

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
REVIEW APPLICATION NO. 03/2020 IN
ORIGINAL APPLICATION No. 84/2019 (S.B.)

Bhaurao S/o Shankarrao Gaidhane,
R/o Plot No. 10, Near NIT Garden,
Mane Ward, Wardha Ring Road,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai.
- 2) Deputy Commissioner of Police,
(Headquarter), Nagpur City, Nagpur.

Respondents.

Shri S.P.Palshikar, Ld. Advocate for the applicant.

Shri H.K.Pande, Ld. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman.

Date of Reserving for Judgment : 16th Feb., 2023.

Date of Pronouncement of Judgment : 28th Feb., 2023.

JUDGMENT

(Delivered on this 28th day of Feb., 2023)

Heard Shri S.P. Palshikar, ld. Counsel for the applicant and
Shri H.K. Pande, ld. P.O. for the respondents.

2. The O.A. No. 84/2019 was filed in this Tribunal on 04.02.2019 and order was passed on 30.01.2020. Ld. Counsel for the applicant has preferred Review of order dated 30.01.2020 in Review Application No. 03/2020 which was heard on 16.02.2023. As per C.P.C. No. XL VII order I the related para is below:-

“From the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record.” Review should be done.

3. The Id. Counsel for the applicant has pointed out error apparent on the face of the record. In view of that, Review Application was allowed and heard. As per Hon’ble Apex Court Judgment, Review is permitted in case above provision of C.P.C. (Supra). The said judgment dated 30.01.2020 requires to be reviewed. The fact of the case in brief is below:-

*“2. As per CPC XLVII-Rule 1 and apart from this reliance is also placed on Apex Court Judgment in case of **K.Ajit Babu and Ors. Vs. Union of India & Ors. delivered on 25.07.1997.***

Where on page no. 3 of judgment in para no. 4 last few lines it is mentioned:-

“We therefore, find that a right of review is available to the aggrieved persons as restricted ground mentioned in order 47 of the code of civil procedure if filed within a period of limitation.”

4. In view of the above legal position, Review Application was heard first on 10.02.2023 and then on 16.02.2023. The prayer in Review Application is at P. 5 which is stated below:-

“1. Review its earlier judgment dated 03.01.2020 in O.A. No. 84/2019 in accordance with law;

2. Further be pleased to allow Original Application No. 84/2019 and grant the applicant relief as prayed in the relief sought clause to meet the ends of justice;

3. Grant any other relief which this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

5. Initially the applicant entered into Government service in the year 1982 and was posted at Nagpur and he worked in various capacity. The applicant was an accused in the Anti Corruption Bureau which was registered on 05.04.1985 and he was suspended from 06.04.1985 as per order dated 06.04.1985 (A-1, P. 15). Subsequently, suspension order was revoked vide order dated 25.10.2020. A criminal case was lodged against A.C.B. case in Trial Court and applicant was convicted by Trial Court under Section 7 of the Prevention of Corruption Act, 1988.

6. In view of conviction stated above, competent authority was pleased to pass order dated 05.01.2005 (A-2, PP. 17 & 18 of O.A.) and applicant was compulsorily retired. Applicant preferred Criminal Appeal No. 667/2004 for Hon'ble High Court against the Trial Court order and Hon'ble High Court passed the order on 08.12.2017 (A-3, P. 19 of O.A.) and in its order paras 14, 15 & 16 which are reproduced below:-

“14. I have no hesitation in holding that the prosecution has failed to prove that the accused demanded and accepted illegal gratification and that the accused has more than probabilized the defence on the touchstone of preponderance of probabilities.

15. *In the light of the discussions supra, I set aside the judgment and order impugned and acquit the accused of offence punishable under section 7, 13 (1) (d) read with section 13 (2) of the prevention of corruption act.*

16. *The bail bond of the accused shall stand discharged and fine paid by the accused, if any, shall be refunded."*

7. Applicant was fully exonerated. After execution of the applicant, department passed modified order dated 24.05.2018 (A-4, PP. 31 & 32) and in para no. 3 it is mentioned that department did not preferred appeal against the Tribunal's order that means Hon'ble High Court order attained the judicial finality. Meanwhile, applicant retired on 29.09.2016. The order was passed on 24.05.2018 from PP. 31 & 32 (in O.A.) are reproduced below:-

“पोशि /३११० भाउराव शंकरराव गायधने यांना सदर प्रकरणात उपरोक्त नमूद केल्याप्रमाणे सक्तीने सेवानिवृत्त करण्यात आले नसते तर ते दिनांक २९.०२.२०१६ रोजी नियत वयोमानाने सेवानिवृत्त झाले असते.

या कार्यालयाचा पोशि/३११० भाउराव शंकरराव गायधने यांना सेवेतून सक्तीने सेवानिवृत्त करण्याचा आदेश क्रमांक पोआना/विचौ/१४(घ)/२००५ दिनांक ०५.०१.२००५ रद्द करण्यात येत आहे. परंतु त्यांना सेवेत पुनःस्थापित केले असते तर ते दिनांक २९.०२.

