

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.549 OF 2023

DISTRICT : THANE

Shri Rohan Kamlakar Gonjari,)
Age 35 years, Police Sub Inspector at)
Special Protection Unit, Mumbai)
R/at 203, Perin Society, R.B. Mehta Marg, Pantnagar,)
Ghatkopar (East), Mumbai 400077)..Applicant

Versus

1. The Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai)
2. The Director General of Police,)
S.B. Road, Near Regal Cinema, Colaba, Mumbai)
3. The Commissioner of Police, Thane City,)
Kharkar Lane, Near Kalwa Bridge, Thane)
4. The Deputy Commissioner of Police,)
Zone-2, Bhiwandi, District Thane)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri Atulchandra M. Kulkarni, Member (A)

RESERVED ON : 17th December, 2024

PRONOUNCED ON: 20th December, 2024

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The applicant was selected through MPSC by direct recruitment as Police Sub-Inspector (PSI) and his batch number was 106 in the year 2011. On 21.11.2018 while the applicant was working at Police Head Quarter, Thane City, two FIRs No.172/2017 & 256/2018 under Section 376 and 506 of IPC came to be registered at Kongaon Police Station, District Thane.

3. On 22.11.2018 i.e. on the next day after registration of the above two FIRs, the applicant came to be suspended by respondent no.4. On 5.8.2020 the applicant was reinstated in service by respondent no.4. Meanwhile, on 4.3.2020 the Departmental Enquiry (DE) was proposed against the applicant and charge sheet was served on him. On 6.5.2022 the applicant came to be acquitted from the criminal case by the Sessions Court. On 21.7.2022 the applicant was served with show cause notice based on the report of the DE for 'dismissal from service' which was received and replied by the applicant in due course. On 23.9.2022 the applicant was 'compulsorily retired' from service. On 12.10.2022 the applicant preferred appeal before respondent no.1. On 28.11.2022 while deciding on the treatment of period of suspension, the respondent no.3 issued show cause notice to the applicant to treat the period "as such". The applicant replied to this notice. On 28.12.2022 the order of compulsory retirement was set aside by respondent no.1 and instead 'stoppage of increment for one year' was awarded as punishment to the applicant. On 9.1.2023 respondent no.2 passed order of reinstatement of the applicant in service. On 16.3.2023 the impugned order was issued by

the respondent no.3 treating the suspension period between 21.11.2018 and 5.8.2020 “as such”. Aggrieved by this impugned order the applicant has filed the present OA.

4. The applicant prays for the following reliefs:

(a) By suitable orders or directions this Hon’ble Tribunal may be pleased to quash and set aside the impugned order dated 16.3.2023 passed by the respondent no.3 forthwith with all other consequential benefits.

(b) By suitable orders or directions this Hon’ble Tribunal may be pleased to direct the respondents to pay the full pay and allowances for the period of suspension during suspension period from 21.11.2018 to 5.8.2020 with revision of pay and with arrears, forthwith with all other consequential benefits.

5. The Learned Advocate for Applicant submits that the impugned order is unjust and the same may be set aside. Further, he submits that the Applicant has already undergone the punishment of ‘Stoppage of Increment’ and treating the suspension period ‘As Such’ will amount to giving him double punishment. So, he submits that the suspension period should be treated as ‘on duty’ and he should be compensated with pay along with arrears, if any. He further submits that the suspension vide Order dated 22.11.2018 was based on registration of the Criminal Case. Since, the Applicant has been acquitted without any stigma and since the sole cause of suspension was Criminal Case, the suspension period should be treated as ‘on duty’. Since, ‘Rule Nos.72(3), (4), (5) and (6) of ‘MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 provide for regularization of pay and allowances and treatment of suspension period as that spent ‘on duty’, the Applicant is entitled for

full pay and allowances during the suspension period in view of the above provisions as well as acquittal in the criminal cases.

6. The Learned Advocate for Applicant wants to rely on Para 9 of Bombay High Court, Panji Bench ruling in **S.P. Naik Vs. The Board of Trustees, Mormugao Port Trust & Anr. (Writ Petition No.563/1993 decided on 22.2.1999)**.

7. The Learned PO submits that the punishment was awarded since the charges were proved in the DE. Therefore, the Applicant, though acquitted in the Criminal Case, was punished in the DE.

8. The Learned PO further takes us to paragraphs 21 and 22 of the 'Affidavit-in-Reply' filed by Respondents dated 28.06.2023 and wants to rely on the Judgment of the Hon'ble Supreme Court ruling in **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr. 1999(3) SCC 679** and the Circular dated 27.04.2023 of DGP, Maharashtra.

9. The Learned PO submits that both **Paul Anthony (supra)** and the DGP Circular dated 27.04.2023 points out that there is no bar for final decision of DE proceedings against commissions or omissions in discharging the official duty. The Learned PO submits that there is no double punishment given to the Applicant even if he has undergone punishment of 'Stoppage of Increment' for one year and suspension period was treated 'As such'. Further, he also wants to rely on ruling in **Union of India & Ors. Vs. Jaipal Singh AIR 2004 SC 1005** of the Hon'ble Supreme Court.

10. He further submits that the Hon'ble Supreme Court Ruling in **Jaipal Singh (supra)** supersedes **S.P. Naik Vs. Board of Trustees's** Judgment of the Bombay High Court, Panji Bench.

11. The Learned Advocate for Applicant submits that **Jaipal Singh (supra)** does not apply to the instant case, as it pertains to dismissal from service. Whereas in the instant case, the departmental proceeding has finally ended in 'Stoppage of Increment' for one year. He further submits that the **Capt. M. Paul Anthony (supra)** ruling is on a different subject and is not applicable to the instant case.

12. Heard both the sides including their reliance on various judgments and rulings. I am of the view that the judgment in **Jaipal Singh (supra)** applies in the instant case as DE proceedings had led to awarding the punishment of 'compulsory retirement' from service to the applicant. It is a different matter that in the appeal this punishment came to be reduced to 'stoppage of increment' for one year. The golden principle of 'no work no pay' as enunciated in **Jaipal Singh (supra)** is reproduced below for the sake of quick reference needs to be followed in the instant case also:

"On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal

subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.”

13. Since the applicant has not worked during the period of suspension, the pay and allowances for the said period do not accrue to him.

14. Keeping in view the above discussions and the rulings/judgments/orders relied upon by the parties, I pass the following order:

ORDER

- (a) The Original Application is dismissed.
- (b) No order as to costs.

Sd/-
(A.M. Kulkarni)
Member (A)
20.12.2024

Dictation taken by: S.G. Jawalkar.