

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 706 OF 2023**

**DISTRICT:- NANDED**

**Kishan S/o Irbaji Waghmare,** )  
Age: 60 years, Occu. Pensioner, )  
(Retired Police Head Constable) )  
R/o. ND-42, P-10906, Near )  
Vitthal Mandir, HUDCO, Nanded. )  
Tal. & Dist. Nanded. )... **APPLICANT**

**V E R S U S**

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

**2. The Superintendent of Police,** )  
S.P. Office, Mutha Chowk, )  
Vazirabad, Nanded, )  
Tal. and District Nanded. )...**RESPONDENTS**

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**APPEARANCE** : Shri S.B. Solanke, learned counsel for  
the applicant.

: Shri A.P. Basarkar, learned Presenting  
Officer for the respondent authorities.

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**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**RESERVED ON** : **26.09.2024.**

**PRONOUNCED ON** : **24.10.2024.**  
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**ORDER**

Heard S.B. Solanke, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking quashing and setting aside the order dated 05.07.2023 issued by the respondent No.2 and further seeking direction to respondents to pay full back wages to the applicant and for that purpose issue necessary orders.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant was working with the Mandvi Police Station on the post of Police Head Constable. During his tenure the crime bearing No. 3008/2004 for the offences punishable under Section 7, 13 (1)(d) and 13 (2) of Prevention of Corruption Act, 1988 came to be registered against the applicant. Consequently by order dated 01.03.2004 the applicant was suspended from service w.e.f. 09.03.2004.

(ii) the applicant further contends that pursuant to the registration of said crime, the trial had commenced and by judgment and order dated 27.07.2007 passed in Special (ACB) Case No. 09/2004 the Special Judge, Nanded has convicted the applicant for the offences punishable under Sections 7 and 13 (1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs.3000/- and to undergo simple imprisonment for one year and to pay fine of Rs.4000/-.

(iii) In view of the judgment and order of conviction, the respondent No.2 had issued a show cause notice dated 18.10.2007 to the applicant thereby calling upon him as to why the action of dismissal from service should not be taken against him. The copy of show cause notice dated 18.10.2007 is marked as Annexure 'A-1'. Thereafter, the applicant was dismissed from services based on his conviction in the aforesaid crime and the said order of dismissal came to be issued on 12.12.2007 and the period of suspension from 09.03.2004 to 14.12.2007 was considered as period of suspension for all purposes.

(iv) Being aggrieved and dissatisfied with the judgment and order of conviction, the applicant had filed an appeal before the Hon'ble High Court of Bombay, Bench at Aurangabad bearing Criminal Appeal No. 322/2007. By judgment and order dated 03.10.2022 the Hon'ble Hough Court, Bench at Aurangabad quashed and set aside the judgment and order of conviction dated 27.07.2007 passed by the Special Judge, Nanded in Special (ACB) Case No. 9/2004 and the applicant came to be acquitted of the offences punishable under Section 7 and 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988. The copy of judgment and order dated 03.10.2022 passed by Hon'ble High Court, Bench at Aurangabad is marked as Annexure 'A-2'.

(v) It is the further case of the applicant that in view of the said acquittal the applicant had filed an application to the respondent No.2 for grant of benefits of service considering the period of suspension so also the period of dismissal as duty period for all purposes. The applicant got retired on attaining the age of superannuation on 31.10.2020. The copy of application dated 16.01.2023 filed by the applicant is marked as Annexure 'A-3'.

(vi) The applicant has received the show cause notice dated 22.05.2023 whereby the applicant was called upon as to why the period of his dismissal from service i.e. from 15.12.2007 to 31.10.2020 should not be considered as duty period, except for the retirement purposes and as to why the 50% of the salary and other benefits for the said period should not be paid to him. The applicant accordingly submitted his reply to the said show cause notice on 15.06.2023 stating therein that except the case in question, no other case has been registered against him during his entire service career. He has also brought to the notice of the competent authority that no departmental enquiry was conducted against him. Thus the applicant has requested to consider the entire period of suspension and dismissal as period of duty and to pay the salary and other allowances for the said period. The applicant has also requested to pay the retirement benefits including the pension w.e.f. 31.10.2020.

