

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 134 of 2017 (S.B.)

Manoj S/o Jayram Kolhe,
Aged 46 years, Occ. Police Constable,
B. No.3019 (Old B.No.1850), Police Headquarter, Nagpur.
R/o Plot no.32, Ladikar Layout,
Manewada Road, Nagpur-440 0024.

Applicant.

Versus

- 1) The State of Maharashtra,
through Principal Secretary,
Home Department, Mantralaya, Mumbai.
- 2) The Director General of Police,
Maharashtra State,
Shahid Bhagatsingh Marg, Coloba,
Mumbai-32.
- 3) The Commissioner of Police,
Nagpur City, Civil Lines,
Nagpur.

Respondents

Shri V.M. Moon, Advocate for the applicant.

Shri A.M. Ghogre, learned P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J)**

JUDGMENT

(Delivered on this 3rd day of April,2018)

Heard Shri V.M. Moon, Id. counsel for the applicant and
Shri A.M. Ghogre, Id. P.O. for the respondents.

2. The applicant a Police Constable is claiming that the order dated 29/12/2015 issued by respondent no.1, whereby the continuity of service for the post of Police Constable for the period from 05/12/1991 to 19/07/2002 has been rejected, be quashed and set aside. He further claims that the order dated 17/07/2002 issued by respondent no.3, whereby salary for the said period has been rejected, also be quashed and set aside. He is further claiming direction to the respondents as regards entitlement of continuity of service for the period from 05/12/1991 to 19/07/2002. From the admitted facts on record, it seems that the applicant was appointed temporary as Police Constable (Unarms) on 17/07/1990. Vide order dated 05/12/1991 (Annex-A-1, P-15) the applicant was discharged from the service along with one month's salary in lieu of notice.

3. Vide order dated 17/07/2002 (Annex-A-2,P-16), the applicant was re-appointed on the post of Police Constable in the pay scale of Rs.3050-75-3950-80-4590. The applicant was therefore reinstated in the service. No departmental inquiry was initiated against the applicant nor he faced any criminal trial.

4. On 26/03/2014 as per Annex-A-3 the applicant made representation claiming that his period of service w.e.f. 05/12/1991 till he was reinstated / re-appointed on 29/07/2002 be regularised and be treated as continuous period of service and the applicant be paid salary and arrears thereon for this period. However, this claim was rejected vide letter dated 29/12/2015 (Annex-A-6,P-23) and hence this application.

5. Vide communication dated 29/12/2015 (Annex-A-6,P-23) it was intimated to the applicant that the applicant was given fresh appointment on 17/07/2002 and it was specifically mentioned in the said order that his previous service will not be counted for any purposes.

6. The respondent no.3, i.e., the Commissioner of Police, Nagpur City, Nagpur has justified the order of rejection of the applicant's claim and states that the period from 05/12/1991 to 29/07/2002 cannot be treated as duty period and no benefit can be given to the applicant as regards continuity of service. An offence under Section 324 of IPC was registered against the applicant at Police Station, Sakkardara, Nagpur within three months from joining as Police Constable and therefore he was removed from service vide order dated 05/12/1991. Subsequently, he was re-appointed and the said re-appointment was nothing but fresh appointment.

7. The learned counsel for the applicant Shri V.M. Moon placed reliance on the Judgment reported in **2010 (1) Mh.L.J.,649 in case of Superintending Engineer, MSEB Circle Office, Latur & Ano. Vs. Ranaji S/o Pandharinath Taksal, 2010 (3) Mh.L.J., 363 in case of Shantilal Dnyanu Jadhav Vs. Commissioner of Police, Brihan Mumbai, (1984) 4 SCC, 329 in case of G.P. Doval & Ors., Vs. Chief Secretary, Government of U.P. & Ors., 1986 Administrative Tribunals cases,531 Shri Manohar Sitaram Nandanwar Vs. Union of India, (1987) 2 Administrative Tribunals cases,444, Shri Gopal Anant Musalgaonkar Vs. Union of India& Ors., (1998) 8 Administrative Tribunals cases,804**

R.S. Gramopadhya vs. Union of India & Ors., and (1991) 16 Administrative Tribunals Cases, 28, K.C. Subramanian & Ors. Vs. Chief General Manager, Telecommunications, Madras & Ors.

8. The facts of none of these cases are analogues with the present set of facts and therefore the said citations are not applicable to the present case.

