

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.375 OF 2021

**DISTRICT : MUMBAI
SUBJECT : EXTRA ORDINARY
LEAVE**

Shri Pralhad Rajaram Parit,)
aged about 40 years, Police Constable,)
Buckle No.01839, presently posted at)
Local Arms-1, Naigaon, Mumbai and)
residential address at Worli BDD)
Chawl No.70, Room No.70, Bhagoji)
Waghmare Marg, Worli, Mumbai 400 018.)... **Applicant**

Versus

- 1) Commissioner of Police, Mumbai)
having his office at Crawford Market,)
Fort, Mumbai 400 001.)
- 2) Additional Commissioner of Police,)
South Region, Sir JJ Marg, Nagpada,)
Mumbai – 400 008.)...**Respondents**

Shri Makarand D. Lonkar, learned Advocate for the Applicant.

Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.

CORAM : M.A. Lovekar, Member (J)

RESERVED ON : 29.04.2022.

PRONOUNCED ON : 05.05.2022.

JUDGMENT

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. In this O.A. order dated 05.03.2019 (Exhibit B) passed by Respondent No.2 is impugned. By this order the period between

10.04.2014 to 21.04.2014 (12 days) and 28.04.2014 to 12.11.2014 (199 days) was treated as Extra Ordinary Leave purportedly under Rule 63(1) of Maharashtra Civil Service (Leave) Rules, 1981.

3. Case of the Applicant is as follows:-

The Applicant is suffering from Bilateral inflammatory changes in facet joints of the lumbar vertebrae and paraspinal muscles, inflammatory changes in left sacroiliac joints, possibility of seronegative arthritis. He is also suffering from severe diabetes. This was certified by medical board of J.J. Group of Hospitals. These severe ailments had prevented the Applicant from reporting on duty on some occasions. He was required to take treatment. By order dated 11.11.2014 DCP, Zone-II placed the Applicant under suspension on account of absence from duty. Departmental Enquiry was contemplated. The Applicant made a representation to DCP, Zone-II stating therein details of his medical condition and treatment. Medical papers were attached to it. DCP, Zone-II directed ACP, Gavdevi to hold preliminary enquiry. Vide report dated 20.01.2015 preliminary enquiry was concluded. It was held in this enquiry that the Applicant was in fact suffering from serious ailments. The disciplinary authority, however, did not accept report of preliminary enquiry and issued a chargesheet on the Applicant. In the chargesheet 5 charges were leveled. Full-fledged enquiry was then conducted. In this enquiry it was found that the Applicant was really suffering from serious ailments and he was required to take treatment for prolonged periods. While arriving at this conclusion certificates issued by J.J. Group of Hospitals were relied upon. The report of enquiry officer was, however, not accepted by the disciplinary authority and he proceeded to issue a show cause notice to him proposing punishment of stoppage of one increment for a period of three years without future effect. The Applicant was further called upon to show cause as to why the period of suspension between

13.11.2014 to 14.12.2015 be not treated as such. By order dated 01.06.2017 DCP, AP Naigaon imposed the proposed punishment. On 31.05.2018 the Applicant preferred appeal before Respondent No.2 against the punishment imposed on him. The appellate authority, by order dated 26.12.2018 rejected the appeal as being time barred. Being aggrieved by that order the Applicant approached this Tribunal by filing O.A. No.51/2019. The said O.A. was partly allowed. Respondent No.2 / the appellate authority was directed to consider the case of the Applicant on merits by giving him an opportunity of hearing (order dated 31.07.2019 passed in O.A. No.51/2019 is at exhibit A). Respondent No.2, by the impugned order treated the periods between 10.04.2014 to 21.04.2014 (12 days) and 28.04.2014 to 12.11.2014 (199 days) as Extra Ordinary Leave. This was done inspite of the fact that to the account of the Applicant Earned Leave of 285 days and Half Pay Leave of 240 days was in credit as shown in (Exhibit C). On 11.09.2020 the Applicant made a representation (Exhibit D) to Respondent No.2. He made a request as follows:-

“माझ्या सेवापुस्तकातील रजा लेखा खाती दिनांक: ३१/१२/२०१४ रोजी जमा (शिल्लक) असलेल्या २४३ दिवस परिवर्तित (अर्धवेतनी) रजेनुसार, एकूण १२१ दिवसांचा रुग्णनिवेदनाचा कालावधी महाराष्ट्र नागरी सेवा (रजा) नियम, १९८१ मधील नियम-६१(१) अन्वये परिवर्तित रजा व उर्वरित ९० दिवसांच्या रुग्णनिवेदनाचा कालावधी अर्जित रजा म्हणून नियमित करून, त्यानुसार सुधारित मंजूरी आदेश लवकरात लवकर पारित/निर्गमित करण्यास नम्र व कळकळीची विनंती आहे.”

