

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 216 of 2017 (S.B.)

Prakash S/o Bhagwanji Belekar,
Aged about 53 years, Occ. Retired Employee,
R/o Rangari (Sapar), Post Rangari (Thoka),
Tah. Saoner, Dist. Chhindwara (M.P.).

Applicant.

Versus

- 1) State of Maharashtra,
Department of Home, Mantralaya, Mumbai-32.
through its Secretary.
- 2) The Director General of Police,
Shahid Bhagatsingh Marg,
Colaba, Mumbai-01.
- 3) The Commissioner of Police,
Civil Lines, Nagpur-01.
- 4) The Accountant General-II,
Civil Lines, Nagpur-01.

Respondents.

Shri S.M. Khan, Advocate for the applicant.
Shri M.I. Khan, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 11/08/2022.

JUDGMENT

Heard Shri S.M. Khan, learned counsel for applicant and
Shri V.A. Kulkarni, learned P.O. for respondents.

2. The applicant was appointed as a Police Constable on 03/03/1986. During the service period, he had received seven Prizes for excellent service. He also received Certificate of merit from Gojukan Karate-do Training School.

3. The applicant was not keeping well. He had already informed to the higher authority about his ill-health. The respondents issued show cause notice on 30/04/2004 for his alleged absence from 16/03/2001 till the date of notice. The applicant replied to the said show cause notice on 07/05/2004 denying all the material allegations against him. The applicant also submitted the Medical Certificates issued by Dr.I. K. Mujawar, Superintendent, Mental Hospital, Nagpur and issued by Dr. O.A. Tiwari, reputed Psychiatrist.

4. The departmental inquiry was conducted by the respondents. In the departmental inquiry, the applicant was punished and he is dismissed from service in the ex-parte departmental inquiry. The applicant challenged the said order of dismissal before this Tribunal in O.A. No. 370/2006. This Tribunal allowed the O.A. and order of dismissal dated 18/05/2004 is modified and substituted with the order of compulsory retirement. Consequently, it was directed to the respondents may consider to grant compassionate pension to the applicant as provided under Rule 100 to 102 of the Maharashtra Civil

Services (Pension) Rules, 1982, provided the applicant is otherwise found entitled to it.

5. The applicant requested the respondents on 07/01/2017 (P-30) for grant of compassionate pension. The respondents rejected the request of the applicant vide order dated 05/12/2016 contending that the applicant has not completed 10 years qualifying service for grant of pension. Therefore, he is not entitled for compassionate pension as provided under Rule 100 to 102 of the Maharashtra Civil Services (Pension) Rules, 1982. Hence, the applicant approached to this Tribunal for the following reliefs –

“(i) To consider the service of applicant as enumerated in para 4.9 as actual service period served by the applicant.

(ii) To grant compassionate pension and release other retiral benefits viz computation of pension, gratuity, etc with interest thereon.

(iii) To grant any other or further relief including costs as may be deemed fit and proper in the facts and circumstances of the case as also in the interest of justice”.

6. The respondent nos.3 and 4 have filed reply and denied the contention of the applicant. It is submitted that the applicant has not completed 10 years qualifying service and therefore he is not entitled for pension as provided in the Rule 100 to 102 of the Maharashtra Civil Services (Pension) Rules, 1982. Hence, the O.A. is liable to be dismissed.

7. Heard learned counsel for applicant Shri S.M. Khan. As per his submission, the dismissal order was challenged before this Tribunal and this Tribunal has granted relief to the applicant. The dismissal order was set aside and the respondents were directed to consider the claim of the applicant for compassionate pension under Rule 100 to 102 of the Maharashtra Civil Services (Pension) Rules, 1982. The learned counsel for applicant has pointed out the Judgment of this Tribunal in O.A. No. 370/2006. He has pointed out the letter issued by the Accountant General Office dated 28/10/2016. He has also pointed out the Judgment of this Tribunal in O.A.No.644/2020.

8. Heard learned P.O. for respondents Shri V.A. Kulkarni. As per his submission, the applicant is not eligible for grant of pension, because, he has not completed 10 years qualifying service and therefore as per the MCS (Pension) Rules, he is not entitled for pension.

9. There is no dispute that the applicant was in service. He remained absent due to his health ground. The inquiry was started in respect of misconduct of absenteeism. During the inquiry also the applicant was not on duty. He had submitted medical evidence to suggest that he was prevented from discharging his duty on health ground, but that was not considered by the authority and he was

dismissed from service. The applicant approached to this Tribunal. This Tribunal in para-9 in O.A. 370/2006 has observed as under –

“(9) What transpires from the above is, the act of misconduct is simplicitor absence from duty. Absence cannot be said to be deliberate, but it was on account of mental illness of the applicant. No doubt, the applicant has not produced on record and even during the enquiry any medical evidence to suggest that he was prevented from discharging his duty on health ground. Prolonged absence of the applicant is a ground for holding that in public interest, he has to be discharged from service. However, in no circumstance, the punishment like dismissal or removal from service can be said to be appropriate in the facts and circumstances of the case. It is discernible from the record that abnormal and irresponsible behaviour of the applicant relates to mental derangement. In that view of the matter, although we propose to affirm the findings of the disciplinary authority that in public interest, the applicant cannot be allowed to remain in service, appropriate penalty would be to impose punishment of compulsory retirement.”

10. This Tribunal partly allowed the O.A.No.370/2006 and the punishment of dismissal from service was modified and substituted with the order of compulsory retirement. It was also directed to the respondents that the respondents may consider to grant compassionate pension to the applicant as provided under Rule 100 to 102 of the MCS (Pension) Rules, 1982, provided the applicant is otherwise found entitled to it. The learned P.O. has emphasized the last part of the order and submitted that the applicant was not found

entitled to get the pension, because, he has not completed 10 years service and therefore his representation is rightly rejected by the respondents.

11. There is no dispute that order in O.A.No. 370/2006 is not challenged by the respondents. This Tribunal has modified the order of dismissal into compulsory retirement. The employee who is compulsorily retired is entitled for pensionary benefits. The applicant was not on duty and therefore he was dismissed on the ground of misconduct of absenteeism of five years. This Tribunal has observed in para-9 that the applicant had submitted medical evidence to suggest that he was prevented from discharging his duty on health ground, therefore, there was no hurdle for the respondents to consider that absent period as leave without pay and could have granted extra ordinary leave on the ground of mental health. The dismissal order itself is modified by this Tribunal because the applicant had filed those documents before this Tribunal on which satisfied the Tribunal that he was prevented from discharging his duty because of his health ground. Therefore, it was the duty of the respondents to consider those documents / medical evidence for grant of extra ordinary leave without pay. Hence, the following order –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondents are directed to consider the representation of the applicant and grant extra ordinary leave for qualifying the service of the applicant for pensionary benefits. The applicant is directed to submit his fresh representation along with medical evidence as observed by this Tribunal in para-9 in O.A.No.370/2006.
- (iii) The respondents are directed to grant extra ordinary leave, if the application is supported by medical evidence. After granting the said leave as extra ordinary leave, the respondents are directed to pay the pension, as per rules, if he is eligible.
- (iv) No order as to costs.

Dated :- 11/08/2022.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 11/08/2022.

Uploaded on : 17/08/2022.

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