

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, BOMBAY
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO.912/2011.

DIST. NANDED.

Khan Mahemood Khan s/o Ismail Khan,
Age 58 -years, Occ. Pensioner,
R/o Kotbazar, Tq. Kandhar,
Dist. Nanded.

..... APPLICANT

VERSUS.

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

(Copy to be served on
Presenting Officer, MAT
Bench at Aurangabad).

2. The Director of Prosecution,
Maharashtra State, Bareilly No.6,
Free Press General Marg,
Nariman Point, Near Manora
MLA Hostel, Mumbai 21.

..... RESPONDENTS.

APPEARANCE : Shri H.I. Pathan, learned Advocate for the
applicant.

: Smt DS Deshpande, learned Presenting Officer
for respondents.

CORAM: : Shri J. D. Kulkarni, Member (J)

DATE: 22.09.2016.

JUDGMENT.

(Delivered on 22nd Sept. 2016)

1. Heard Shri HI Pathan, the learned counsel for the applicant and Smt DS Deshpande, the learned Presenting Officer for the respondents.
2. The applicant Khan Mahemood Khan s/o Ismail Khan has claimed a declaration that he is entitled for continuity in service and the consequential benefits including pay and promotion and his fixation as per 6th Pay Commission, as if he continued in service in the absence of criminal case registered and decided against it. He is also claiming a direction to the Respondent authorities to pay pay arrears of pay and pensionary benefits.
3. The applicant was appointed as Assistant Public Prosecutor vide order dated 6.8.1993 on temporary basis. Vide order dated 2.5.1996 the applicant was selected through M.P.S.C. Prior to

regularization the applicant was serving as Assistant Public Prosecutor at Selu Dist. Parbhani vide order dated 16.8.1993

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4. While in service the applicant came to be suspended vide order dated 15.4.2001 since crime was registered against him under Prevention of Corruption Act. In consequence of the said criminal investigation a Special Case No.1/2002 was filed against the applicant in the Court of Special Judge, Biloli. In view thereof, the applicant was kept under suspension w.e.f. 14.05.2001.

5. The Special Case No.1/2002 came to be decided by Special Judge, Biloli on 6.8.2003 and the applicant was acquitted of all the charges levelled against him.

6. Immediately after acquittal, the applicant filed representation to the competent authority on 25.8.2003 and requested that his suspension shall be revoked and he be reinstated and all his arrears shall be paid. In view of the said representation the Respondent authorities issued the reinstatement order dated 13.01.2009 i.e. after six years. The said reinstatement order is at paper book page no.70.

7. According to the applicant, the Respondents did not follow the directions in G.R. dated 20.7.2006 wherein it has been clearly stated that when the employee is acquitted of criminal charges he shall be immediately reinstated. The Respondents took six years time for reinstating the applicant.

8. The applicant got retired on superannuation on 30.7.2011. In the meantime the State preferred a criminal appeal No.713/2003 against the judgment of acquittal of the applicant. The said appeal came to be dismissed on 26.11.2015. Till today the applicant has not been paid the salary. He is entitled to claim all salary and arrears, etc. He is however, getting only provisional pension. Hence, this O.A.

9. The Respondent no.2 filed the affidavit in reply. It seems that, when the reply affidavit was filed the appeal against the acquittal was pending before the Hon'ble High Court and therefore, it was stated that it is only if the Hon'ble High Court upholds the acquittal, the applicant will be entitled to benefit of pension, gratuity, etc.

10. As already stated it is now admitted fact that, the criminal appeal No.713/2003 filed by the State against the acquittal of the applicant has been decided on 26.11.2015. The copy of the judgment passed by the Hon'ble High Court in the said appeal is placed on record at Exh.-G1 from paper book page Nos.74-A to 74-I. In the said appeal the Hon'ble High Court has confirmed the applicant's acquittal. Thus, the fact remains that the applicant is acquitted of the criminal prosecution and at present no criminal case is pending against the applicant.

11. This Tribunal, on 8.9.2016, was pleased to direct the learned Advocate for the applicant to tender the copy of the representation filed by him on 18.1.2016 along with the copy of the judgment of the Hon'ble High Court. The said copy was accordingly supplied to the learned Presenting Officer for the Respondents. The learned Presenting Officer submitted that, she will take instructions as to whether the said representation was received by the Respondent authorities and if yes, within how many days a decision can be taken on the said representation.

12. In pursuance of the aforesaid order the learned C.P.O. received a letter on 8.9.2016 from the Director of Prosecution, Maharashtra State, Mumbai, which is marked at Exh.X for the purpose of convenience. In the said letter it has been stated that, the Director was unable to move the proposal for regularization of suspension period as the applicant has not communicated the copy of acquittal order passed by Hon'ble High Court nor made representation for regularization of suspension period, and therefore, the proposal was called from the office of Assistant Director of Public Prosecutor, Raigad – Alibag and it was stated that, the said proposal shall be forwarded to the Govt. for necessary direction.