(vii) By impugned order dated 05.07.2023 (Annexure 'A-6') the respondent No.2 has rejected the explanation submitted by the applicant as not satisfactory and further held that the applicant would be entitled for the 50% of salary and allowances for the said period of 15.12.2007 to 31.10.2020

and the said period would not be considered as duty period for any purposes except for the retiral benefits. It has also been held that the arrears of payment would be paid for three years preceding the date of his retirement i.e. 31.10.2020. Hence, this Original Application.

4. Learned counsel for the applicant submits that the impugned order is an unreasoned order and no due weightage has been given to the reply/explanation tendered by the applicant. Learned counsel for the applicant submits that the respondent No.2 has failed to consider that no departmental enquiry was ever conducted against the applicant and he was suspended and later on dismissed from service solely on account of the registration of crime and later on conviction of the applicant of the said crime. Thus after getting acquittal from the said case, the applicant needs to be paid all the benefits including salary and other allowances for the said period of dismissal. Learned counsel for the applicant submits that the respondent No.2 has not considered the provisions of Rule 70 of the Maharashtra Civil Services (Joining Time Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter

referred to as 'Rules of 1981') in its proper perspective and arrived at erroneous conclusion.

5. Learned counsel for the applicant in order to substantiate his contention placed his reliance on the following case laws:-

- (i) **Baban Shriram Wafare Vs. Zilla Parishad, Ahmednagar (Writ Petition No. 2883/1989) MANU/MH/0298/2002** (High Court, Bench at Aurangabad).
- (ii) **Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera (Civil Appeal No. 2992/1995)** MANU/SC/0256/1995 (Hon'ble Apex Court)
- (iii) **Abhimanyu Laxman Kumbhar Vs. MSEDCL and others** MANU/MH/3377/2022 (High Court, Bench at Aurangabad).
- (iv) **Dnyaneshwar Kashinath Shingane Vs. State of Maharashtra and others** MANU/MH/3975/2022 (High Court, Bench at Aurangabad).
- (v) **Ramesh Govindrao Pawar Vs. State of Maharashtra and others (O.A.No. 855/2023)**
- (vi) **Anantdeep Singh Vs. High Court of Punjab and Haryana** MANU/SC/0989/2024 (Hon'ble Apex Court).

6. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No.2 submits as follows:-

- (i) The learned P.O. by referring paragraph No. 17 of the judgment and order passed by the Hon'ble High Court, Bench at Aurangabad in Criminal Appeal No. 322/2007 submits

that the applicant has not been honorably acquitted by the Hon'ble High Court but the applicant came to be acquitted on technical grounds. In paragraph No. 17 the Hon'ble High Court, Bench at Aurangabad has concluded that the sanctioning authority has accorded sanction mechanically. Further considering that the 18 years have been passed post date of offence and the applicant might have crossed the age of superannuation, acquitted the applicant instead of giving discharge.

(ii) Learned P.O. submits that the respondent No.2 in terms of the provisions of Rule 70 (4) and (5) of the said Rules of 1981 has passed the impugned order which is proper, correct and legal. The respondent No. 2 has considered the said period of dismissal including suspension as a service period for the purpose of retiral benefits and further granted 50% of amount of pay and allowance restricting the period of three years as prescribed in the said rule. The respondent No.2 has considered all the aspect of the matter. There is no substance in this Original Application and the same is liable to be dismissed.

7. The applicant came to be suspended initially and after the judgment and order of conviction dated 27.07.2007



passed by the Special Court, Nanded in connection with the Special (ACB) Case No.9/2004 dismissed from service by order dated 12.12.2007 passed by the respondent No.2, claims full pay and allowance to which he would have been entitled had he not been dismissed from service due to his acquittal by Hon'ble High Court, Bench at Aurangabad in Criminal Appeal No. 322/2007. It is also the case of the applicant that he was never subjected to the departmental enquiry in connection with the aforesaid crime registered against him.

