

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.313 OF 2018

DISTRICT : MUMBAI

Shri Ajay Rajaram Shinde,)
Age about 46 years, Assistant Police Inspector,)
State Intelligence Department, Office of Director)
General of Police, Maharashtra State, Colaba, Mumbai)
Having residential address as A-2/94, Arujna,)
Godrej Garden Enclave, Pirojsha Nagar, Vikhroli (E),)
Mumbai 400079)..Applicant

Versus

1. Government of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai)
2. Director General of Police,)
Old Council Hall, S.B.S. Marg, Colaba, Mumbai)
3. Government of Maharashtra,)
Through Principal Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai)
4. Government of Maharashtra,)
Through Principal Secretary,)
Finance Department, Mantralaya, Mumbai)..Respondents

Shri M.D. Lonkar – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman
 Shri P.N. Dixit, Member (A)

RESERVED ON : 14th March, 2019

PRONOUNCED ON : 18th March, 2019

PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Brief facts:

2. The Applicant who was working as Police Sub Inspector resigned on 13.2.2007. On 14.2.2012 the Applicant requested for his reinstatement. On 12.11.2012 he was reinstated. The order dated 12.11.2012 reinstating him stated as under:-

- “१) त्यांच्या विनंतीचा शासनाने सर्वकष विचार करून महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम - १९८२ मधील नियम ४६(४)(सी) शिथिल करून “एक विशेष बाब” म्हणून पोलीस उपनिरीक्षक श्री. अजय राजाराम शिंदे यांनी वेतनश्रेणीच्या ज्या टप्प्यावर राजीनामा दिला होता. त्या टप्प्यावर त्यांना शासनसेवेत पुनःस्थापित करण्यात येत आहे.
- २) पोलीस उपनिरीक्षक श्री. अजय राजाराम शिंदे कार्यमुक्त झाल्यापासून पुन्हा कार्यभार घेईपर्यंतचा कालावधी महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम - १९८२ मधील नियम ४६ (६) ज्या तरतुदीनुसार क्षमापिता करण्यात येत आहे.”

(Quoted from page 70 of OA)

3. In pursuance of the same, Respondent no.2 has passed posting order dated 3.12.2012. Relevant portion of the same is as under:

- “१. त्यांच्या विनंतीचा शासनाने सर्वकष विचार करून गृहविभाग, शासन निर्णय क्र.आरईएन ०३१२/प्र.क्र. ११५/पुर्नबांधणी १६/पोल-५ ब, दि. १२ नोव्हेंबर, २०१२ अन्वये महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम - १९८२ मधील नियम ४६(४)(सी) शिथिल करून “एक विशेष बाब” म्हणून पोलीस उप निरीक्षक श्री. अजय राजाराम शिंदे यांनी वेतन श्रेणीच्या ज्या टप्प्यावर राजीनामा दिला होता त्या टप्प्यावर त्यांना शासन सेवेत पुनःस्थापित केले आहे. तसेच पोलीस उप निरीक्षक श्री. अजय राजाराम शिंदे कार्यमुक्त झाल्यापासून पुन्हा कार्यभार घेईपर्यंतचा कालावधी महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम - १९८२ मधील नियम ४६(६) च्या तरतुदीनुसार क्षमापित केला आहे.
२. श्री. अजय राजाराम शिंदे, पोलीस उप निरीक्षक यांना शासनाने सेवेत पुनःस्थापित केले असल्यामुळे त्यांची पुनःस्थापनंतर राज्य गुप्तवार्ता विभाग, महाराष्ट्र राज्य, मुंबई येथे सद्या रिक्त असलेल्या पदात नियुक्ती करण्यात येत आहे.”

