

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 673 OF 2018
(Subject – Arrears of Salary)**

DISTRICT : BEED

Shri Gangadhar s/o Nana Kamble,)
Age : 60 years, Occu. : Retired,)
R/o Milind nagar, Ambajogai,)
Tq. Ambajogai, Dist. Beed.)

.. **APPLICANT**

V E R S U S

- 1) **Principal,**)
Chief Conservator of Forest,)
Maharashtra State, Nagpur,)
Tq. And Dist. Nagpur.)
- 2) **The Chief Conservator of Forest,**)
Aurangabad Region, Aurangabad.)
- 3) **The Deputy Chief Conservator)
of Forest (Wild Life),)**
Aurangabad Division, Aurangabad)
- 4) **The Deputy Director,**)
Social Forest Division,)
Osmanabad.)

.. **RESPONDENTS**

APPEARANCE : Shri K.G. Salunke, Advocate for the Applicant.

: Shri N.U. Yadav, Presenting Officer for the
Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 25.01.2019.

ORDER

1. The applicant has sought directions to the respondents to pay the arrears of salary to him for the period from June, 2015 to 10.09.2015 with interest by filing the present Original Application.

2. In the year 2015, the applicant was serving as Range Forest Officer (Wild Life) at Naigaon, Tq. And Dist. Beed. He was transferred to Paranda, Tq. Paranda, Dist. Osmanabad as Plantation Officer by the order dated 10.06.2015. It is his contention that he was due for retirement on superannuation w.e.f. 31.03.2016 and only the period of 7 to 8 months was remained to his retirement. He has not completed his normal tenure of posing at Naigaon. Therefore, he challenged the transfer order dated 10.06.2015 before this Tribunal by filing O.A. No. 332/2015. This Tribunal passed the order dated 23.06.2015 and directed the respondents not to allow anybody to take regular charge of the post of the applicant till further orders. Thereafter, the matter was finally heard and decided by this Tribunal. This Tribunal dismissed the O.A. No. 332/2015 on 04.08.2015. Thereafter, the applicant has challenged the decision of this Tribunal before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad by filing W.P. No.

8528/2015, but it came to be dismissed on 10.09.2015. After dismissal of W.P., the applicant has joined his new posting at Paranda on 11.09.2015. Thereafter, he filed representation dated 15.10.2015 to the respondent No. 3 and requested to pay him salary for the period from June, 2015 till the decision of the Hon'ble High Court i.e. 10.09.2015. It is his contention that during that period he worked at Naigaon, Tq. and Dist. Beed, but salary had not been paid to him due to the pendency of the litigation. It is his contention that thereafter, he made several representations with the respondents claiming arrears of salary, but the respondents had not paid it to him. The respondents made correspondence *inter se* in that regard. It is his contention that in spite of repeated representations made by him, the respondents had not paid salary to him. Meanwhile, he retired on superannuation on 31.03.2016. As the respondents had not paid salary to the applicant, he filed the present Original Applicant and sought directions of this Tribunal to the respondents to pay arrears of salary for the period from June 2015 to 10.09.2015 with interest.

3. The respondent Nos. 2 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant has been transferred by

the order dated 10.06.2015 from Naigaon, Tq. and Dist. Beed to Paranda, Tq. Paranda, Dist. Osmanabad as Plantation Officer. They have not disputed the fact that the applicant has filed O.A. No. 332/2015 and it was dismissed. They have also admitted the fact that the applicant has filed W.P. No. 8528/2015 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad, but it was also dismissed. They have not disputed the fact that an interim relief has been granted in O.A. No. 332/2015 by this Tribunal. It is their contention that in view of the transfer order dated 10.06.2015, the applicant has been relieved from Naigaon (Wild Life) on 13.06.2015, but he has not joined his new posting i.e. at Paranda. It is their contention that after dismissal of the W.P., the applicant joined his new positing at Paranda on 11.09.2015. It is averred by them that the applicant remained absent without permission from the duty since 14.06.2015 till 10.09.2015. They have admitted the fact that the applicant has filed representations with the respondents claiming salary for the said period. They have contended that the applicant was absent from duty during the period from 14.06.2015 to 10.09.2015. It is their contention that the applicant has mislead and misguided this Tribunal by narrating false facts. It is their contention that the applicant has filed an

application dated 25.07.2015 addressed to the Divisional Forest Officer Social Forestry Osmanabad and requested to sanction leave for the said period of 89 days from 14.06.2015 to 10.09.2015. It is their contention that extra ordinary leave (without pay and allowances) has been granted to the applicant for the said period and accordingly, the order has been passed on 04.10.2017. It is their contention that as the said period was treated as extra ordinary leave, the applicant is not entitled to claim salary for the said period. It is their contention that the applicant remained absent unauthorizedly for the said period and therefore, he is not entitled to claim the salary for the said period and therefore, they prayed to reject the present Original Application.

4. I have heard Shri K.G. Salunke, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

5. Admittedly, in the year 2015, the applicant was serving as a Range Forest Officer (Wild Life) at Naigaon, Tq. and Dist. Beed. There is no dispute about the fact that by the order dated 10.06.2015, the applicant has been transferred as

Plantation Officer at Paranda, Tq. Paranda, Dist. Osmanabad. There is not dispute about the fact that the applicant was on the verge of retirement and the period of only 7 to 8 months was remained for his retirement. The applicant has challenged the said transfer order dated 10.06.2015 before this Tribunal by filing O.A. No. 332/2015. There is no dispute about the fact that in the said O.A., this Tribunal was pleased to grant interim relief and directed the respondent not to allow anybody to take regular charge of the post of the applicant till further orders by passing the order dated 23.06.2015. Admittedly, the said O.A. was finally heard and decided by this Tribunal and on 04.08.2015 the O.A. has been dismissed. The applicant has challenged the said order passed by this Tribunal in O.A. No. 332/2015 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad by filing W.P. No. 8528/2015, but it came to be dismissed on 10.09.2015. Admittedly, after dismissal of the said W.P., the applicant joined his new posting at Paranda on 11.09.2015. Admittedly, the applicant had not received salary for the period from 14.06.2015 to 10.09.2015. Admittedly, the applicant has made representations with the respondents in that regard, when he was in service. Admittedly, the applicant retired on superannuation on 13.03.2016.