8. In these contexts, Rule 70 of the Rules of 1981 prescribes the provisions for 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. The said Rule 70 of the Rules of 1981 reproduced as under:-

***“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.- 1. When a Government servant who has been dismissed, removed or compulsorily retired is re-instated 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 spends 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:*

*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.*

*(3) In a case falling under sub-rule(2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.*

(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.*

*Note:- The order of competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of –*

*(a) extraordinary leave in excess of three months in the case of a temporary Government servant; and*

*(b) leave of any kind in excess of five years in the case of a permanent Government servant.*

*(6) The payment of allowance under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.*

*(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 68.*

*(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement. Where the pay and allowances admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.”*

9. In the instant case, the applicant came to be retired on 31.10.2020 whereas the Hon’ble High Court of Bombay, Bench at Aurangabad has disposed of the Criminal Appeal No. 322/2007 preferred by the applicant by judgment and order dated 03.10.2022. The Hon’ble High Court, Bench at Aurangabad by judgment and order dated 03.10.2022

quashed and set aside the order of conviction dated 27.07.2007 passed by the Special Judge, Nanded in Special (ACB) Case No. 09/2004 and acquitted the applicant of the offences punishable under Sections 7 and 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988. There is no dispute that Rule 70 (1) also covers the case of such an employee who would have been so reinstated but for his retirement on superannuation while under suspension or not.

10. In a case **Dnyaneshwar Kashinath Shingane Vs. State of Maharashtra & Ors.** decided on 09.11.2022 placed before this Tribunal by learned counsel for the applicant in paragraph No.11 the Hon'ble High Court, Bench at Aurangabad has referred the case of **Krishnakant Reghunath Bibhavnekar Vs. State of Maharashtra reported in (1997) 3 SCC 636** on the issue of treatment of period of suspension and payment of pay and allowances during intervening period. The said paragraph No. 11 is reproduced hereinbelow:-

*“11. The issue of treatment of period of suspension and payment of pay and allowances during intervening period has been dealt with by the Apex Court in its judgment in Krishnakant Raghunath Bibhavnekar v. State of Maharashtra, (1997) 3 SCC 636 in which the Hon'ble Supreme Court has held as under:*

“4. Mr Ranjit Kumar, learned counsel for the appellant, contends that under Rule 72 (3) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment during Suspension, Dismissal and Removal) Rules, 1991 (for short “the Rules”), the Rules cannot be applied to the appellant nor would the respondents be justified in treating the period of suspension of appellant, as the period of suspension, as not being warranted under the Rules. We find no force in the contention. **It is true that when a government servant is acquitted of offences, he would be entitled to reinstatement. But the question is whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period, as contended by Shri Ranjit Kumar?** The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of the prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Penal Code, 1860. **If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of**

*course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.). Rules 72(3), 72(5) and 72(7) of the Rules give discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date the Rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paras 5 and 6 of the additional affidavit.” (emphasis supplied)*

11. In paragraph No. 18 the Hon’ble High Court, Bench at Aurangabad in the aforesaid case has made the following observations:-

*“18. Thus the decisions in Bramha Chandra Gupta and Baban Shriram Wafare (supra) cannot be construed to mean that in every case of acquittal, suspension period must be treated as duty for payment of full pay and allowances. As against the two judgments cited by Mr. Ambetkar, the judgment of the Apex Court in Krishnakant Raghunath Bibhavnekar (supra) is clear and specific. Payment of full*

*pay and allowances is not automatic on acquittal of a government servant.”*

12. The issue of treatment of period of suspension and payment of pay and allowances during intervening period has been dealt with by the Hon’ble Apex Court in the judgment in **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra** as referred by the Hon’ble High Court, Bench at Aurangabad in paragraph No. 11 as above particularly by referring the Rule 72 of the said Rules of 1981. It is observed by the Hon’ble Supreme Court that when a Government servant is acquitted of offences, he would be entitled to reinstatement, but the question is whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period. The conduct alleged is the foundation of prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal. The Hon’ble Supreme Court has further observed that the grant of consequential benefits with all back wages cannot be as a matter of course. In terms of ratio laid down



by the Hon'ble Supreme Court it is necessary to go through the order of acquittal for the purpose of determining whether the applicant can be paid full pay and allowances during the said period.