(Quoted from page 72 of OA)

4. Thereafter his seniority was fixed by Respondent no.2 by order dated 4.1.2013. The relevant portion of the same is as under:

“पोलीस उपनिरीक्षक अजय राजाराम शिंदे यांच्या राजीनाम्यामुळे दि.१/१/२०१२ च्या पोलीस उपनिरीक्षक ज्येष्ठता सूचीत त्यांच्या नावासमोर ज्येष्ठताक्रमांक दर्शविण्यात आलेला नव्हता. आता उपरोक्त नमुद शासन निर्णयातील तरतुदी लक्षात घेवून पोलीस उपनिरीक्षक अजय राजाराम शिंदे यांची पोलीस उपनिरीक्षक संवर्गाच्या एकचित्र ज्येष्ठता सूचीत पुढील प्रमाणे नोंद घेण्यांत येत आहे.

दिनांक - १/१/२०१२ चा ज्येष्ठतासूची

ज्ये.सू. अ.क्र.	नव	प्रवर्ग	भरती दिनांक	मुळ जिल्हा	सेवानिवृत्त दिनांक
५८	अण्णासाहेब मारोती बोरुडे (सरळसेवा)	खुला	१५/०९/१९९३		
	आनंत महिपतराव कुलकर्णी (सरळसेवा)	खुला	१५/०९/१९९३	बीड	३१/७/२०२८
५८-अ	अजय राजाराम शिंदे (सरळसेवा)	खुला	१५/०९/१९९३	मुंबई	३१/४/२०३०
	प्रमोदकुमार परशराम शेवाळे (सरळसेवा)	खुला	१५/०९/१९९३	मुंबई	
	प्रदिप पंढरीनाथ थोपटे (सरळसेवा)	खुला	१५/०९/१९९३	मुंबई	२८/२/२०१७
५९	बजीराव महादेव पोवार (सरळसेवा)	खुला	१५/०९/१९९३	कोल्हापूर	३०/६/२०१५”

(Quoted from page 73 of OA)

5. On the basis of his restoration he was promoted in a provisional manner to the post of Assistant Police Inspector by order dated 26.2.2013 (Exhibit X page 74 of OA). A proposal was sent by Respondent no.2 to Respondent no.1 to provide the Applicant the deemed date of promotion to the post of Assistant Police Inspector. While scrutinizing the proposal the

Respondent no.1 in consultation with Finance Department made following observations in the GR dated 17.4.2017:

“४. श्री. अजय शिंदे यांनी पदोन्नतीनंतर दिनांक ११ मार्च २०१३ च्या अर्जांन्वये सेवा ज्येष्ठतेनुसार सहायक पोलीस निरीक्षक पदाचा मानीव दिनांक मंजूर करण्याची पोलीस महासंचालकांकडे विनांती केली. पोलीस महासंचालकांनी त्यांच्या मानीव दिनांकाचा प्रस्ताव दिनांक ९ एप्रिल २०१३ च्या पत्रान्वये शासनाच्या मंजुरीसाठी सादर केला. सदर प्रस्तावाच्या छाननीअंती श्री. अजय शिंदे यांना सेवेत पुनः स्थापित करण्यापासून त्यांना पदान्ती देण्यात येईपर्यंत चुकीची कार्यवाही झाल्याच्या खालील बाबी निदर्शनास आल्या आहेत

