

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

AURANGABAD BENCH, AURANGABAD.

ORIGINAL APPLICATION NO.403/2015.

Vasant Madhavrao Khare,
Aged about 55 years,
Occ-Service,
R/o Samta Nagar, Aurangabad.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Social Justice and Special Aid,
Mantralaya, Mumbai-32.
2. The Assistant Commissioner of Social Welfare,
(M.S.), Aurangabad.
3. The Divisional Social Welfare Officer,
Aurangabad.
4. The Director,
Department of Social Welfare,(M.S.),
Pune.

Respondents.

Shri S.G. Shinde, the Ld. Advocate for the applicant.
Shri S.K. Shirse, the Ld. P.O. for the respondents.

Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).

Dated:- 22nd September 2017.

Order

Heard Shri S.G. Shinde, the learned counsel for the
applicant and Shri S.K. Shirse, the learned P.O. for the respondents.

2. In this O.A., the applicant has challenged the impugned order dated 18.2.2015 whereby the Divisional Social Welfare Officer, Aurangabad (R.3) has taken a decision to treat the applicant's duty period from 1.10.1992 to 20.3.2002 as non duty (*dies-non*) i.e. the absence period. The relevant decision is as under:-

शुद्धया अथुधुने सहायुयक आयुधुत, समाज कणुयाण, औरंगुाबाद युांनल संदभुधु ३ के शासन धुणशुधु धुनलंक २ जून २००३ अणुवये धुणत झललेणुया आधुकरलरलकल वलपर कणुन धुणु खरे, शलरुधुधु युलंकल सेवकलल धुनलंक १.१०.१९९२ ते २०.३.२००२ पयलतुतकल रजेशलवलय अनुपधुधुतुधुतु असणुयलने धुणलंकी संपूणुधु अनुपधुधुतुधुतु "आकललललधुन" (Dies-Non) धरणुयलत येत असून सदर कलललवधुधुी कणुणुयलहणु धुणुयणुनलथुधु (धुनवृधुधुधुधुतन धुवषयक ललभलसह) धुणुय धरणुयलत येणलर नलहणु असे आदेशलत करलत असून युलबलबतकी नलधुधु धुणुलंके मूळ सेवलपुधुतकलत धुेणुयलत युलवी. सदर आदेशलकी तलणुकलळ अंमलबजलवणुी करणुयलत युलवी."

3. Admittedly, the applicant was terminated vide order dated 1.10.1992 retrospectively, since he remained absent for a long period without permission. The said order was challenged in O.A. No. 940/2014. The Tribunal was pleased to allow the O.A. and, therefore, the applicant was reinstated on 9.2.2000. The respondent authorities regularized the applicant's service vide order dated 17.1.2006. The applicant thereafter filed O.A. No.108/2012 and in the said O.A., vide order dated 21.1.2014, this Tribunal was pleased to direct the

respondents to take a decision on the point of regularization of absence period of the applicant.

4. On the basis of directions as aforesaid given by this Tribunal, respondent No.2 took a decision on 18.2.2015 and the said decision has been challenged in this O.A.

5. The learned counsel for the applicant submits that respondent No.2 has not properly appreciated Rule 44 (2) of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules') and has wrongly come to the conclusion that the applicant is not entitled to regularize his absence period as duty period. The learned counsel for the applicant submits that as per Rule 44 (2) of the Pension Rules, the period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension, if any, shall not count as qualifying service unless regularized as duty or leave by a specific order of the authority which passed the order of reinstatement. The competent authority in this case has taken a conscious decision not to regularize the period by giving specific reasons and it is clear that the applicant has worked during such intervening period in other department and, therefore, the decision cannot be faulted with and the Rule 44 (2) of the Pension Rules as above may not help the applicant.

6. Respondent Nos. 1 to 4 have filed affidavit in reply and submitted that the applicant was absent for a long period and during this period from 10.5.1980 to 18.8.1995, the applicant was working as a Sweeper in Maharashtra State Road Transport Corporation (in short M.S.R.T.C.) Aurangabad and this fact was communicated to the respondents by the s Divisional Controller, M.S.R.T.C., Aurangabad vide letter dated 15.3.2002 and, therefore, period of absence has been considered as absence period.

7. Perusal of the impugned order dated 18.2.2015 shows that it is self explanatory order. The applicant remained absent from 10.5.1985 to 18.8.1995. In the order, it has been mentioned as under:-

श्री. खरे, शिपाई यांच्यावृत्त गैरहजेर करायत आलेल्या शिपिंगाच्या कायद्यामये यांच्या वृत्तचे अनाधिकृत गैरहजेरचे आरोप सिद्ध झालेले आहेत. तसेच श्री. खरे हे महाराष्ट्र शासनाकडे शिपाई म्हणून सेवा करत असतांना द. १०.५.१९८० ते १८.८.१९९५ या कालावधीमध्ये राज्य परिवहन महामंडळामध्ये सफाईगार म्हणून सेवा करत होते, असे राज्य परिवहन महामंडळाने द. १५.३.२००२ च्या पत्रान्वये कळवले असून महामंडळाकडील सेवेच्या कालावधीमध्ये यांना गैरवतणुकांच्या कारणातून चार वेळेस बडतफ करायत आल्याचेही महामंडळाने कळवले आहे. श्री. खरे यांनी एकाच वेळी शासन तसेच राज्य परिवहन महामंडळाची फसवणुका करून दोन्ही ठिकाणी सेवा केल्याचे पट होत आहे. सबब श्री. खरे, शिपाईयांचे अनाधिकृत गैरहजेरचे दोषारोप सिद्ध झालेले आहेत.

श्रीया अथाने सहायक आयुक्त, समाज कल्याण, औरंगाबाद यांना संदर्भ ३ चे शासन प्रणाली दिनांक २ जून २००३ अन्वये पत्र

झालेऱ्या आधकाराचा वापर करून ढी खरे, श्पाई यांचा सेवकाल ढनांक १.१०.१९९२ ते २०.३.२००२ पयसचा रजेऱ्शवाय अनुपठिती असऱ्याने ऱ्यांची संपूणऱ् अनुपठिती “आकायाढन” (Dies-Non) धरऱ्यात येत असून सदर कालावधी कोणऱ्याहऱ् ऱ्योजनाथऱ् (ढनवृढीवेतन ऱ्वषयक लाभासह) ऱ्याय धरऱ्यात येणार नाहऱ् असे आदेशात करऱ्त असून याबाबतची नऱ्ढ ऱ्यांचे मूळ सेवापुढतकात घेऱ्यात यावी. सदर आदेशाची ताढकाळ अंमलबजावणी करऱ्यात यावी.”

8. The aforesaid order, therefore, clearly shows that during the absence period, the applicant was serving in M.S.R.T.C. and he remained absent without permission. In such circumstances, the respondent No.2 has rightly treated his absence period. I do not find any reason to interfere in the said decision taken by respondent No.2. In view thereof, following order is passed:-

ORDER

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

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