MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 571 OF 2016

DISTRICT: - AURANGABAD.

Shri Vishnu S/o Karbhari Hagwane,
Age : 42 years, Occu. Service
(as Police Constable, Mukundwadi
P.S.), R/o : Raje Sambhaji Colony,
Jadhavwadi, Aurangabad. **.. APPLICANT.**

V E R S U S

1) The Director General of Police,
M.S., Mumbai.

2) The Deputy Commissioner of Police
(Headquarter), Aurangabad City,
Aurangabad.

.. RESPONDENTS.

APPEARANCE : Shri Avinash S. Deshmukh – learned Advocate for the applicant.

: Shri V.R. Bhumkar – learned Presenting Officer for the respondents.

CORAM : **HON'BLE SHRI B.P. PATIL, MEMBER (J)**

DATE : **1ST AUGUST, 2017.**

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O R D E R

1. The applicant has challenged the impugned orders dated 18.4.2011 (Annexure 'A-5' page No. 39 of paper book of O.A.) and 14.03.2016 (Annexure 'A-9' page Nos. 56 & 57 of paper book of O.A.) issued by the respondent Nos. 2 and 1 respectively and prayed to quash and set aside the order and direct the respondents to treat his period of suspension w.e.f. 1.3.2003 to 21.06.2003 as his duty period for all purposes by filing this Original Application.

2. The applicant entered service of the Government of Maharashtra in its Home Department as a Police Constable on the establishment of Commissioner of Police, Aurangabad City, Aurangabad, on 04.11.1996. In the year 2003 he was posted at Waluj Police Station, but was attached to the Police Headquarter. On 03.03.2003 the respondent No. 2 issued an order and placed him under suspension w.e.f. 01.03.2003 as crime has been registered against him with Kranti Chowk Police Station for the offences punishable under Section 85 (1) (3) of the

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Bombay Prohibition Act. One Mr. K.S. Giri was also placed under suspension along with the applicant under the said order. Thereafter, respondent No. 2 has issued an order on 21.06.2003 and reinstated the applicant in service. Mr. K.S. Giri was also reinstated in service by the said order.

3. It is his contention that the criminal case bearing SCC No. 2362/2003 was ended in his acquittal by the judgment and order passed by the learned J.M.F.C., Aurangabad on 02.02.2005, as there was no evidence against the applicant. The learned J.M.F.C. has recorded findings to that effect. In spite of the decision of the J.M.F.C., respondent No. 2 had not taken decision as regards as to whether his suspension period should be treated as duty period, though the copy of the judgment has been produced by the applicant with the respondent No. 2. The applicant waited for long time. Lastly on 18.4.2011 the respondent No. 2 issued order treating the period of suspension as it is. Being aggrieved by the said

order, he preferred an appeal before the respondent No. 1 on 7.7.2011, but the respondent No. 1 had not decided the appeal within the reasonable time.

4. Therefore, the applicant approached this Tribunal by filing O.A. No. 815/2015 along with Miscellaneous Application No. 250/2015 for condonation of delay caused in filing the O.A. No. 815/2015. On 15.12.2015 this Tribunal allowed the M.A. No. 250/2015 and condoned the delay caused in filing the O.A. No. 815/2015 and on the very day this Tribunal had disposed of the O.A. No. 815/2015 with a direction to the respondent No. 1 to take proper decision as per the Rules and Regulations and considering the circumstances of the case on appeal dated 07.07.2011 filed by the applicant. It was further directed to the respondent No. 1 to decide the appeal within a period of three months' from the date of that order. Accordingly, respondent No. 1 passed the order in the appeal and conveyed the order to the applicant on 14.03.2016 and rejected the appeal and upheld the order passed by the respondent No. 2. It is contention of the

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applicant that the appeal decided by respondent No. 1 was not in accordance with the direction given by this Tribunal. Respondents had not followed the direction given by this Tribunal in the earlier Original Application. Therefore, he filed the present Original Application and challenged the impugned order dated 18.04.2011 and 14.03.2016 passed by respondent Nos. 2 & 1 respectively. The applicant has sought direction to the respondent No. 2 to treat his suspension period as duty period and to pay full pay and allowances of that period.