१. श्री. अजय शिंदे यांना वेतन श्रेणीच्या ज्या टप्प्यावर राजीनामा दिला होता, त्या टप्प्यावर त्यांना शासन सेवेत पुनः स्थापित करण्यात आले आहे. हे महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम-४६(१) च्या तरतुदीनुसार एखाद्या सेवेचा किंवा पदाचा राजीनामा दिल्यामुळे पूर्वीच्या सेवेचा हक्क गमावला जातो. या तरतुदीनुसार राजीनामा दिल्यास पूर्वीच्या सेवेवर निवृत्तीवेतन अनुज्ञेय नाही, असा-निर्णय मा. उच्च न्यायालय, मुंबई यांनी सी.डी.मोरे यांच्या याचिका क्रमांक- २७१३ / २००० मध्ये दिनांक ३ जुलै २००० रोजी दिला आहे.
२. भारतीय संविधानाच्या अनुच्छेद-३०९ मध्ये दिलेल्या अधिकाराचा वापर करून, दिनांक १ नोव्हेंबर २००५ पासून रद्द केलेली महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम, १९८२ आणि या नियमातील कायदेशीर तरतूद व त्यावरील मा.उच्च न्यायालयाचा निर्णय विचारात घेता, श्री. अजय शिंदे हे निवृत्तीवेतनासाठी पात्र नाहीत.
३. तसेच त्यांना सेवेतून कार्यमुक्त केल्यापासून पुन्हा सेवेचा कार्यभार घेईपर्यंतच त्यांचा सेवाखंडित कालावधी क्षमापित करून तो अर्हताकारी सेवा म्हणून हिशोबात घेण्यात आला आहे. हे महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम-४६(६) च्या तरतुदीनुसार अनुज्ञेय नाही.
४. श्री. अजय शिंदे यांची पोलीस उपनिरीक्षक पदावरील मूळ ज्येष्ठता अबाधित ठेवण्यात आली अनुज्ञेय नाही.
५. निवृत्तीवेतन नियमानुसार विशेष बाब म्हणून सेवेतील खंड क्षमापित करून पूर्वीची सेवा निवृत्तीवेतनाथ ग्रहण धरून पुनर्नियुक्ती करण्यास मान्यता देण्याच्या निर्णयाच्या आधारे श्री. अजय शिंदे यांना वेतनाचे इतर लाभ उदाहरणार्थ वेतन संरक्षण, ज्येष्ठता, मानीव दिनांक इत्यादी अनुज्ञेय नाहीत.

शासन निर्णय

शासन निर्णय, गृह विभाग दिनांक १२.११.२०१२ अधिक्रमित करण्यात येत आहे.

२. श्री. अजय राजाराम शिंदे यांची दिनांक १५ अक्टोबर १९९३ रोजी सरळसेवेने पोलीस दलात पोलीस उपनिरीक्षक पदी नेमणूक झाली होती. पोलीस प्रशिक्षणानंतर त्यांची बृहन्मुंबई पोलीस दलात नियुक्ती करण्यात आली होती. श्री. अजय शिंदे यांनी दिनांक १४ मे २०१७ रोजी पोलीस आयुक्त, बृहन्मुंबई यांच्याकडे कौटुंबिक अडचणीच्या पाश्चीभूमीवर पोलीस उपनिरीक्षक पदाचा दिलेला राजीनामा पोलीस आयुक्तांनी स्वीकारला होता. महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम, १९८२ मधील नियम-४६(४)(सी) मधील तरतुदी शिथिल करून, एक विशेष बाब म्हणून श्री. अजय शिंदे यांनी मूळ संवर्गा पोलीस उपनिरीक्षक पदी दिनांक ४ डिसेंबर, २०१२ रोजी कार्यभार स्विकारला असल्याने, दिनांक ४ डिसेंबर, २०१२ रोजी खालील अटीच्या अधीन राहून दिनांक १२ नोव्हेंबर, २०१२ रोजी पुनर्नियुक्ती करण्यात येत आहे.

