

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 673/2010

Omprakash Ranchod Das Gandhi
Aged about 51 years
Occupation : Junior Geologist,
Ground Water Survey Development Agency,
Gadchiroli.

Applicant

- **Versus** -

- (1) The State of Maharashtra
Through its Secretary,
Department of Water Supply and Sanitation,
Secretariat, Mumbai - 32.
- (2) Director,
Ground Water Survey Development Agency
(Maharashtra State), "Bhujal Bhavan",
Near Agricultural University,
Wakdewadi Road,
Pune.
- (3) Deputy Director,
Ground Water Survey Development Agency,
(Nagpur Region), Maharashtra Jeevan Pradhikaran
Building 'A-Wing', 2nd Floor, Telangkhedi,
Civil Lines, Nagpur.
- (4) Senior Geologist,
Ground Water Survey Development Agency,
Gadchiroli.

Respondents

Shri M. M. Sudame, Advocate for the applicant

Shri M. L. Senad, P. O. for the respondents

**Coram : - The Hon'ble Shri B. Majumdar,
Member(A)**

Dated :- 1-2-2013

ORDER

The applicant, a Junior Geologist with the Groundwater Survey and Development Agency (hereinafter referred as GSDA) has filed this O.A. being aggrieved that the period of his absence from duty has not been regularized. He has sought reliefs as follows.

- (1) To quash and set aside the order of April 20, 2010 passed by the Deputy Director, Nagpur Region holding the period from May 25, 2009 to January 22, 2010 (244 days) as leave without pay for unauthorized absence.
- (1A) Further quash and set aside part of the direction passed by the Deputy Director, GSDA, (Nagpur Region) on 03-12-2010 and intimated by Senior Geologist on 04-12-2010 directing submission of leave application for 244 days (25-05-2010 to

22-01-2011) for sanction of leave and regularization and all consequential orders passed thereon and

- (2) Direct the respondent nos. 1 and 2 to regularize the period from May 25, 2009 to July 5, 2009 as leave period and to treat the period from July 6, 2009 to January 22, 2010 as compulsory waiting period and to release the salary accordingly with all consequential benefits arising there from.

2. The brief facts of the case are that on 25-5-2009, Senior Geologist, GSDA, Gadchiroli (R-4) on the basis of telephonic instructions received from the Deputy Director, GSDA, Nagpur (R-3) issued an order directing the applicant to report on deputation to the office of the Senior Geologist, GSDA, Chandrapur and relieving him for that purpose on 25-5-2009. The applicant aggrieved with this order submitted a representation to respondent no. 3 dated 25-5-2009. In the representation, he made certain allegations against one Shri. P. K. Kalambe, Assistant Geologist and stated that the order of his deputation to Chandrapur was being issued as he refused to a party to the irregularities committed by said Shri. Kalambe. Therefore in protest against irregularities and corruption in Government work, he was proceeding on leave.

On 6-7-2009, the applicant submitted a representation to the Director, GSDA (R-2) requesting that the order of his deputation to Chandrapur should be cancelled and he should be allowed to resume duty at Gadchiroli. Thereafter he sent several representations to the Secretary, Water Conservation and the Chief Secretary. The applicant was called for a meeting in the office of the respondent no. 2 at Pune on 19-1-2010. On 21-1-2010, respondent no. 2 issued an order cancelling the applicant's deputation to Chandrapur as there were directions that the vacant posts at Gadchiroli should be filled up immediately. The applicant joined at Gadchiroli on 22-1-2010. Thereafter, following a show cause notice dated 7-4-2010 respondent no. 3 issued an order dated 20-4-2010 vide which the period of absence of the applicant from 25-5-2009 to 22-1-2010 (total 244 days) was treated as unauthorized absence and leave without pay. On 9-11-2010, the respondent no. 1 sent a communication to the respondent no. 2 in which it was directed that the above order dated 20-4-2010 is cancelled and the applicant's period of absence should be regularized by granting him whatever leave due and at credit to the applicant. Respondent no. 2 in the said communication was also directed to caution the applicant in writing about not remaining absent over prolonged period without informing his superior office.

On 4-12-2010, respondent no. 4 directed the applicant to apply for leave in the prescribed format.

3. The applicant's grievances are that he had to proceed on leave as the impugned order of deputation was issued by respondent no. 4, who was not competent to do so. It was motivated by his refusal to be a party to various illegal activities and cases of misappropriation in his office. It is also his grievance that his repeated requests for being allowed to join duties at Gadchiroli were not accepted. Hence on these grounds, according to the applicant, his action to remain absent was fully justified and hence this period is to be treated as on duty.

4. The respondents in their reply to the O.A. submit that the applicant was deputed to Chandrapur for completing urgent works there and it was part of the steps taken to depute officers from different districts on a temporary basis to complete the works at Chandrapur within a stipulated time period. On the basis of oral permission received from respondent no. 2, the impugned order deputing the applicant to Chandrapur was issued. The applicant proceeded on leave not because the order of deputation was illegal, but as per his own whims and protest. The State Government had quashed and set aside the impugned order dated 20-4-2010 and had directed

that the applicant's period of absence of 244 days should be regularized by sanctioning leave due and admissible to the applicant. The applicant was absent without sanctioning of leave by the competent authority and he also did not submit any leave application. There are no provisions in the Maharashtra Civil Services (Leave) Rules for regularizing the long period of absence of 244 days as compulsory waiting period. As the applicant was not on duty for the period of absence, he was required to apply for grant of leave for this period in accordance with Rule 24 sub-rule (5) of the Leave Rules.