5. Respondent Nos. 1 & 2 have filed affidavit in reply and resisted the contention of the applicant. They have admitted the fact that the applicant was suspended w.e.f. 1.3.2003 and he was under suspension till 21.06.2003. They have also admitted the fact that the suspension of the applicant has been revoked and he was reinstated in service w.e.f. 21.06.2003. They have admitted the fact that the respondent No. 2 has rightly passed the impugned order dated 18.4.2011 and treated the suspension period as it is. They have admitted the fact of

filing of appeal by the applicant and decision thereon. They have admitted that respondent No. 1 has passed the impugned order dated 14.3.2016 and upheld the order passed by the respondent No. 2 on 18.04.2011. It is their contention that learned JMFC acquitted the applicant by giving benefit of doubt by her judgment and order dated 02.02.2015. The applicant was not acquitted honourably and, therefore, in view of the Government Resolution dated 24.12.1987, his suspension period cannot be regularized. It is their contention that respondent No. 1 has passed the impugned order dated 14.03.2016 in view of the provisions of the Maharashtra Civil Services (Joining Time, Foreign Service And Payments During Suspension, Dismissal And Removal) Rules, 1981 and they have rightly rejected the claim of the applicant. It is their contention that there was no illegality on their part in rejecting the request of the applicant. It is their contention that the respondent No. 1 has rightly held that the appeal filed by the applicant was not maintainable, as there is no provision of appeal in view of the provisions of

Bombay Police Act, 1951, the Bombay Police (Punishments & Appeals) Rules, 1956 and the Manual of Departmental Enquiries, 1991. It is their contention that the applicant was acquitted in the criminal case by giving benefit of doubt to him and, therefore, his suspension period cannot be regularized as duty period and, therefore, the applicant is not entitled to get monetary benefits as prayed for by the applicant. On these grounds they have prayed to dismiss the present Original Application.

6. I have heard Shri Avinash Deshmukh – learned Advocate for the applicant and Shri V.R. Bhumkar – learned Presenting Officer for the respondents. I have also perused the documents placed on record by both the sides.

7. Learned Advocate for the applicant has submitted that the respondent No. 1 has not followed the direction given by this Tribunal while deciding the appeal preferred by the applicant on 07.07.2011. He has submitted that the impugned order regarding period of suspension has

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been passed by the respondent No. 2 in view of the provisions of the Maharashtra Civil Services (Joining Time, Foreign Service And Payments During Suspension, Dismissal And Removal) Rules, 1981. He has submitted that in view of the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, the said order is appealable, but the said fact has not been considered by the respondent No. 1. He has further submitted that even if it is presumed that the suspension order has been passed as punishment then also the said order is appealable in view of the provisions of rule 6 of the Bombay Police (Punishments & Appeals) Rules, 1956.

8. Learned Advocate for the applicant has submitted that if the impugned order passed by the respondent No. 2 has been passed under the M.C.S.R., then it is appealable, in view of the provisions of Rule 17 (a) (i) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. He has submitted that the respondent No. 1 has not considered the said provisions with proper perspective while deciding the appeal to the applicant and he was wrongly held that

the appeal is not maintainable. Therefore, the impugned order dated 14.03.2016 passed by respondent No. 1 is illegal.

9. Learned Advocate for the applicant has further submitted that the respondent No. 2 by the impugned order dated 18.4.2011 treated the suspension period as it is on the ground that the charge against the accused for maligning the image of the Police Department by behaving in disorderly manner at the public place in the influence of liquor by the applicant has been proved. He has submitted that the applicant has been acquitted of the offences punishable under Section 85 (1) (3) of Bombay Prohibition Act in SCC No. 2362/2003 by learned J.M.F.C. on 2.2.2005. He has submitted that learned J.M.F.C. has held that there was no evidence to prove the charges leveled against the accused in respect of his disorderly behaviour at public place under the influence of liquor and, therefore, she acquitted him of the offence. He has submitted that learned J.M.F.C. nowhere observed that the accused behaved in disorderly manner at the public

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place and, therefore, observations made by the respondent No. 2 while passing the impugned order dated 18.4.2011 in that regard are unwarranted. He has submitted that the said observations are perverse, but the said aspect has not been considered by respondent No. 1 while deciding the appeal filed by the applicant.

10. Learned Advocate for the applicant has further submitted that the acquittal of the applicant from the criminal case was on merit and not by giving benefit of doubt to him. He has submitted that there are no concepts of honourable acquittal or full exoneration in the criminal jurisprudence and, therefore, the reasons given by respondent No. 2 while passing the impugned order dated 18.4.2011 are unjustified. He has submitted that since the applicant has been acquitted from the charges leveled against him it can be held that he has been acquitted of the blame. Therefore, on that ground the impugned orders passed by respondent No. 1 and 2 cannot be justified.