१. श्री. अजय शिंदे यांची पुर्ननियुक्ती पोलीस अपनिरीक्षक या पदावरील नियुक्ती सेवा ज्येष्ठतेच्या प्रयोजनार्थ नवीन नियुक्ती असेल. त्यांना पुर्वीच्या सेवेच्या सेवा ज्येष्ठतेचा कोणताही लाभ अनुज्ञेय असणार नाही. त्यांची पुनर्नियुक्ती शुन्य ज्येष्ठतेवर व पोलीस उपनिरीक्षक पदास विहित केलेल्या वेतनसंरचनेतील किमान वेतनावर निश्चित करण्यात येत आहे.
 २. श्री. अजय शिंदे यांचा राजीनामा अंमलात येण्याची तारीख आणि राजीनामा मागे घेण्यास परवानगी दिल्यामुळे ते कामावर रुजू होण्याची तारीख या दरम्यानचा कामावरील अनुपस्थितीचा कालावधी महाराष्ट्र नागरी सेवा (निवृतीवेतन) नियम, १९८२ मधील नियम ४६(६) नुसार क्षमापित करण्यात येत असून, सदरहू खंडित कालावधी व त्यापूर्वीचा सेवा कालावधी हा कोणत्याही सेवा विषयक प्रयोजनार्थ अर्हताकारी सेवा म्हणून हिशोबात घेतला जाणार नाही.
 ३. श्री. अजय शिंदे यांनी दिनांक १४ मे २००७ रोजी वैयक्तिक कारणासाठी राजीनामा दिला असल्यामुळे, महाराष्ट्र नागरी सेवा (निवृतीवेतन) नियम, १९८२ मधील नियम-४६(१) नुसार त्यांनी त्यांच्या पूर्वीच्या सेवेवरील हक्क गमावला आहे. त्यामुळे ते पुनर्नियुक्ती झाल्यानंतर प्रत्यक्ष रुजू होईपर्यंतच्या म्हणजेच दिनांक १५ सप्टेंबर १९९३ ते ३ डिसेंबर २०१२ च्या सेवेवर त्यांना कोणतेही लाभ अनुज्ञेय ठरणार नाहीत.
३. श्री. अजय शिंदे यांच्या ज्येष्ठता व पदोन्नतीचे अनुक्रमे दिनांक ४ जानेवारी २०१३ व २६ फेब्रुवारी २०१३ रोजीचे आदेश पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांनी तात्काळ रद्द करण्याची कार्यवाही करावी. तसेच श्री. अजय शिंदे यांच्या वेतन, ज्येष्ठता इत्यादी प्रकरणी खालील सूचनांचे पालन करण्यात यावे व केलेल्या कार्यवाहीचा अहवाल शासनास सादर करण्यात यावा.
- i. श्री. अजय शिंदे यांचे वेतन, ते पुनर्नियुक्तीनंतर शासनाच्या सेवेत रुजू झाल्याच्या दिनांकापासून सहाव्या वेतन आयोगाच्या अनुषंगाने पोलीस उपनिरीक्षक पदास विहित केलेल्या वेतन संरचनेतील किमान वेतनावर व शुन्य ज्येष्ठतेवर निश्चित करण्यात यावे. अतिरिक्त प्रदानाची वसुली करण्यात यावी.
 - ii. श्री. शिंदे यांना पूर्वीच्या सेवेचे कोणतेही लाभ जसे वेतन संरक्षण, वेतनवाढी, रजा सेवांतर्गत आश्वासित प्रगती योजना, जुने निवृतीवेतन नियम अनुज्ञेय राहणार नाहीत.
 - iii. श्री. शिंदे यांना पुनर्नियुक्तीच्या दिनांकापासून परिभाषित अंशदान निवृतीवेतन योजना लागू राहिल. त्यानुसार त्यांचे या योजनेचे खाते उघडणे, त्यांच्या वेतनातून अंशदान जमा करण्याबाबतची कार्यवाही करण्यात यावी.
 - iv. श्री. शिंदे यांचे भविष्य निर्वाह निधी खाते असल्यास, विहित कार्यपद्धती अवलंबून ते बंद करण्यात यावे. त्यांना परिभाषित अंशदान निवृतीवेतन योजनेच्या खात्यावर भविष्य निर्वाह निधीच्या दराप्रमाणे व्याज मिळणार असल्यामुळे त्यांच्या भविष्य निर्वाह निधी खात्यावर व्याज देण्यात आले असल्यास ते शासनाकडे जमा करण्याची कार्यवाही करावी.

(Quoted from page 201-204 of OA)

6. The Applicant has challenged the above GR dated 17.4.2017 with the following prayers:

“15(a) This Hon’ble Tribunal be pleased to hold and declare that the impugned Government Resolution dated 17.4.2017 issued by Respondent no.1 as illegal and bad in law and the same be quashed and set aside with all consequential service benefits in favour of the present Petitioner.”

