarding pay and allowances for such period as admissible under the Rules.
- (v) Necessary decision be taken within three months from the date of this order.
- (vi) No order as to costs.

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

Dated:- 17.9.2018.