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11. Learned Advocate for the applicant has further submitted that no departmental enquiry has been initiated against the applicant for the alleged offence. The criminal trial against him ended in his acquittal. Therefore, the respondent Nos. 1 & 2 ought to have regularized his suspension period as duty period, but the respondent No. 2 passed the impugned order dated 18.4.2011 as a punishment and, therefore, the same is not maintainable. On these ground he prayed to allow the present Original Application.

12. Learned Advocate for the applicant has placed reliance on the judgment delivered by the Hon'ble Bombay High Court in case of **DATTATRAYA VASUDEO KULKARNI VS. DIRECTOR OF AGRICULTURE, MAHARASHTRA AND OTHERS reported in 1984 BCI 35 [Writ Petition No. 3141 of 1979 decided on 26.3.1984]**, in support of his submissions.

13. Learned Presenting Officer has submitted that the impugned order has been passed by respondent No. 2 in view of the provisions of the Maharashtra Civil Services

(Joining Time, Foreign Service And Payments During Suspension, Dismissal And Removal) Rules, 1981. He has submitted that proper reasons have been recorded by the respondent No. 2 while passing the impugned order dated 18.4.2011. He has submitted that learned J.M.F.C. has acquitted the applicant by giving him benefit of doubt. He has submitted that the applicant behaved in disorderly manner at the public place under the influence of liquor and due to the said act of the applicant, the image of the Police Department has been maligned. Therefore, the respondent No. 2 has treated the suspension period as it is by passing impugned order dated 18.04.2011. He has submitted that the respondent No. 1 while deciding the appeal has rightly considered the said aspect and rejected the appeal.

14. He has submitted that the impugned order dated 18.4.2011 passed by the respondent No. 2 is not appealable and, therefore, respondent No. 2 rejected the appeal of the applicant. He has submitted that the respondent No. 1 has followed the directions given by this

Tribunal and this Tribunal never directed the respondent No. 1 to regularize the suspension period of the applicant as duty period and, therefore, he prayed to reject the Original Application.

15. Admittedly, The applicant entered service of the Government of Maharashtra in its Home Department as a Police Constable on the establishment of Commissioner of Police, Aurangabad City, Aurangabad, on 04.11.1996. In the year 2003 he was posted at Waluj Police Station, but was attached to the Police Headquarter. It is not much disputed that by the order dated 03.03.2003 issued by the respondent No. 2 he was suspended w.e.f. 1.3.2003 as crime for the offences Section 85 (1) (3) of the Bombay Prohibition Act has been registered against him and one Mr. K.S. Giri at Kranti Chowk Police Station. Admittedly, he was placed under suspension up to 21.06.2003. There is no dispute about the fact that in view of the order issued by the respondent No. 2 on 21.6.2003 and the applicant and Mr. Giri were reinstated in the service w.e.f. 21.06.2003, but no order as regards their suspension

period has been passed (Annexure 'A-4' page-38). Admittedly, the criminal case bearing SCC No. 2361/2003 has been filed against the applicant in the Court of learned JMFC, Aurangabad, and it was decided on 02.02.2005. Admittedly, the applicant was acquitted of the offence under Section 85 (1) (3) of the Bombay Prohibition Act, by the judgment delivered by the learned J.M.F.C. It is not much disputed that the applicant produced the copy of the judgment before the respondent No. 2 and respondent No. 2 passed the impugned order dated 18.04.2011 holding that the applicant had behaved in disorderly manner at the public place and thereby damaged the image of Police Department. He has further observed that though the applicant has been acquitted, the image of Police Department has been damaged due to his misconduct and, therefore, the suspension period of the applicant has been treated as it is. The applicant challenged the said order by filing an appeal before the respondent No. 1 on 07.07.2011. The appeal was not decided within a reasonable period. Therefore, the

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applicant approached this Tribunal by filing O.A. No. 815/2015 along with M.A. No. 250/2015 for condonation of delay. The said M.A. has been allowed on 15.12.2015 by this Tribunal and on very day the O.A. has been disposed of with a direction to the respondent No.1 to take appropriate decision, as per rules and regulations and considering the circumstances of the case, on the appeal dated 07.07.2011 filed by the applicant. Respondent No. 1 was further directed to take the decision on the appeal within a period of 3 months. Admittedly, the respondent No. 1 decided the appeal on 14.03.2016 (Annexure 'A-9' page-56 of the O.A.) and upheld the decision of the respondent No. 2 dated 18.04.2011. Respondent No. 1 has further observed that there is no provision of appeal challenging the order regarding the suspension period in view of the provisions of the Bombay Police Act, 1951, the Bombay Police (Punishments & Appeals) Rules, 1956 and the Manual of Departmental Enquiries, 1991.