(Quoted from page 24 of OA)

7. In support of the same, learned Advocate for the Applicant has furnished following grounds:

“7.1(f) The petitioner submits that neither any show cause notice is issued nor rules of natural justice have been observed while issuing the impugned GR dated 17.4.2017.

(g) The impugned GR dated 17.4.2017 is prima facie arbitrary and malafide in nature and thus violative of the provisions of Article 14 of the Constitution of India, in as much as, identically placed police officer viz. Shri Gopinath Patil, who initially joined the police force as PSI in 1983 resigned on 31.12.1997, which was accepted on 10.2.1998 and is reinstated vide GR dated 23.5.2002. On top of it, deemed date of promotion is also accorded in his favour with consequential monetary benefits. It is not open for the Respondents to discriminate the petitioner and as a matter of record, being identically placed police officer like Shri Gopinath Patil, the Petitioner is also entitled to receive the same treatment. It is also not the case of the Respondents that wrong/illegal order was passed in the case of Shri Gopinath Patil.”

(Quoted from page 21-22 of OA)

8. The learned Advocate for the Applicant relies on following judgments to support above arguments:

(1) M/s. Motilal Padampat Sugar Mills v. State of Uttar Pradesh & Ors. 1979 AIR 621 : 1979 SCR(2) 641. Relevant portion of the same is as under:

“Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppels and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. We are, therefore, of

the view that in the present case the Government was bound to exempt the appellant from payment of sales tax in respect of sales of vanaspati effected by it in the State of Uttar Pradesh for a period of three years from the date of commencement of the production and was not entitled to recover such sales tax from the appellant.”

(Quoted from page 300 of OA)

(2) Shri Bhaskar D. Sanap v. The State of Maharashtra, OA No.318 of 2002 decided on 1.10.2002 by this Tribunal. Relevant portion of the same is as under:

“21. It is not pointed out before us that the Respondents had exercised the powers vested in it specifically by any statute or that the same is conferred on it by necessary implication. In the absence thereof, we have to hold that the Respondents had exercised the said power without any jurisdiction. The same can be ignored as non-est.”

(3) RA No.49 of 2002 & Ors. was filed by the State of Maharashtra in this Tribunal against the order dated 1.10.2002 in OA No.318 of 2002 & Ors.. However, the same was dismissed by order dated 20.2.2003 confirming the decision in OA.

(4) Writ Petition No.6839 of 2003 and Writ Petition No.7407 of 2003 were filed by the State of Maharashtra in the Hon'ble High Court challenging the order dated 1.10.2002 in OA No.318 of 2002 and order dated 20.2.2003 in RA No.49 of 2002. The Hon'ble High Court in its order dated 13.3.2008 observed as under:

“4. Perusal of the orders of MAT both in the original application, and in the review petition shows that the MAT has given cogent reasons for making the orders. There can be no doubt that the order cancelling the order, giving deemed date of promotion to Mr. Sanap, could have not been made without giving Show cause notice to Mr. Sanap. Therefore, in our opinion no exception can be taken to the orders passed by MAT setting aside the order which were impugned before it. In our opinion the only question that needs

to be considered is whether MAT should have given liberty to the State Government to issue show cause notice and then make the order. In our opinion the Government of Maharashtra was not entitled to any liberty because of two circumstances one passage of time, because even if it is assumed though the MAT has held that the Government does not have power of review, that the government had power of review but that power has to be exercised within a reasonable time. The Government had made order giving deemed date of promotion in the year 1994 nobody challenged that order and the order withdrawing that deemed date of promotion has been made in the year 2002. In our opinion the Government of Maharashtra was not at all justified in exercising the power of review after lapse of such a long time Secondly, the petitioner has been given further promotion in the year 1998 itself on the basis of deemed date of promotion. Therefore, it is obvious that not only the deemed date of promotion was given by the Government of Maharashtra but the Government of Maharashtra has acted upon it and gave further promotion to Mr. Sanap. Nobody either challenged the order given deemed date of promotion and change the placement in the seniority list or the promotion to the post of Additional Collector in the year 1998. Granting liberty to the State Government would have involved in unsettling the entire situation. In our opinion therefore, the MAT was perfectly justified in not granting liberty to the State Government.”