२०१६ रोजी नियत वयोमानाने सेवानिवृत्त झाले असते. त्यामुळे त्यांना सेवेतून सक्तीने सेवानिवृत्त करण्यात आल्याचा दिनांक ०६.०९.२००५ ते त्यांचे नियत वयोमान सेवानिवृत्तीचे दिनांक २९.०२.२०१६ पर्यंतचा सेवाबाह्य कालावधी महाराष्ट्र नागरी सेवा (निलंबन, बडतर्फी आणि सेवेतून काढून टाकणे यांचे काळातील प्रदाने) नियम १९८१ मधील नियम ७० मधील तरतुदीनुसार सर्व प्रयोजनार्थ कर्तव्य कालावधी समजण्यात येत आहे. परंतु प्रत्यक्ष थकबाकी ही त्यांच्या नियत वयोमान सेवानिवृत्तीच्या तारखेच्या लगत पूर्वीच्या तीन वर्षांच्या कालावधीपुरती मर्यादित राहिल.

तसेच त्यांचा दिनांक ०६.०४.१९९५ ते २९.१०.२००० पर्यंतचा निलंबन कालावधी सर्व प्रयोजनार्थ कर्तव्य कालावधी गणण्यात येत आहे.”

8. In the order the applicant is aggrieved with only last two lines of first para which is reproduced below:-

परंतु प्रत्यक्ष थकबाकी ही त्यांच्या नियत वयोमान सेवानिवृत्तीच्या तारखेच्या लगत पूर्वीच्या तीन वर्षांच्या कालावधीपुरती मर्यादित राहिल.

9. Respondents have filed reply on review application on 05.02.2020 and their submission in para no. 5 is reproduced below:-

“The applicant is seeking review of the order/judgment dated 03.01.2020 solely on the strength of the judgments cited by him. So far as the judgment dated 2nd Nov., 2015 rendered in O.A. No. 238/2015 is concerned suffice it to say that this

Hon'ble Tribunal has considered the provisions of Rule 70 (4) so also Rule 71 of the Joining Time Rules and held that the rule 70 (4) would apply when the issue of 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 a Government servant is reinstated. This Hon'ble Tribunal has further made it clear that Rule 71 applies where the order of dismissal removal or compulsory retirement is set aside by the Court of Law and such Govt. Servant is reinstated. In the present case of the applicant the order of compulsory retirement dated 05.01.2005 was revoked/cancelled by the respondents vide order dated 25.04.2018 and as such rule 70 (4) is very much applicable and therefore, the action resorted to by the department is just, legal and valid and this Hon'ble Tribunal has rightly dismissed the original application of the applicant by the order dated 03.01.2020.

The facts of the present case and the facts of the cited case are entirely different. In the said cited case the order of dismissal of applicant was set aside by the Hon'ble Tribunal and as such

the applicant was granted relief considering the provisions of Rule 71.”

10. It is also mentioned in para no. 5 that applicant superannuated on 29.02.2016, in order part the order dated 05.1.2005 has been cancelled. So compulsorily retirement order is not in existence. In the last para his period of suspension from 06.04.1995 to 29.10.2000 has been treated on duty period for all purposes of calculation. Now, position as on today is that:-

A. Applicant was never suspended since his suspension period has been regularized for all purposes as duty period.

B. The case in which he was convicted in Trial court was overruled by Hon'ble High Court on 08.12.2017 by observation in paras 14, 15 & 16 which are reproduced above and applicant superannuated on 19.10.2016 without any blemish on service record.

11. In view of this situation, Id. Counsel for the applicant has also pointed out the Maharashtra Civil Services (Joining time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981. Rule 70 is reproduced below:-

“70. Regularisation 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.-

(1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(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 :”

12. The Id. Counsel has relied on Rule 70 A as well as mentioned above. In view of this legal position, the **O.A. is partly allowed in terms of prayer clause 8 (i) and (ii) of Review Application.** Hence, the order dated 24.05.2018 i.e. परंतु प्रत्यक्ष थकबाकी ही त्यांच्यां नियत वयोमान सेवानिवृत्तीच्या तारखेच्या लगत पूर्वीच्या तीन वर्षांच्या कालावधीपुरती मर्यादित राहिल is quashed and set aside. Applicant is entitled for all service benefit with effect from 01.01.2005 to 31.12.2015 and as per benefits of order dated 24.05.2018 accepting that last two lines of paragraphs. **Respondents are directed to comply the order within two months from the date of receipt of this order.** No order as to costs.

Dated :- 28/02/2023.

**(Shree Bhagwan)
Vice-Chairman.**

aps

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

Name of Steno : A.P.Srivastava

Court Name : Court of Hon'ble Vice-Chairman.

Judgment signed on : 28/02/2023.
and pronounced on

Uploaded on : 01/03/2023.