Pursuant to order passed by this Tribunal in O.A. No.51/2019 the appellate authority decided the appeal on merits by order dated 09.09.2019. The appellate authority came to the conclusion that punishment of stoppage of one increment for a period of three years without effecting future increments imposed by the disciplinary authority was not proper. In the appeal the appellate authority made the following order.

“:- अपील आदेश :-”

५. मी, संजीव कुमार सिंगल, अपर पोलीस महासंचालक (प्रशासन), महाराष्ट्र राज्य, मुंबई या आदेशाद्वारे पो.शि.क्र.०१.८३९/प्रल्हाद राजाराम परीट, नेम. सशस्त्र पोलीस, नायगांव, मुंबई यांना शिस्तभंगविषयक प्राधिकारी तथा पोलीस उप आयुक्त, शास्त्र पोलीस, नायगांव, मुंबई यांनी दिनांक ०१/०६/२०१७ च्या अंतिम आदेशान्वये दिलेल्या “**देय वार्षिक वेतनवाढ ३ वर्ष रोखणे (पुढील वेतन वाढीवर परिणाम न होता.)**” या शिक्केचे आदेश बाजूस सारून त्यांना देण्यात आलेली शिक्षा “रद्द” करित आहे. तसेच पो.शि.क्र.०१.८३९/प्रल्हाद राजाराम परीट यांच्या दि.१३/११/२०१४ ते दि.१४/१२/२०१५ पर्यंतचा निलंबन कालावधी महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीचेत्तर सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे यांच्या काळातील प्रदाने) नियम १९८१, च्या नियम ७२ (३) (४) मधील तरतुदीनुसार “**सर्व प्रयोजनार्थ कर्तव्य कालावधी**” म्हणून गणण्यात येत आहे.”

Being aggrieved by the impugned order the Applicant had made a representation. By communication dated 09.11.2020 (Exhibit F) he was informed that this representation dated 11.09.2020 was still to be decided. By communication dated 27.05.2021 (Exhibit G) the Applicant was informed that his representation for reconsidering the impugned order was rejected. This communication stated “He came in O.R. and requested to change the LWP given by the Addl. CP since then Additional CP has already taken the decision.” Since the grievances of the Applicant with regard to the impugned order remained unredressed he was left with no alternative but to approach this Tribunal. Hence, this Application.

4. Affidavit-in-Reply of Respondent No.2 is at pages 43 to 47. According to the Respondent No.2 the Original Application is devoid of merits and hence it deserves to be dismissed.

5. From the record, following facts can be culled out.

- i. The Applicant was absent from 28.04.2014.
- ii. He was suspended on 11.11.2014.
- iii. He was reinstated on 30.12.2015.

- iv. There were two distinct periods of absence:-
viz 10.04.2014 to 21.04.2014 (12 days) & 28.04.2014 to 12.11.2014 (199 days).
- v. The appellate authority, in Para 4 of his order observed as follows:-
 “4. एकंदरीत अपिलार्थी यांनी अपिलामध्ये उपस्थित केलेले मुद्दे, त्यावर पोलीस उप आयुक्त यांनी सादर केलेली निराकरण टिपणी, विभागीय चौकशीची कागदपत्रे तसेच अपिलार्थी यांनी आज्ञांकित कक्षामध्ये केलेले कथन इत्यादींचे अवलोकन करता असे दिसून येते की, सदर कालावधीमध्ये अपीलार्थी हे खरोखर आजारी असून, त्याबाबत त्यांनी त्यांच्या आजारपणाची वैद्यकीय प्रमाणपत्रे सादर केलेली आहेत. तसेच विभागीय चौकशी अधिकारी यांनी सुद्धा अपिलार्थी हे खरोखरच आजारी असल्यामुळे, विभागीय चौकशी रद्द करण्यात यावी अशी शिफारस केली होती, यास्तव अपिलार्थी यांना शिस्तभंगविषयक प्राधिकारी तथा पोलीस उप आयुक्त, सशस्त्र पोलीस, नायगांव, मुंबई यांना त्यांना दिनांक ०१/०६/२०१७ च्या अंतिम आदेशान्वये दिलेली “**देय वार्षिक वेतनवाढ ३ वर्षे रोखणे (पुढील वेतनवाढीवर परिणाम न होता.)**” हि शिक्षा योग्य नसल्याचा निष्कर्षप्रत मी आलो आहे. म्हणून मी खालीलप्रमाणे आदेश देत आहे.”
- vi. In view of afore-drawn conclusion the Applicant was exonerated. The appellate authority directed that the period of suspension of the Applicant be treated as duty period for all purposes.
- vii. It may be reiterated that the Applicant was suspended on 11.11.2014 and he was reinstated on 30.12.2015.
- viii. Entire period which was treated as extra ordinary leave by the impugned order was pre-suspension period.
- ix. The Appellate authority came to the conclusion that the Applicant was really sick, there were medical papers to come to this conclusion, medical certificates were placed on record by him and hence he could not be held to be guilty of deliberately and wantonly remaining absent.
- x. By representation (Exhibit D) the Applicant prayed that his period of absence of 211 days be adjusted against half pay leave and earned leave standing to his credit.
- xi. Extract of record maintained at the office of Police Commissioner, Greater Bombay is as follows:-