9. The Ld. Advocate for the Applicant draws our attention to the following facts in the present case. The Applicant was reinstated and promoted on 12.11.2012. However, the order cancelling his reinstatement and promotion was issued on 17.4.2017. Thus, there was a delay of more than four years which is considerably long period. He reiterates while issuing the impugned order no show cause notice was issued to the Applicant which was against the principles of natural justice. Ld. Advocate for the Applicant mentions that this is well settled principles of natural justice and therefore violation of the same establishes that this order was arbitrary and therefore needs to be set aside.

10. Though the Applicant had made General Administration Department as Respondent no.3 and Finance Department as Respondent no.4, no reply has been filed on behalf of them. The matter was agitated and replied only by Respondents no.1 and 2. The Respondent no.1 in their affidavit states as under:

- “5. *With reference to contents of Paragraph 6.31, I say and submit that Respondent no.1 rendered the opinion of Law & Judiciary Department as per the opinion of Respondent no.3. As the Law & Judiciary Department opined in support of order and views expressed by Respondent No.4, the Respondent no.1 once again referred the matter to Respondent no.3 in accordance with the views of Law & Judiciary Department for further consequent action. As per request made by Respondent No.1, the Respondent no.3 thoroughly opined to follow the instruction of Respondent No.4 and accordingly cancelled the previous views expressed in order to sanction deemed date of petitioner. Hence, Respondent no.1 has issued Government Resolution in accordance with the views expressed by Respondent No.3 & 4 as well as Law & Judiciary Department, dated 17.04.2017 in order to take away all the undue benefits given to the Petitioner and consequently cancelled the Government Resolution dated 12.11.2012. The Government Resolution dated 17.04.2017 states that the petitioner would not be entitled for any benefits of the past service and seniority. The Petitioner is re-appointed on the lowest pay-scale on the post of Police-Sub-Inspector and on zero basis seniority. The interregnum period of the petitioner is held as non-qualifying service vide the said Government Resolution. I say and submit that Respondent No.1 also directed Respondent no.3 to immediately cancel the orders regarding the seniority and promotion of the Petitioner, dated 04.01.2013 and 26.02.2013.*
6. *With reference to contents of Paragraph 7.1(a), I say and submit that the claim of the petitioner that the Respondent no.1 has no power to review Government Resolution dated 17.04.2017 is baseless. The Respondent No.1 has all the powers to review, cancel or recall the orders of all the employees appointed in the Police Department as the Administrative Head.*
7. *With reference to contents of Paragraph 7.1(b), I say and submit that as per rule 4 of the Maharashtra Civil Services (Pension) Rules, 1982, the Government has got the powers to relax any of the rules if it is satisfied that the operation of any of these rules causes or is likely to cause undue hardship in the case of any Government servant. From the provisions of the said Rule 4, it becomes clear that the powers of Relaxation of rules are to be exercised by the Government only if it is satisfied that any of the pension Rules causes undue hardship to the Government servant. I say and submit that the petitioner has tendered his resignation from his post and it has become effective on 14.05.2007. The petitioner was not in any hardship and not able to produce any documentary evidence to show that he was in any hardship.*
8. *With reference to contents of Paragraph 7.1(c), I say and submit that as per the provisions of the said Rule 46(4), Public Interest is the sole ground which*

is available to the Government to take any of the person who had resigned from the service, back in the Government services. No other criteria is mentioned in entire provisions.