13. Today, the learned Presenting Officer has submitted copy of one letter dated 14.9.2016 received from In-charge Director of Prosecution, Maharashtra State, Mumbai in which it is stated that, the proposal will be submitted to the Govt. after reconstruction of the file of Khan Mahemood Khan s/o Ismail Khan as the file has been lost in Mantralaya fire. Three months time has been requested for reconstructing the file and get the proposal sanctioned from the Government.

14. It is material to note that the applicant in this case has been acquitted by the Special Judge and the appeal against the acquittal has been dismissed and therefore, there is no hurdle in regularizing the suspension period as well as for grant of pensionary benefits to the applicant.

15. The learned Advocate for the applicant has placed reliance on the judgment reported in “2002 (6) LJSOFT 135 decided by Hon'ble High Court of Bombay (Aurangabad Bench) in WRIT PETITION No.2883/1989 in the case of BABAN SHRIRAM WAFARE Vs. ZILLA PARISHAD”. In the said case also the petitioner was acquitted of the criminal charges and was under suspension during the trial. It was held that, the petitioner was entitled for reinstatement in service with continuity and other consequential benefits including pay and its fixation. In para nos. 5 & 6 of the said judgment the Hon'ble High Court has observed as under :-

“5. The provisions of Rule 19(a) of the Tamilnadu Civil Services (CCA) Rules came up for interpretation in the case of Deputy Director of Collegiate Education

(Administration), Madras v. S. Nagoor Meera, 1995 (3) Supreme Court Cases 377 and the Supreme Court, referring to the provisions of Clause (a) of the second proviso to Article 311 (2) of the constitution, held :

“.....The more appropriate course in all such cases is to take action under Clause (a) of the second proviso to Article 311 (2). Once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision as the case may be if, however, the Government servant accused is acquitted in appeal or other proceedings, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz. to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal Court.”

The Apex Court further held that pendency of an appeal against an order of conviction and sentence would not be a reason for the Government servant concerned to seek

reinstatement in service and such a relief cannot be sought for unless the appeal resulted in acquittal and on his success in the appeal, the issue can also be reviewed in such a manner that he suffers no prejudice.

We have not been shown any other rule in the appeal rules as applicable to the petitioner which empowers the Zilla Parishad to deny him the benefit of continuity in service with consequential benefits including pay and its fixation, on acquittal in appeal by this Court. The law laid down by the Apex Court in the case of Deputy Director of collegiate Education (Administration) Madras (supra) obviously supports the contentions of the petitioner and therefore the orders impugned cannot be sustained.

6. In the result, we allow the petition and quash and set aside the order dated 24.7.1986 and 29.11.1988 as well as the order dated 30.4.1989. We hold that the petitioner, on his acquittal by this Court, was entitled for reinstatement in service with continuity and other consequential benefits including pay and its fixation as if he continued in service in

the absence of the criminal case registered and decided against him. The respondent Zilla Parishad is therefore, directed to take appropriate steps for revision of the petitioner's pensionary benefits and also payment of arrears if any. This shall be done within a period of two months from today.”

16. The learned Advocate for the applicant also placed reliance on the judgment reported in “1984 (1) LJSOFT 194 decided by Hon'ble High Court of Bombay in WRIT PETITION No.3141/1979 in the case of DATTATRYA VASUDEO KULKARNI Vs. DIRECTOR OF AGRICULTURE, MAHARASHTRA AND OTHERS”. In the said case also the Hon'ble High Court was pleased to direct the Respondents to treat the suspension period of the applicant as being the period spent on duty and to pay him full pay and allowances for said period, as if he had not been suspended. In the said case also the applicant was acquitted by the Hon'ble High Court.

17. In view of the aforesaid circumstances it will be clear that since the applicant has been acquitted of the criminal charges and no other

D.E. is pending against him, the only recourse open for the respondents is to treat the suspension period as duty period and to grant all arrears of pay and to grant him pension and all consequential benefits as if there was no criminal case pending against him.

18. Learned P.O. submits that, since the earlier proposal was sent to the Government has been lost due to fire in the Mantralaya, it is necessary to re-construct the said proposal. I do not agree with the submission made by the learned P.O. for the simple reason that the appropriate authority can sent fresh proposal since the applicant has been acquitted of the criminal charges and said acquittal has been maintained by the Hon'ble High Court. In view thereof, the following order.

ORDER.

- i) The Original Application is partly allowed.
- ii) The Respondent no.2 is directed to submit fresh proposal to the Government of Maharashtra i.e. the Respondent no.1 to consider the applicant's claim for regularization of his suspension period and for grant of regular

pension, and all other admissible consequential benefits as per rules.

iii) It is hereby declared that, the applicant is entitled for continuity in service and consequential benefits including pay, pay fixation, arrears, etc. as may be admissible as per 6th Pay Commission.

iv) It is hereby declared that, the applicant is entitled to regular pension and all pensionary benefits, as may be admissible.

v) The Respondents are directed to take steps to see that the applicant shall be paid regular pension and all consequential benefits including arrears of pay, difference of pay fixation, etc. within three months from the date of this order.

vi) No order as to costs.

MEMBER (J)

OA912.2011-ATP

