

(1998) 12 BOM CK 0070

In the Bombay High Court

Case No : Writ Petition No. 6645 of 1998

Sambhaji Wamanrao Chavan

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Citation : (1999) 1 ALLMR 495 : (1999) 81 FLR 884 : (1999) 3 LLJ 1081

Hon'ble Judges : S.H. Kapadia, J;A.P. Shah, J

Bench : Division Bench

Advocate : A.R. Pitale, for the Appellant; Kiran Bagadia, for the Respondent

Judgement

Kapadia, J.—By this petition, the petitioner seeks to challenge Judgment and Order passed by Maharashtra Administrative Tribunal (MAT) in Review Application No. 65 of 1997 in Transfer Application No. 1659 of 1991 (Writ Petition No. 1131 of 1990).

2. The facts giving rise to this Writ Petition, briefly, are as follows: -

3. Petitioner was working as Naik Tahasildar in Slum (II) Thane. He was charged with an offence of accepting an illegal bribe of an amount of Rs. 1200/- from one Shri Belose. The case was numbered as Special Case No. 20 of 1982 in the Court of Special Judge at Thane. The said Special Case came to be disposed of vide Judgment dated September 30, 1986. The petitioner stood acquitted of the charges levelled against the petitioner. On June 8, 1988 the petitioner applied for regulating his period of suspension. He also applied for continuity of service. On May 30, 1989, the petitioner received a Notice from Respondent No. 2, calling upon the petitioner to show cause why suspension period should not be considered as the period of suspension, without giving continuity of service. According to the said Notice, the Sessions Court had not granted a clean acquittal to the petitioner. Being aggrieved by the said Notice, the petitioner had made a representation on July 20, 1989 to the concerned authority by which the petitioner pointed out that the petitioner had been honourably acquitted and in

the circumstances he was entitled to claim the benefit of continuity of service and that the suspension period ought not be considered as a period of suspension. By Order dated November 18, 1989, the petitioner's representation came to be rejected. Being aggrieved by the said Order passed by the Collector, the petitioner preferred an Appeal to the Commissioner, Konkan Division, New Bombay. In the meantime, the petitioner filed Writ Petition No. 1131 of 1990, challenging the impugned Order dated November 18, 1989 passed by the Collector. The said Writ Petition came to be admitted on April 4, 1990. After the formation and constitution of M.A.T. the said Writ Petition came to be transferred to M.A.T. On August 14, 1997, the petitioner's Transfer Application came to be dismissed by M. A. T. In September 1997 the petitioner filed a Review Application which also came to be dismissed by M.A.T. vide Order dated February 20, 1998. Being aggrieved by the said Order passed by M.A.T., the present Writ Petition has been filed. By the impugned Orders, M.A.T. came to the conclusion that the petitioner was given a benefit of doubt by the Special Judge, Thane in Special Case No. 20 of 1989. Under the above circumstances, the petitioner's contention that he was entitled to regularisation of suspension period and continuity of service came to be rejected.

4. Learned Advocate appearing on behalf of the Petitioner invited our attention to the judgment of the Sessions Court in Special Case No. 20 of 1982. We have gone through the said judgment. The judgment clearly shows that the petitioner was given a clean acquittal by the Special Judge after considering the evidence on record. The findings of the Special Judge clearly indicate that the the petitioner has been given an Honourable acquittal and all findings on each of the charge are in favour of the petitioner. Under the above circumstances, we fail to appreciate the findings of M.A.T. that the petitioner was not entitled to continuity of service and regularisation of suspension period on the ground that the acquittal was not a clean acquittal. At this stage, we may also mention that the representation/Appeal filed by the petitioner to the Commissioner against the Order of the Collector has been disposed of only on July 2, 1998. The said Order virtually reproduces the Order of M.A.T. The Commissioner has proceeded also on the footing that the Sessions Court has not granted a clean acquittal to the petitioner, which finding is totally erroneous. Under the above circumstance, the following Order is passed.

ORDER

The Order passed by Maharashtra Administrative Tribunal and Commissioner are hereby set aside and/or quashed. The Appeal filed by the petitioner before the Commissioner stands restored to file. The Commissioner is directed to once again hear and decide the said appeal on the footing that the petitioner has got a clean acquittal from the Sessions Court in the above Special Case No. 20 of 1982. The Commissioner is further directed to hear and decide the matter in accordance with law within a period of two months from today. He is also directed to give a Speaking Order in the matter.

Accordingly, Writ Petition stands disposed of with no order as to costs.
Issuance of certified copy expedited.