9. *With reference to contents of Paragraph 7.1(d), I say and submit that the petitioner claims that he is not only covered by the doctrine of promissory estoppel but is also covered by the doctrine of legitimate explanation but the claim of the petitioner is unwanted and illegal. The clause (c) of sub-rule (a) of Rule 46 clearly shows that the period of absence from duty between the period of resignation becoming effective and allowing to resume the duty, shall not be more than ninety days. The period of absence of the petitioner between the date on which the resignation become effective and the date on which he is allowed to resume the duty is beyond ninety days. It is almost five years which is not in consonance with the provisions of said Rule. Hence the claim of petitioner of doctrine of promissory estoppel is equally unjustifiable to those employees who were in continuous service and due for seniority at the place of petitioner.*
10. *With reference to contents of Paragraph 7.1(e), I say and submit that the Government Resolution dated 12.11.2012 by which the petitioner is taken back in the service, is issued in order to reinstate the petitioner. The said order is issued under the provisions of section 46 (4) (c). The said provision does not speak of reinstatement of a person who had earlier resigned from his post from the government service. This provision deals with taking the person back in service in the public interest and on the condition mentioned in sub-rule (a). Hence, the said order dated 12.11.2012 cannot be considered as re-instatement but purely re-appointment. I say and submit that as per the provisions of sub rule (6) of the Rule 46 of the Pension Rules, the period of interruption cannot be counted as qualifying service.*
11. *With reference to contents of Paragraph Nos. 7.1(f) to (j) & 7.2, I say and submit that the Government Resolution is quite justifiable and non-violative of the provisions of Article 14 of the Constitution of India as according to sub-rule (b) of Rule 46 of the Pension Rules, the period of interruption in the service shall not count as qualifying service. There are innumerable examples where the interruption in services is not counted as qualifying service. I say and submit that the petitioner's claim is completely unfair as he had willingly resigned from his service and was absent for his duty and now he want to claim for such benefit of the service which he has not performed. Hence, the Government Resolution dated 17.04.2017 is very just, legal and fair as per the provisions in the law."*

(Quoted from page 306-310 of OA)

11. The issues for consideration are as follows:

- (1) *The order of reinstatement issued in 2012 and the order cancelling the same has been issued in 2017 that is after 4 ½ years. Therefore, whether the Government has exercised its authority of reviewing its earlier order within reasonable period?*
- (2) *The impugned order has been passed without issuing show cause notice to the Applicant and therefore whether it is violative of the principles of natural justice?*
- (3) *Whether there is justification for discrimination against Applicant by Respondent no.1?*

Discussion and findings:

12. As far as the power of review by the competent authority is concerned, the Respondent no.1 is certainly competent to make review of its orders. However, as clarified by the Hon'ble High Court in WP No.6839/2003 and WP No.7407/2003 (supra), the Government must exercise the authority of review within a reasonable time. In the present case the review has been made after prolonged period of 4 ½ years and no justification has been furnished in support of this undue delay. Therefore, the finding is negative as far as issue no.1 is concerned.

13. While issuing the order, for reasons which have not been disclosed, the Respondent no.1 has not issued show cause notice to the Applicant. This is certainly against the principles of natural justice.

14. The Applicant has referred to the case of Shri Gopinath Patil who was having similar circumstances. Reply given by the Respondents is completely silent regarding the same. The Respondent has thus failed to refute Applicant's pleadings as regards discrimination against the Applicant.

15. Thus it is evident that the Government has issued the impugned order after having acquiesced with the order sought to be reviewed. Reasons towards the delay have not been explained. Similarly, it is beyond comprehension why the Respondent no.1 has issued the order without issuing show cause notice to the Applicant. The Respondent no.1 also does not reply to the allegations of discrimination against the Applicant.

16. In view of the above, OA is allowed in terms of prayer clause 15(a). No order as to costs.

Sd/-

(P.N. Dixit)
Member (A)
18.3.2019

Sd/-

(A.H. Joshi, J.)
Chairman
18.3.2019

Dictation taken by: S.G. Jawalkar.