

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION 57 OF 2016

DISTRICT : PUNE

Shri Vijay Somanappa Harke,)
Retd as Police Head Constable from)
The office of below named Respondent)
No. 1, R/o: OM Disha Township,)
E-2/202, Sasane Nagar, Hadapsar,)
Pune-28.)...Applicant

Versus

1. The Commandant,)
State Reserve Police Force, Group-I)
Having office at Ram Tekdi,)
Pune-22.)
2. The Special Inspector General of)
Police, S.R.P.F, having office at)
Pune.)
3. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, having office)
at Mantralaya, Mumbai 400 032.)...Respondents

Shri A.V Bandiwadekar, learned advocate for the Applicant.
Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Justice A.H. Joshi (Chairman)

DATE : 06.05.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and
Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.



2. The applicant was serving as Police Head Constable and was posted in S.R.P.F, Group-I, Pune. He was named as accused in an offence, Crime No 327/2006 registered under various sections 302, 498-A, 392, 304-B and 34 of I.P.C read with section 3 and 4 of Dowry Prohibition Act.

3. The investigation of said Crime No 327/2006 has resulted in filing of charge sheet against various accused persons including applicants towards the offence for which FIR was lodged. The case was committed to sessions court, and ultimately the accused were tried in Sessions Case No. 605/2006. Along with other accused the applicant was convicted and sentenced by the Sessions Court. The matter reached the Hon'ble High Court in Criminal Appeal No. 437/2009. Applicant and his wife were acquitted by Hon'ble High Court while the conviction of other accused was upheld.

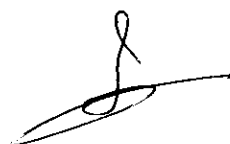
4. Because the applicant was arrested, he was kept under suspension. After the conviction of applicant and sentence, the applicant was removed from employment.

5. After acquittal by the Hon'ble High Court, the applicant has been reinstated. By the impugned order, the period of suspension was treated "as such", i.e. not spent on duty.

6. The applicant claims that in view of his acquittal the period of suspension is liable to be treated as duty.

7. The applicant's claim in the Original Application is contested by filing affidavit in reply. In para 21 of the affidavit, the ground of objection to applicant's claim is incorporated:-

"21. With reference to Para 6.17, I say that the contents therein are not true and correct and as such the same is not admitted. It is kindly



submitted that the petitioner has filed appeal against the order of conviction before the Hon'ble High Court, Mumbai. The Hon'ble High Court, Mumbai by its judgment dated 27.10.2014 has given benefit of doubt to the Petitioner and his wife, i.e. accused No. 2 and 3 and acquitted them. As such the Petitioner has not clean/honorable acquittal, hence according to the MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 Rule No. 70(2) the decision regarding suspension period was treated "As such" vide order No. आस्था-१/बडतर्फ पोहवा. व्ही.एस.हारके/शासकीय फायदे/२००९ / ८२९/२०१५, दिनांक २७/०९/२०१५. As such the same is legal, just and proper hence deserves to be confirmed."

(quoted text is drawn from Page No 60 of the Paper Book).

(The portion is quoted and underlined portion is done for supplying emphasis).

8. Applicant has placed on record of this O.A, copy of judgment rendered by Hon'ble High Court in Criminal Appeal No. 437/2009 in which applicant was acquitted which is at Page No 23 of the Paper Book.

Perusal of the said judgment reveals that the reasons and findings regarding to the acquittal of the applicant are recorded in para 14. Relevant paragraph is quoted below for ready reference as below:-

"14. Thus, though the prosecution has failed to establish the offence punishable under Sections 498-A, 304-B of the IPC and offence under the provisions of Dowry Prohibition Act, in our opinion, the prosecution has proved that it was accused no. 1 who had committed murder of deceased Suwarna. Presence of accused no. 1 is established. Accused no. 1 does not claim any alibi, much less has he proved alibi. Accused No. 1 has also not offered any explanation as to who he had knowledge that Suwarna had sustained the injuries due to fall. However, there is no evidence regarding presence of accused nos 2 and 3 at about the time when the



offence was committed. In our opinion, therefore, accused nos 2 and 3 are entitled to be given the benefit of doubt.”

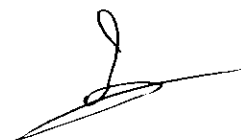
(quoted text is drawn from Page No. 38 of the Paper Book of O.A). The underlining is done in the quoted text for supplying emphasis.

9. The underlined portion contained in the quotation reveals that the acquittal of the applicant, is ordered because no evidence is brought by the prosecution before the Sessions Court for supporting the charge about involvement of the applicant in commission of offence. Though learned Sessions Judge has categorically recorded that the prosecution did not bring any evidence to prove presence of accused, at the same time he has observed as follows:-

“In our opinion, therefore, accused nos 2 and 3 are entitled to be given the benefit of doubt”.

This latter sentence quoted herein before has created a belief in the mind of the competent authority, i.e. the Respondent no. 1 that the applicant was acquitted by giving benefit of doubt. In fact, the said latter sentence is instrumental for leaving the authority to go astray. Respondent No. 1 ought to have read both the sentences together and coherently and he would have been guided more than being misguided.

10. Underlined portion from the quotation of para No 14 of the judgment of Sessions Court, namely:- “However, there is no evidence regarding presence of accused nos 2 and 3 at about the time when the offence was committed”, is in fact the pronouncement of fact finding and the judgment on facts. The latter sentence “In our opinion, therefore, accused nos 2 and 3 are entitled to be given the benefit of doubt”, is an obiter, and it does not have value whatsoever either on facts or on law.



11. In the result, the application has to succeed and he cannot be denied benefits due to inappropriate paraphrasing of the sentences by the Learned Sessions Judge. In the result, present Original Application is allowed. Impugned order dated 27.1.2015 passed by the Respondent no. 1 (Exhibit-I) under which he treated the period of suspension "as such" [and not as duty period], is set aside. It is declared that the period of suspension is liable to be treated as period spent on duty and applicant shall be entitled to receive all consequential benefits and the same be passed within four months from today.

12. In so far as costs are concerned, though the order denying continuity of service is unjust, this Tribunal will not find serious fault with the Respondent No. 1 because of ambiguous text contained in the judgment delivered by Sessions Judge. If a Sessions Judge can be lax in using his language, the Respondent No. 1 would definitely deserve latitude for because he was misguided. Therefore in the peculiar facts and circumstances of the case, cost shall be the cost in the cause

Sd/-
(A.H Joshi, J)
Chairman

Place : Mumbai
Date : 06.05.2016
Dictation taken by : A.K. Nair.