16. On perusal of the record, it reveals that the suspension order passed by the respondent No. 2 was in

view of the provisions of the Maharashtra Civil Services (Joining Time, Foreign Service And Payments During Suspension, Dismissal And Removal) Rules, 1981. The respondents have admitted the said fact in their reply. As the order has been passed under the above said provisions, the same is appealable in view of the provisions of Rule 17 (a) (1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The observations and findings recorded by the respondent No. 1 in that regard while passing the impugned order dated 14.03.2016 and while rejecting the appeal dated 7.7.2011, are not proper and legal. Respondent No. 2 has held that the appeal is not maintainable in view of the provisions of the Bombay Police Act, 1951, the Bombay Police (Punishments & Appeals) Rules, 1956 and the Manual of Departmental Enquiries, 1991. On perusing the Bombay Police (Punishments & Appeals) Rules, 1956, it is clear that if the suspension order is issued by way of punishment then the same is appealable in view of provisions of the rule 6 of the Bombay Police

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(Punishments & Appeals) Rules, 1956. But the respondent No. 1 has not considered the said provisions also while deciding the appeal filed by the applicant, and he has wrongly held that appeal is not maintainable. Therefore, the impugned order dated 14.3.2016 passed by respondent No. 1 rejecting appeal of the applicant on that ground is not proper and legal.

17. Respondent No. 1 has not recorded the reason while rejecting the appeal of the applicant and maintaining the order of the respondent No. 1 passed on 18.4.2011. Without recording reasons the respondent No. 1 has rejected the appeal of the applicant. Therefore, the impugned order dated 14.3.2016 passed by respondent No. 1 is not maintainable in the eye of law.

18. It is also pertinent to note here that respondent No. 2 has also not recorded the sound and proper reasons while passing the order dated 18.4.2011. He has simply mentioned that he image of the Police Department has been maligned due to the disorderly behaviour of the

applicant at a public place under the influence of liquor, without substantial evidence in that regard. No departmental enquiry was initiated against the applicant. There is nothing on record to show on which basis the respondent No. 2 had arrived at the conclusion that the damage to the image of Police Department due to disorderly behaviour of the applicant under influence of the liquor had been proved / established. The observation and finding recorded by the respondent No. 2 in that regard are baseless and without evidence.

19. The respondents have relied on the judgment in criminal case SCC No. 2362/2003. The copy of the said judgment is placed on record at page Nos. 32 to 37. The observations made by the learned JMFC in paragraph No. 11 of the judgment are material. Therefore, I reproduce the same as under : -

> ***"11] In the present case also, I discussed earlier there is no evidence produced on record by prosecution in respect of the disorderly behaviour of the accused and what is made punishable under section 85***

> ***(1) (3) of the Bombay Prohibition Act, disorderly behaviour under influence of liquor, and not only the consumption of liquor. As such prosecution has failed to bring home guilt of the accused beyond all reasonable doubt and benefit of it definitely will go to the accused and I answer point No. 1 in the negative."***

20. On going through the same, it reveals that the JMFC acquitted the applicant as there was no evidence adduced by the prosecution to prove that the applicant disorderly behaved under the influence of liquor. It means the applicant has been acquitted of the blame in the criminal case. Merely because of the JMFC has observed that the benefit of doubt has been given to the applicant while acquitting the applicant, is not sufficient to hold that accused i.e. the applicant was not fully exonerated. In this regard the observations made by the Hon'ble High Court in case of **DATTATRAYA VASUDEO KULKARNI VS. DIRECTOR OF AGRICULTURE, MAHARASHTRA AND OTHERS reported in 1984 BCI 35 [Writ Petition No.**

3141 of 1979 decided on 26.3.1984] are material and the same are applicable in the instant case. The Hon'ble High Court has observed as follows: -