5. I have heard Shri. M. M. Sudame, learned counsel for the applicant and Shri. M. L. Senad, learned P.O. for the respondents. I have also gone through the various documents placed before me.

6. The learned counsel for the applicant submitted that the impugned order issued by respondent no. 4 deputing the applicant to Chandrapur was in violation of the circular dated 12-1-2006 issued by the respondent no. 2 in which he had directed that no Junior Geologist can be sent on deputation without his prior approval. Besides, respondent no. 4 had no authority to depute the applicant to Chandrapur even on the basis of telephonic instructions as is clear from the

communication dated 9-11-2010 made by the Government to the respondent no. 2 in which the Government had held that the Deputy Director, GSDA, Nagpur (R-3) had no jurisdiction for deputing a Group B Officer or to treat his period of absence as leave without pay. The concerned officer was also directed to be cautioned not to commit such administrative irregularities in future. Thus, according to the learned counsel, the applicant was fully justified in refusing to proceed as per ~~the~~ compliance of the illegal order dated 25-5-2009 and he had no option but to proceed on leave. This is also demonstrated from the fact that respondent no. 2 had cancelled the above order dated 25-5-2009 deputing the applicant to Chandrapur as also the order of respondent no. 3 dated 20-4-2010 treating the period of absence as leave without pay. The Government, vide its above referred communication dated 9-11-2010, had further directed that the applicant's absence from duty is to be regularized.

7. The learned P.O., on the other hand, opposed the O.A. by submitting that the applicant, instead of complying with the order of deputation or submitting a formal representation explaining as to why the order is not acceptable to him, merely made certain allegations against one of the officers and proceeded on his own accord on leave in protest. He neither submitted any application for leave nor any leave

was sanctioned to him and hence the period of 244 days during which he remained absent under protest cannot be regularized other than by treating it as leave. The applicant's act of remaining absent unauthorizedly for such a prolonged period was clearly a case of indiscipline and misconduct and keeping all the facts in proper perspective, the Government took a very lenient view of the applicant's case and directed that his period of absence be regularized by granting him leave due and admissible. It will therefore in the interest of the applicant, according to the learned P.O., if he applies for grant of leave under the Leave Rules so that the respondents are in a position to suitably regularize his period of absence and thus redress his grievance.

8. After taking into consideration the arguments put forth by the learned counsel for the applicant and learned P.O. and after going through the documents on record, I find that the prayer clause (1) has become infructuous as the order dated 20-4-2010 has been cancelled and set aside by the Government. As regards the period of absence of the applicant from 25-5-2009 to 22-1-2010, I find that the applicant in his representation dated 25-5-2009 has clearly stated as : "आपल्या अश्या भ्रष्ट व प्रशासकीय गैरकारभाराच्या निषेधार्थ मी रजेवर प्रस्थान करीत आहे." Thus, the applicant has made it clear that he is not only refusing to comply with the order dated 25-5-2009 deputing him to

Chandrapur, he was also proceeding on leave in protest. A government servant cannot on his own volition remain absent by informing his superior that he was proceeding on leave in protest. Under Rule 10 of the Maharashtra Civil Services (Leave) Rules, 1981, leave is permission granted by the competent authority at its discretion to remain absent from duty and leave cannot be claimed as of a right. Rule 24 requires a government servant to apply for leave to the competent authority and under Rule 29, the competent authority shall grant leave to the gazetted government servant as admissible to him. It is relevant to note here that the applicant did not follow the above procedure nor did he take any steps to seek prior permission before proceeding on leave or to get such leave sanctioned in his favour. Thus, his action to proceed on leave is not only in violation of the Leave Rules, but also is clearly an act of indiscipline. The Government however, vide its communication dated 9-11-2010 directed the respondent no. 2 to issue a written caution to the applicant not to repeat his action to remain absent for a long period without approval of the higher authorities and it also directed respondent no. 2 to regularize the period of absence by granting leave due and admissible to the applicant. It is important to note that this communication has not been challenged by the applicant. What is relevant is that in his representation dated 25-5-2009, the

applicant had submitted that he was proceeding on leave. Hence in my view the applicant should not have any grievance if the period of absence is decided to be regularized as leave due and admissible. Thus, in conclusion, I find that even if the order deputing the applicant to Chandrapur was not issued with proper authority in terms of what is stated in the circular dated 12-1-2006 issued by the respondent no. 2 as well as the Government's communication dated 9-11-2010, there is no justification for the applicant to have remained absent and to proceed on leave as a mark of protest without taking any action to get his leave approved and sanctioned as per the procedure laid down in the Leave Rules. I am also of the clear view that it is in the interest of the applicant that he applies for regularization of the period of absence as leave due and admissible to him, specially, in the light of the communication dated 9-11-2010 which has been discussed above. I therefore dispose of the O.A. by issuing directions as follow.

- (a) The O.A. is partly allowed.
- (b) The applicant is directed to apply for leave in compliance with the directions dated 4-12-2010 issued by respondent no. 4 asking him to submit an application for leave for regularizing the period of absence from 25-5-2009 to 22-1-2010.

- (c) The respondents are directed to dispose of the applicant's application for leave within three months of receiving the same by granting him leave, that is due and admissible to him.
- (d) There are no orders as to cost.

sd/-

(B. Majumdar)
Member(A)

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