

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 81 OF 2018

DISTRICT : LATUR

Sayyed Wali Abdul Khadar,
Age : 62 years, Occu. : Retired Nil,
R/o : Khair Nagar, Shelhar Road,
Nideban Udgir, Dist. Latur.

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.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,
Through the Secretary, Home Department,
Mantralaya, Mumbai-32.

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**2. The Additional Director General of
Police (Administration),**
Maharashtra State, Police Headquarter,
Shahid Bhagat Singh Marg, Colaba,
Mumbai-400 001.

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3. The Superintendent of Police,
Superintendent Office, Latur, Dist. Latur.)

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4. The Accountant General,
Office of the Accountant General
(Accounts & Entitlement)-II,
Maharashtra, Nagpur-440001.

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... RESPONDENTS

APPEARANCE : Shri D.A. Bide, Counsel for Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

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

DATE : 23.04.2024

ORAL - ORDER

1. Heard Shri D.A. Bide, learned counsel appearing for the applicant and Shri D.M. Hange, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the parties at the admission stage itself.

3. Facts in brief as stated by the applicant giving rise to the Original Application as follows :-

(i) The applicant was working as Police Constable with respondent Nos. 1 to 4. However, during the service period i.e. from 09.02.2008 to 15.11.2009, the applicant was suspended due to the criminal case registered against him. Initially, he was acquitted by the learned Sessions Judge, Ahmedpur by judgment and order dated 06.03.2012. However, meanwhile, the Departmental Enquiry was conducted against the applicant and as a result of the said enquiry, the applicant was compulsorily retired by order dated 06.07.2009. Being aggrieved by the same, the applicant has approached the superior authority by filing an appeal and by order dated 16.05.2014, the respondent

No. 2 has set aside the said order of compulsory retirement and instead imposed fine on the applicant to the tune of Rs. 1000/-. In view of the said order, by order dated 10.10.2014, the applicant came to be reinstated in service.

(ii) In view of the order dated 10.10.2014, the respondent No. 3 i.e. the Superintendent of Police, Latur has passed further order dated 19.06.2015 of pay fixation of the applicant including the benefits to the applicant during the suspension period, considering the said period as duty period. After the said order, the Superintendent of Police, Latur has forwarded proposal for sanction to the office of the Accountant General, Nagpur. However, by communication dated 26.02.2016, the Accountant General, Nagpur has raised query as to how regularization of his suspension period as duty period was done.

(iii) It is further case of the applicant that in spite of the orders dated 10.10.2014, 10.06.2015 and 18.07.2017 passed by the respondent authorities, the office of respondent No. 4 i.e. Accountant General, Nagpur again issued communication directing the respondent No. 3 that there is no necessity of pay fixation of the applicant during

the suspension period. Hence, the present Original Application.

4. Learned counsel for the applicant submits that in view of the facts above, it is clear that the competent authorities have taken efforts to give effect to the order dated 16.05.2014 passed by the respondent No. 2 by setting aside the compulsory retirement order against the applicant and instead imposed fine of Rs. 1000/- on him and further given effect to the order dated 10.10.2014 (Annexure A-2). However, the respondent No. 4 i.e. the Accountant General, Nagpur has unnecessarily taken objection for the said pay fixation and even though the said period is directed to be treated as period for the purpose of pension, due to the objection raised by the respondent No. 4 i.e. the Accountant General, Nagpur, the pensionary benefits have not been given to the applicant.

5. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 and particularly on the basis of para No. 9 submits that in spite of orders dated 10.10.2014, 10.06.2015 and 18.07.2017, which are passed by the competent authorities, the respondent No. 4 again issued the communication by disposing the claim of the applicant directing

the respondent No. 3 that there is no necessity of the pay fixation of the applicant during out of service period.

6. Learned Presenting Officer submits that as per the affidavit in reply filed on behalf of respondent No. 4 i.e. the Accountant General, Nagpur, the respondent No. 4 has only pointed out that the pension sanctioning authority to verify the position in view of their decision to consider the said period as qualifying service for the purpose of calculation of pension.

7. It is an admitted position that so far as recovery of overpayment of pay and allowances to the tune of Rs. 93,480/- is concerned, the same has been quashed and set aside by this Tribunal by order dated 01.11.2017 in O.A. No. 405/2017.

8. In fact I do not find any dispute or any issue in this matter except technical objection as has been raised by the respondent No. 4 i.e. the Accountant General, Nagpur. So far as recovery of excess amount is concerned, the same has been quash and set aside by this Tribunal by order dated 01.11.2017 in O.A. No. 405/2017. The question about full payment towards pay and allowances of the said period is not required to be considered again.

9. On perusal of the orders dated 10.10.2014, 10.06.2015 and 18.07.2017, which are passed by the competent authorities, there is no reason for the respondent No. 4 i.e. the Accountant General, Nagpur to raise any technical objection in this regard, when the respondent No. 4 the Accountant General, Nagpur has specifically stated in his affidavit in reply that the issue regarding fixation of pay, increments, treatment of period of suspension etc. are purely administrative in nature and falls within the ambit of respondent Nos. 1 to 3. The office of respondent No. 4 has only pointed out to the pension sanctioning authority to verify the position. On careful perusal of the entire orders together, so far as the period as qualifying service for the purpose of pensionary benefits, I do not think that the competent authorities have committed any mistake.

10. Learned counsel for the applicant on instructions submits that the applicant has been paid pay and allowances to the extent of 50% as per the order passed by the competent authorities on 10.10.2014 and further the amount recovered from the applicant has been refunded to him.

11. In view of the statement made by the learned counsel for the applicant on instructions, the prayer clause 11 (D) and (E)

may not survive and there is no need to consider the representation of the applicant in view of the aforesaid order.

12. Learned counsel for the applicant submits that the said period of absence on duty is directed to be treated as duty period for the purpose of pension only and therefore, the prayer clause (F) also does not survive.

13. In view of above discussions, the present Original Application deserves to be partly allowed. Hence, the following order :-

ORDER

- (i) The Original Application is hereby partly allowed.
- (ii) The respondent Nos. 1 to 4 are hereby directed to pay pensionary benefits along with all consequential benefits to the applicant in view of the order dated 18.07.2017 (Annexure A-5) within a period of four months from the date of this order.
- (iii) In the circumstances, there shall be no order as to costs.
- (iv) The Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 23.04.2024

(Justice V.K. Jadhav)
Member (J)