6. Learned Advocate for the applicant has submitted that the applicant has been transferred from Naigaon, Tq. and Dist. Beed to Paranda, Tq. Paranda, Dist. Beed by the order dated 10.06.2015. He has submitted that the applicant has filed O.A. No. 332/2015 before this Tribunal and challenged the order dated 10.06.2015 and this Tribunal has granted interim relief and directed the respondent not to allow anybody to take regular charge of the post of the applicant till further orders. He has submitted that because of the interim relief granted in favour of the applicant, the applicant discharged his duties at Naigaon till dismissal of the W.P. No. 8528/2015 on 10.09.2015. He has submitted that the respondents had not paid salary to the applicant for the period from 14.07.2015 to 10.09.2015. He has submitted that the applicant is entitled to get salary for the said period and therefore, he applied with the respondents, but the respondents had not decided his representation and therefore, he prayed to allow the present Original Application and to direct the respondents to pay salary to the applicant for the said period from 14.06.2015 to 10.09.2015.

7. Learned Presenting Officer has submitted that the applicant has mislead and misguided this Tribunal. He has submitted that the applicant has suppressed the material fact

and therefore, he is not entitled to get relief as claimed by him. He has submitted that the applicant remained absent on duty unauthorizedly for the period from 14.06.2015 to 10.09.2015 and therefore, his absentee period was treated as Extra Ordinary Leave and therefore, extra ordinary leave was granted to him for the said period i.e. 89 days. He has submitted that the respondents have passed the order dated 04.10.2015 in that regard, but the applicant, without challenging the said order has filed the false O.A. Therefore, he prayed to dismiss the present Original Application.

8. Learned Presenting Officer has further submitted that the applicant was not protected by this Tribunal. He has submitted that the applicant has already been relieved from Naigaon, Tq. and Dist. Beed on 13.06.2015 and this Tribunal has granted interim relief and directed the respondents not to allow anybody to take regular charge of the post of the applicant till further orders. Therefore, it cannot be said that the applicant was retained on the post of Range Forest Officer (Wild Life) at Naigaon, Tq. and Dist. Beed in view of the interim order passed by this Tribunal in O.A. No. 332/2015. He has submitted that the applicant unauthorizedly remained absent and therefore, leave period has been treated as extra ordinary leave and

therefore, the applicant cannot claim salary for the said period. Therefore, he prayed to dismiss the present Original Application.

9. On perusal of the record, it reveals that in spite of the transfer order issued by the respondents on 10.06.2015 transferring the applicant to Paranda, Dist. Osmanabad, the applicant has not joined his new posting, though he was relieved from the post of Range Forest Officer (Wild Life) at Naigaon, Tq. and Dist. Beed on 13.06.2015. The applicant joined his new posting at Naigaon, Tq. and Dist. Beed as Range Forest Officer (Wild Life) on 11.09.2015 only after dismissal of the W.P. No. 8528/2015 filed by him. On perusal of the record, it reveals that the Tribunal has granted interim relief in O.A. No. 332/2015 and directed the respondents not to allow anybody to take regular charge of the post of the applicant till further orders. The Tribunal has not granted any protection for his stay at Naigaon, Tq. and Dist. Beed and therefore, the applicant ought to have joined his new positing immediately after relieving him from the post of Range Forest Officer (Wild Life) at Naigaon, Tq. And Dist. Beed, but he remained absent unauthorizedly. The absence of the applicant was unauthorized and therefore, the applicant cannot claim salary for the said period. There is nothing on record to show that the applicant worked at Naigaon, Tq. and

Dist. Beed during that period and he discharged his duties there. In the absence of documents and evidence the contention of the applicant that he rendered service as Range Forest Officer (Wild Life) at Naigaon, Tq. And Dist. Beed during the period from 14.06.2015 to 10.09.2015, the submissions of the learned Advocate for the applicant in that regard is not acceptable.

10. The respondents produced the copy of the order dated 04.10.2015 along with their affidavit in reply at paper book page No. 50 (Exhibit 'R-3'), which shows that the absentee period of the applicant from 14.06.2015 to 10.09.2015 had been treated as extraordinary leave. The copy of the said order has been served on the applicant, but the applicant has not challenged the said order. Not only this, but the applicant has suppressed the said fact and he had not made any reference in that regard in the present O.A. The suppression of material fact leads me to reject the claim of the applicant. The applicant has not challenged the said order dated 04.10.2017, by which his absentee period for the period from 14.06.2015 to 10.09.2015 has been treated as extra ordinary leave before the appropriate and competent forum. Therefore, the applicant cannot claim salary for the said period. Since the applicant had not discharged duties for the period from 14.06.2015 to 10.09.2015,

he is not entitled to get salary for the said period. Therefore, no question of giving directions to the respondent to pay the salary for the said period to the applicant arises. There is no merit in the present O.A. Consequently, O.A. deserves to be dismissed.

11. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE : 25.01.2019.

(B.P. PATIL)

MEMBER (J)

KPB S.B. O.A. No. 673 of 2018 BPP 2019 Arrears of Salary