> ***"On a reading of the aforesaid provision, two things become at once clear. In the first instance, there is no reference to any concept of either full exoneration or to the concept of suspension being wholly unjustified and secondly, the provision clearly speaks of the Government servant being acquitted of blame in the criminal case that might have been launched against him. The first part of the rule 156 (a) provides that there should be an automatic suspension of a Government servant whenever proceedings against him have been taken either for his arrest for debt or on a criminal charge, or who is detained under any law providing for preventive detention, for that the provision in terms provides that a servant of Government against whom proceedings have been taken either for his arrest for debt, or on a criminal charge or who is detained under any law providing for preventing detention should be considered as under suspension***

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for any periods, during which he is detained in custody, or is undergoing imprisonment. The second part is very material. It confers a right upon the Government servant for adjustment of his allowance for such periods of suspension according to circumstances of the case, the full amount being given in the event of the officer being acquitted of blame. Under this provision, therefore, what the State Government had to consider was whether the petitioner had been acquitted of blame and considerations whether there had been a full exoneration or not would be thoroughly irrelevant. Even when he was acquitted on the basis of benefit of doubt being given to the petitioner all the same he was acquitted of the charges leveled against him and he must be held to have been acquitted of the blame. In other words, on a proper interpretation of rule 156 (a), we are clearly of the view that concepts of honourable acquittal or full exoneration are irrelevant and immaterial.

In the earlier part of the judgment while interpreting rule 152-the division Bench observed that rule 152 will have to be

regarded as a rule of general application whereunder suspension orders are passed in different sets of circumstances would fall, whereas rule 156(a) is a special rule dealing with suspension orders passed in certain specified cases, one of them being suspension of a Government servant consequent upon his prosecution. The division Bench further observed that on a fair reading of rule 152 it will appear clear that the dismissal, removal or suspension spoken of by that rule is contemplated in cases where the State Government itself undertakes departmental inquiry against a Government Servant for neglect of duties or misconduct, for sub-rule (2) of Rule 152 speaks of the authority concerned forming an opinion that the Government servant has been fully exonerated or in the case of suspension that it was wholly unjustified. These expressions fully exonerated and suspension being wholly unjustified would be more appropriate to the holding of a departmental enquiry against a Government servant for a neglect of duty or misconduct in respect of which the Government servant could be fully exonerated and in respect of

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which the suspension could be decided upon to be either wholly unjustified or otherwise. Concept of honourable acquittal or full exoneration may be inappropriate qua the result of a criminal prosecution. In any view of the matter, there cannot be any doubt that the petitioners case would be governed by the special provisions of Rule 156(a).”

21. The principles laid down in the said decision are most appropriately applicable in the instant case. The applicant has been acquitted of the offence pubishable under Section 85 (1) (b) of Bombay Prohibition Act by the learned JMFC as there was no evidence in that regard. Therefore, it can be held that the accused has been acquitted of the blame and the concepts of honourable acquittal or full exoneration are irrelevant and immaterial. The reasons recorded by the respondent No. 2 in the impugned order dated 18.04.2011 for treating the suspension period of the applicant as it is are not just and proper.

22. In the instant case no departmental enquiry has

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been initiated against the applicant nor any action has been taken against him on account of his alleged disorderly behaviour in a public place under the influence of liquor, but the respondent No. 2 has observed in his order dated 18.4.2011 that it has been proved that the applicant behaved in disorderly manner at a public place under the influence of liquor. There is no evidence to substantiate the observations made by respondent No. 2 while passing the impugned order dated 18.4.2011. Therefore, his order maintaining suspension period of the applicant as it is on the basis of the said observations is not maintainable. Therefore, the impugned order dated 18.4.2011 passed by the respondent No. 2, as well as, the order dated 14.3.2016 passed by respondent No. 1 are not sustainable. Therefore, the said order deserves to be quashed and set aside by allowing the present Original Application.

23. In view of this, the present Original Application stands allowed. The impugned order dated 14.3.2016

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passed by respondent No. 1 and impugned order dated 18.4.2011 and 22.12.2015 passed by respondent No. 2 are hereby quashed and set aside.

24. The respondents are directed to treat the suspension period of the applicant from 1.3.2003 to 21.6.2003 as being the period spent on duty and pay him full pay and allowances for such period as if he had not been suspended.

There shall be no order as to costs.

MEMBER (J)