13. The judgment and order of acquittal dated 03.10.2022 passed by the Hon'ble High Court, Bench at Aurangabad in Criminal Appeal No. 322/2007 is annexed to the Original Application (Annexure 'A-2'). In paragraph Nos. 16 and 17 of the said judgment and order of acquittal, the Hon'ble High Court has made the following observations:-

*"16. In the case in hand, PW 2- Anupkumarsinh was examined in proof of sanction (Exh.25). It is in his evidence that on going through the papers of investigation, he was satisfied that there was sufficient evidence to lodge the prosecution against the appellant. He, therefore, accorded sanction (Exh.25). In response to the question put to him during cross-examination, he testified to have had received the draft sanction along with the papers of investigation. A copy of the draft sanction was with him when he was cross-examined. He admitted that the draft sanction and the sanction (Exh.25) were identical. In paragraph 8 of the draft sanction, a space was left for writing name of the sanctioning authority. The same is there in the sanction (Exh.25) and his name is written there in handwriting.*

*17. Perusal of sanction (Exh.25) indicates that there is no reference to the police papers referred to and relied on for grant of sanction. Learned counsel for the appellant was, therefore, justified in contending that the sanctioning authority has accorded sanction mechanically. This Court is in agreement with the submissions made by learned counsel for the appellant. The trial Court simply*

*relied on the oral evidence of PW 2 - Anupkumarsinh that he had gone through the papers of investigation and accorded sanction (Exh.25). This Court is not at one with the findings recorded by the trial Court in this regard. The same leads this Court to interfere with the impugned order of conviction and sentence. Eighteen years have passed post date of offence. Evidence might have disappeared by now. The appellant might have crossed the age of superannuation. This Court, therefore, acquits the appellant instead of giving discharge."*

14. It is thus clear that the applicant has not been honorably acquitted with the findings that he did not commit offence at all. The applicant came to be acquitted merely on the technical ground i.e. non application of mind at the time of granting sanction for prosecution by the sanctioning authority. Thus the principles enunciated in **Krishnakant Reghunath Bibhavnekar Vs. State of Maharashtra** are fully attracted in the present case. Therefore, mere acquittal of applicant would not be entitled automatically for full pay and allowances.

15. Further the respondent No.2 has passed the order in terms of the provisions of Rule 70 (4) and (5) of the Rules of 1981. In terms of Rule 70 (4), such a Government servant is entitled to be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, as the competent authority may determine

after giving notice to the Government servant of the quantum proposed. In the instant case the respondent No.2 has issued show cause notice dated 22.05.2023 to the applicant and considering the explanation tendered by the applicant in response to the said show cause notice has rightly granted 50% pay and allowances to the applicant for the said period and in terms of the proviso to sub-Rule 70, restricted the said pay and allowance to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed or immediately preceding the date of retirement on superannuation of such Government servant. The respondent No.2 has rightly granted 50% of pay and allowances to the applicant for the last preceding three years from the date of his retirement i.e. 31.10.2010. The order impugned is proper, correct and legal and thus calls for no interference.

16. So far as the other citations relied upon by learned counsel for the applicant are concerned, those are not relevant in view of the observations and ratio laid down by the Hon'ble Supreme Court in the aforesaid case as referred by the Hon'ble High Court, Bench at Aurangabad. There is no

substance in the Original Application and the same is liable to be dismissed. Hence, the following order:-

**ORDER**

- (i) The Original Application is hereby dismissed.
- (ii) In the circumstances there shall be no order as to costs.
- (iii) The Original Application is accordingly disposed of.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 24.10.2024**

SAS O.A. 706/2023 Pay and Allowance