9. The applicant is claiming continuation of service w.e.f. 05/12/1991 to 19/07/2002. It is however material to note that though the applicant was appointed as Police Constable in the year 1990, i.e., on 17/07/1990, he was discharged from service on 05/12/1991 vide Annex-A-1. This order was never challenged by the applicant in any court of law and therefore the fact remains that the applicant was discharged from duty on 05/12/1991. Thereafter, vide order dated 17/07/2002 (Annex-A-3) the applicant was re-appointed vide a fresh order of appointment. The order is self speaking and therefore the same is reproduced as under :-

[^]vlnsk&

'kkI ukus R; kps i = dēkad @vkjbu&0396@, chvkj&593@i ky&5&v] fnukad
6@5@2002 vllō; s'kkI u i = l edēkad fnukad 11@4@2001 psvknskkllō; sekth i ksyhl
f'ki kbZēukst t; jke dkygsc-ua1850 ; kauk i ksyhl f'ki kbZEg.kuu u0; kusfu; Ørh fnY; kus
R; kauk #-3050&75&3950&80&4590 ; k oruJskhr #-3050@& oj i ksyhl f'ki kbZ; k
i nh i q%Fkki hr dj.; kr ; s vkgS

¼2½

R; kauk R; kb; k ; k i øtP; k l øpk dkskrkgh ykHk vuKs jkg.kkj ukgh**

10. The plain reading of the aforesaid fresh order of appointment clearly shows that the applicant was appointed by fresh order on 17/07/2002. It was specifically mentioned in para-2 of the order that he will not be entitled to claim benefit of earlier service in any manner. If the applicant wanted that his period of service from the date of his discharged on 05/12/1991 to 17/07/2002 should have been treated as continuous service, the applicant should not have accepted the order of fresh appointment dated 17/07/2002 (Annex-A-2). The applicant however accepted the terms and conditions of the order dated 17/07/2002 (Annex-A-2) and continued to work as if he was appointed freshly on 17/07/2002. He continued to work as per fresh appointment till 26/03/2014 and then all of a sudden on 26/03/2014 he has filed the representation as per Annex-A-3 claiming continuation of service from 05/12/1991 to 29/07/2002.

11. The Government has issued the order dated 29/12/2015 and the said order is also self speaking. The said order is as under :-

^I mHkZ/khu i = di ; k i gkos

2- Jh- eukst t; jke dkygq i syhl f'ki kbZ 3019 ; kauh R; kpsfnukad 26@03@2014 P; k vtWlo; s fnukad 05@12@1991 rs fnukad 19@07@2002 i; I rpk I okckg; dkyko/kh fu; fer dj.; kckcrph fourh 'kkI ukl dsyh gkrh- ; k I mHkZ I mHkZ i =kUo; s 'kkI ukl I knj dsyh; k vgokykps voykdu djrk vl sfnl u ; s s dh] Jh- dkygs; kauk i u%EFkfi r djroGh i syhl f'ki kbZ i nkoj u0; kus fu; qrh ns; kr vkyh vl u R; kb; k i qhP; k I rpk dkskrkgh ykHk R; kauk vuKs jkg.kkj vigs() vl sfnukad 17@07@2002 P; k vknslke/; s Li "V uem vigs R; keGs I okckg; dkyko/kh fu; fer dj.kckcrph Jh-dkygs; kph eku; fourh djrk; s ukgh-*

3- I nj ckc] vki Y; k Lrjko#u vtñkj Jh eulst t; jke dksYgš i ksyhl f'ki kbZ@3019 ; kulk
dGfo.; kr ; koh gh fourth**

vlgx(*)¼ okLrfod 'kñn ~ulgh**vI kok-½ (emphasis supplied)

12. The plain reading of aforesaid order clearly shows that the appointment of the applicant vide Annex-A-2 on 17/07/2002 was fresh appointment and it was clearly stated in the said order that he will not be entitled to benefit of previous service in any manner. Since the applicant has accepted said order and never challenged it even in this O.A., the fact remains that he was freshly appointed vide order dated 17/07/2002. The applicant's claim for continuation of service from 05/12/1991 to 19/07/2002 is thus absolutely without substance and the same has been rightly rejected by the respondents. I, therefore, do not find any merits in the O.A.

ORDER

The O.A. stands dismissed with no order as to costs.

Dated :- 03/04/2018.

(J.D. Kulkarni)
Vice-Chairman (J).