“पो.शि.क्र.०१.८३९/प्रल्हाद राजाराम परीट, गावदेवी पोलीस ठाणे यांनी रुग्ण निवेदन कालावधी बाबतच्या कागदपत्रांचे कृपया अवलेखन होण्यास विनंती आहे.

श्री परीट हे दिनांक १०/०४/२०१४ ते दिनांक २१/०४/२०१४ पर्यंत १२ दिवस संधीवात मधुमेह या आजाराने आजारी होते त्यांनी पोलीस ठाणे कडून सिक पास घेतला आहे.

श्री परीट हे दिनांक २२/०४/२०१४ रोजी वैद्यकीय अधिकारी नागपाडा पोलिस ठाणे यांचे कर्तव्यास सक्षम असल्या बाबतचे प्रमाणपत्र घेऊन हजर झाले आहेत.”

“पो.शि.क्र.०१.०८३९/प्रल्हाद राजाराम परीट, गावदेवी पोलीस ठाणे यांच्या रुग्णनिवेदन कालावधी बाबतची कागदपत्रे कृपया अवलोकावित पो.शि परीट हे दिनांक २८/४/२०१४ पासून कर्तव्यावर गैरहजर होते त्यांना वारंवार पत्र पाठवून सुद्धा ते कर्तव्यावर हजर झाले नाहीत. तसेच कोणतीही कागदपत्रे सादर केली नाहीत. या कसुरीबद्दल त्यांना दिनांक १३/११/२०१४ पासून सेवेतून निलंबित केले होते. त्यांना निलंबनातून मुक्त करण्यात आले असून ते दिनांक १५/१२/२०१५ रोजी कर्तव्यावर हजर झाले आहेत. त्यांचा दिनांक १०/४/२०१४ ते २७/४/२०१४ १२ दिवसांचा गैरहजर कालावधी तसेच निलंबना पूर्वीचा दिनांक २८/४/२०१४ ते १२/११/२०१४ पर्यंतच्या कालावधी पो.३.आ परीट यांनी केलेल्या शिफारशीनुसार वैद्यकीय रजा / अर्जित रजा (त्यांच्या खाती शिल्लक असलेल्या रजेनुसार नियमित करण्यात येईल.)”

6. It may be reiterated that on the charge of remaining absent for a prolonged period the Applicant was dealt with departmentally. He was placed under suspension on 11.11.2014 and reinstated on 30.12.2015. Naturally the departmental enquiry was in respect of period of his absence prior to the date of his suspension. Once, absence of the Applicant was held to be justified on account of his ill health it could not have been treated as extra ordinary leave.

7. The Applicant has relied on the judgment dated 27.02.2017 passed by this Tribunal in O.A. No.1191/2016. In this case this Tribunal relied on Rule 63 of M.C.S. (leave) Rule, 1981 which reads as under-

“63. Extra ordinary leave.- (1) Extra ordinary leave may be granted to a Government servant in special circumstances –
(a) when no other leave is admissible;

- (b) when other leave is admissible but the Government servant applies in writing for the grant of extra ordinary leave.”

By relying on this Rule it was observed-

9. Having regard to the aforesaid facts and circumstances of the case, EOL without pay granted to the Applicant by orders dated 27.5.2016 and 30.11.2015 will have to be modified and the period of absence of 247 + 51 days will have to be adjusted against leave available in the account of the Applicant. After the leaves available in his account are exhausted, the balance, if any, can be treated as EOL without pay. The Respondents are directed to act accordingly and complete this exercise within a period of four weeks from the date of this order.”

8. In the departmental enquiry the appellate authority exonerated the Applicant by concluding that his absence prior to the date on which he was placed under suspension was on account of his severe ailments. This conclusion cannot be reconciled with the impugned order whereby period of absence was treated as extra ordinary leave. For these reasons the impugned order cannot be sustained. It may be observed that admittedly as on 31.12.2014 earned leave of 285 days and half pay leave of 240 days was standing to the account of the Applicant. Aforesaid period of absence was required to be adjusted against the said leave. Hence, the order.

ORDER

- A) The impugned order (Exhibit B) is quashed and set aside and Original Application is allowed in terms of prayer (A).
B) No order as to costs.

**Sd/-
(M.A. Lovekar)
Member (J)**

Place: Mumbai
Date: 05.05.2022.
Dictation taken by: N.M. Naik.
Uploaded on: _____