

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 53/2015 (D.B.)

Ramesh S/o Shaligram Kolteke,
Aged about 58 years, Occ. Nil,
through Power of Attorney his wife
Sau. Kashigaya W/o Ramesh Kolteke
r/o State Bank Colony, Shankar Nagar Rd.,
Rajapeth, Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through the Director, Directorate of Libraries,
Nagar Bhavan, Mumbai-23.
- 2) District Librarian,
Office of District Library,
near Sant Dnyaneshwar Sanskrutik Bhawan,
Morshi Road, Amravati.

Respondents.

Smt. S.W. Deshpande, Advocate for the applicant.

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

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 17th January,2022.

Date of Pronouncement of Judgment : 20th January,2022.

JUDGMENT**Per : Member (J).****(Delivered on this 20th day of January, 2022)**

Heard Smt. S.W. Deshpande, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. By filing the present O.A., the applicant has prayed the following reliefs –

“ 8 (a) quash and set aside the impugned orders dated 2/1/2014 at Annex-A-IX and 28/3/2014 at Annex-A-XI and direct the respondent nos.1&2 to consider the application dated 19/03/2014 at Annex-A-X and declare him as medically unfit and entitled for pension as per the provisions of the MCSR (Pension) Rules;

(b) any other relief as this authority deems fit in the facts and circumstances of the case in favour of the applicant in favour of justice;”

3. The case of the applicant in short is as under –

4. The applicant was appointed as a Lance Nayak on 20/12/1977 in the Army. The applicant worked there till 01/12/1993. On 12/9/1996, the applicant was appointed as Peon in the Government Library, Amravati. The applicant worked satisfactorily and unblemished till December,2012. However, from January,2013

the applicant developed behavioural problems. On 7/3/2013, the Director, Government Library, Mumbai issued show cause notice to the applicant. The applicant had given his explanation on 12/4/2013. On 22/4/2013, the applicant requested for voluntary retirement. On 14/5/2013, the Director, Government Library, Mumbai rejected the application for voluntary retirement. The applicant was transferred to Library Class-II, Govt. District Library, Amravati. The applicant resumed his duty on 19/6/2013. On 28/6/2013, the respondent no.2 issued letter to the applicant, enquiring about his behaviour.

5. By application dated 10/7/2013, the applicant requested the Librarian for medical test. On the same day, the respondent no.2 issued letter to the applicant. By application dated 16/11/2013, the applicant again requested for grant of voluntary retirement. By order dated 02/01/2014, the Director, Govt. Library, Mumbai accepted the voluntary retirement application. It is submitted that the resignation of the applicant is accepted. Thereafter, he applied to allow him to join duty and declared him medically unfit. His application also came to be rejected. Hence, the O.A. is filed for quashing and setting aside the impugned orders.

6. The application is strongly objected by the respondent no.2. It is submitted that the applicant has submitted application for grant of voluntary retirement w.e.f. 31st July,2013 on the reason that

due to his ill-health, he is unable to do his duties. The applicant has not completed qualifying service for 20 years for grant of voluntary retirement. Therefore, the said application came to be rejected. The applicant continued his misbehaviour with answering respondent as well as other staff. On 2/11/2013, while answering respondent asked him to do certain official work, the applicant assaulted him. The respondent no.2 made complaint on 2/11/2013 to the Police Station, Gadge Nagar, Amravati. It is submitted that after the above said incidence, the applicant moved application dated 16/11/2013 to the respondent no.1 to accept his resignation w.e.f. 1/12/2013. He has mentioned the reason in the said application that due to ill-health he has to take medical leave and he is not able to do his duty. In the said resignation letter, the applicant has specifically mentioned that he made the said application voluntarily and without any influence of any kind. He also mentioned that, in free state of mind he has made said application. The applicant has not enclosed any document regarding his health as alleged.

7. The applicant requested to accept the resignation, it is mandatory to deposit amount equal to basic pay of one month. The communication dated 5/12/2013 was issued by respondent no.1 to answering respondent and thereby directed him to deposit amount equal to basic pay of one month of applicant and to make

representation thereafter. In pursuance of the said communication, the applicant has deposited the said amount in Government's Account and submitted Challan on 11/12/2013 and again submitted resignation application dated 16/12/2013.

8. The respondent no.1 has accepted the resignation of applicant vide order dated 2/1/2014 w.e.f. 11/12/2013. The applicant has not completed 20 years service, therefore, he cannot get benefit of voluntary retirement. The applicant was doing work which was beneficial to him, but disobeying the superiors due to his misbehaviour. Hence, the show cause notice was issued and therefore he had given resignation knowing well about the outcome of departmental enquiry.

9. Heard the learned counsel for the applicant. She has submitted that due to the mental condition of the applicant, he could not behave properly. Therefore, it is necessary to direct the respondents to declare him medically unfit so that he can get pensionary benefits.

10. Heard the learned P.O. He has strongly objected the O.A. He has submitted that the resignation of applicant is accepted. Now he cannot claim that he should be declared medically unfit. Hence, the O.A. is liable to be dismissed.

11. Perused the documents filed on record. From perusal of the documents and reply, it appears that the applicant was not doing official work properly. At one time, he assaulted the respondent no.2, therefore, due to misbehaviour of the applicant, the matter was reported to the superior authority. The superior authority called the explanation of applicant about his misbehaviour. The applicant was well aware about his misconduct, therefore, he had given various resignation letters to accept voluntary retirement.

12. The applicant had not completed 20 years of service in the establishment of the respondents. The applicant already retired from the Indian Army, therefore, his earlier service cannot be taken into consideration.

13. The learned counsel for the applicant submitted that his earlier service can be taken into consideration. It is pertinent to note that the applicant was appointed through fresh recruitment. Therefore, his earlier service cannot be taken into consideration. The applicant has not completed 20 years service, therefore, his voluntary retirement applications not accepted by the respondents.

14. The applicant when came to know about his misconduct and he was sure that the departmental enquiry will be started. Thereafter, he had given resignation along with one month pay. The applicant himself has deposited the amount of one month pay by

Challan no.112 on 11/12/2013. The respondent no.2 informed to the Appointing Authority i.e. the respondent no.1 about the payment of one month pay along with resignation letter. On 2/1/2014, the respondent no.1 accepted the resignation of the applicant. Nothing is on record to show that the applicant is mentally retarded person. The reply shows that the applicant was mentally fit. He was demanding his pay and other benefits regularly, but not doing work as directed by the superior authority. He assaulted the respondent no.2. The explanation called by the respondent no.1 shows that the applicant has committed misconduct. Once the resignation is legally accepted, then the applicant cannot claim again that he shall be joined on duty and he shall be declared as medically unfit.

15. In that view of the matter, there is no merit in the O.A. Hence, the following order –

ORDER

The O.A. is dismissed. No order as to costs.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 20/01/2022.

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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 V.C. and Member (J).

Judgment signed on : 20/01/2022.

Uploaded on : 20/01/2022*