

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

DISTRICT : NANDED

**ORIGINAL APPLICATION NO.327/2012
WITH
ORIGINAL APPLICATION NO.328/2012**

O.A.No.327/2012

Sadanand s/o Prabhakarrao Sapkale,
(Sadanand s/o Prabhakar Sapkal)
Age : 27 years, Occ : Nil,
R/o.Sahayognagar, Nanded,
Dist. Nanded.

...APPLICANT

O.A.No.328/2012

Mohd. Imran Ali s/o Mujahid Ali,
Age : 24 years, Occ : Nil,
R/o. Police Head Quarter,
Nanded, Dist. Nanded.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
(Copy to be served on the Chief Presenting Officer,
M.A.T. Bench at Aurangabad)
 - 2) The Superintendent of Police, Nanded,
Police Headquarters, Nanded.
 - 3) The Special Inspector General of Police,
Nanded Range, Nanded.
 - 4) The Director General of Police,
Maharashtra State, Mumbai. ...COMMON RESPONDENTS
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APPEARANCE : Shri G.S.Shembole learned Advocate for the Applicants.

Shri M.P.Gude, learned Presenting Officer for respondents.

CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman and
Hon'ble Shri J.D.Kulkarni, Member (J)

DATE: 21st October, 2016.

ORDER

[PER: VICE-CHAIRMAN]

Heard learned Advocate Shri G.S.Shembole for the Applicants and Shri M.P.Gude learned Presenting Officer for the Respondents.

2. The Applicant in O.A.No.327/2012 is challenging his order of discharge from service dated 13-03-2009 and also the order dated 21-03-2012 rejecting his representation to take him back in service on being acquitted in the criminal case.

3. In O.A.No.328/2012, the Applicant is challenging order dated 20-07-2009 discharging him for service and also order

dated 21-03-2012 rejecting his representation to take him back in service on being acquitted in the criminal case.

4. Both these O.As. were heard together and are being disposed of by a common order as the issues to be decided are more or less identical.

5. In O.A.No.327/2012, the Applicant was discharged from service by order dated 13-10-2008. Though in the relief clause VIII-B, the Applicant has challenged order dated 13-03-2009, in the index at Sr.No.4, order dated 13-10-2008 issued by the Respondent No.2 is appended as Exhibit 'B' on page 19 of the paper book. No order dated 13-03-2009 is found on record. It is, therefore, taken that the Applicant is challenging order dated 13-10-2008.

6. Learned Advocate for the Applicant in O.A.No.327/2012 argued that this order dated 13-10-2008 is not an order of discharge simplicitor, but a stigmatic order. As such, it is unsustainable and deserves to be quashed and set aside. Learned Advocate for the Applicant contended that the Applicant was discharged from service as a criminal case was registered against the Applicant and he was arrested. However, vide order dated 27-02-2012 in S.C.No.07/2009 passed by learned

Additional Sessions Judge-2, Nanded applicant has been acquitted. The Applicant made representations to the Respondent No.2 to take him back in service. However, the Respondent No.2 has rejected this request by impugned order dated 21-03-2012. As the cause of Applicant's discharge from service does not survive, the Applicant is entitled to be taken back in service. The order dated 21-03-2012 is unsustainable.

7. Learned Advocate for the Applicant stated that in O.A.No.328 of 2012, the Applicant has challenged the discharge order of the Applicant dated 20-07-2009. The Applicant was earlier discharged from service by order dated 13-03-2009, which was challenged before this Tribunal in O.A.No.388/2009. By judgment dated 24-07-2009 this Tribunal quashed the order dated 13-03-2009 as it was a 'stigmatic' order. The Respondent No.2 was given liberty to pass a fresh order, if found necessary. Accordingly this order dated 20-07-2009 was issued. Learned Advocate for the Applicant contended that the Applicant was acquitted in Criminal Case C.R.No.07/2009 by judgment dated 27-02-2012 by learned Additional Sessions Judge-2, Nanded. The Applicant was discharged from service as the above mentioned criminal case was pending against him. Now that he has been acquitted, he deserved to be taken back in service. Learned Advocate for the Applicant prayed that order dated

20-07-2009 and the order dated 21-03-2012 may be quashed and set aside.

8. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicants have not challenged the orders discharging them from service dated 13-10-2008 (O.A.No.327/2012) and 20-07-2009 (O.A.No.328/2012) respectively at the relevant time. By these orders the Applicants were discharged from service as their services were no longer required. These orders were issued under Rule 78(1)(iii) of the Bombay Police Manual, 1999. Now these orders cannot be challenged, and these O.As. are not maintainable on account of limitation. Learned P.O. further argued that the order discharging an employee from service if his services are not required, is not an order of punishment. No appeal is provided against such orders. There is no provision under any rules to take such employees back in service. In case of the Applicant in O.A.No.238/2012, his order dated 20-07-2009 discharging him from service was passed before the judgment dated 24-07-2009 of this Tribunal in O.A.No.388/2009 was delivered. This judgment has given liberty to pass a fresh order, if necessary. The Applicant has not challenged this order dated 20-07-2009. Learned P.O. relied on the judgment of the Hon'ble Supreme Court in **Krishnadevaraya Education Trust V/s. G.A.Balakrishna, AIR 2001 SC 625,**

wherein it is held that service of a probationer can be terminated in terms of letter of appointment if his services were not satisfactory. Such an order is not by way of punishment and cannot be challenged in appeal.

9. We find that the orders of termination dated 13-10-2008 and 20-07-2009 were not challenged by the Applicants. These orders were issued in terms of letters of appointment which has the following clause:

“fu;qDr dsysY;k mesnokjkaph use.kqd gh
laiq.kZr% vLFkk;h Lo:ikph vlwu dks.krsgh dkj.k u
n’kZfork R;kaph lsok dks.kR;kgh osGh leklr dj.;kr
;sbZy-”

10. The Applicant in O.A.No.327/2012 never challenged the order of discharge dated 13-10-2008 and now after so many years, it is not permissible to challenge it as ‘stigmatic’. The order of discharge in O.A.No.328/2012 is an order of discharge simplicitor. Both the orders have been passed under Rule 78(1)(iii) of the Bombay Police Manual. As the impugned orders were not by way of punishment, no appeal against them is provided. As the orders were discharge simplicitor, the question of taking the Applicant in O.A.No.328/2012 simply does not arise on his acquittal in criminal case, as he was not discharged due to

that case. In O.A.No.327/2012, the order dated 13-10-2008 was never challenged and has become final. It cannot be challenged in this O.A. as period of limitation is over and there is no request for condonation of delay. The Respondent No.2 cannot be faulted for rejecting the representations of the Applicants for taking them back in service.

11. Having regard to the aforesaid facts and circumstances of the case, these O.As. are dismissed with no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

(Rajiv Agarwal)
Vice-Chairman