

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 1042 OF 2015**

**DISTRICT : RAIGAD**

Shri Shridhar Mukund Mokal, )  
Occ : Research Officer, in Planning Dept, )  
R/at: AT Post Chirner, Tal-Uran, )  
Dist-Raigad. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Principal Secretary, )  
Planning Department, Mantralaya, )  
Mumbai. )
2. The Director of Economics & )  
Statistics, Mumbai. )
3. The Project Officer, )  
Integrated Tribal Development )  
Project, Pen, Dist-Raigad. )...**Respondents**

Shri J.N Kamble, learned advocate for the Applicant.

Shri K.B Bhise, learned Presenting Officer for the Respondents.

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**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 16.06.2016**

**ORDER**

1. Heard Shri J.N Kamble, learned advocate for the Applicant and Shri K.B Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 3.11.2015 issued by the Respondent no. 1 treating the period from 1.6.2013 to 28.2.2014 as extra ordinary leave without pay, when the Applicant claims that he was working on loan basis in the office of then Minister, State Excise.

3. Learned Counsel for the Applicant argued that the Applicant was posted on 1.7.2010 as Research Project Officer in the office of the Integrated Tribal Development Project (I.T.D.P) Pen, Dist-Raigad. He worked in that post till 31.5.2013 and from 1.6.2013, he started working in the office of Minister, State Excise, in Mumbai. Minister, State Excise, sent a letter to the Deputy Chief Minister on 1.6.2013 that the Applicant may be posted to his office on loan basis from 1.6.2013. Copies of these letters were sent to the Respondents and the Applicant. Accordingly, the Applicant started working

in the office of the Minister, State Excise at Mantralaya. As no orders were issued, Minister, State Excise, again wrote to Deputy Chief Minister on 2.9.2013. Additional Commissioner, Tribal Development, Thane, wrote to the Respondent no. 2 on 24.9.2013 regarding the orders posting the Applicant in the office of Minister, State Excise. The Applicant informed the Respondent no. 3 by letter dated 28.9.2013 that he has joined on the establishment of Minister, State Excise, on 1.6.2013. Minister of State Excise, again wrote on 21.2.2014 and on 12.6.2014 to the Chief Minister and Deputy Chief Minister to post the Applicant in his office. There were many more letters from the Minister, State Excise to the Chief Minister and the Deputy Chief Minister. Ultimately, by order dated 13.1.2015, the Applicant was posted in the office of the Minister, State Excise with effect from 1.3.2014. Learned Counsel for the Applicant argued that the Applicant had worked in the office of Minister, State Excise from 1.6.2013 to 28.2.2014 on the orders given by the Minister. Despite repeated instructions from the Minister and Deputy Chief Minister, the Respondents did not pay him salary for the period from 1.6.2013 to 28.2.2014. Now by the impugned order this period is treated as Extra Ordinary Leave without pay, though the Applicant was actually discharging Government duties during this period. Learned Counsel for the Applicant contended that this order is against rules and may be quashed and set aside.

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4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant is a Group 'B' officer on the establishment of the Respondent no. 1. During the relevant period, he was posted as Research Officer in the office of the Respondent no. 3. Without any order of transfer, the Applicant left his post in the office of the Respondent no. 3 from 1.6.2013 and started working in the office of Minister, State Excise. This action of the Applicant was totally against rules as a Government servant cannot be transferred by a Minister, without following the due procedure. General Administration Department of the State Government which deals with the subject of staff on the establishment of Ministers, has issued a G.R dated 7.12.2010. As per this G.R, a Minister is entitled to have personal staff of 15, which was already working with Minister of State Excise on 1.6.2013. There was no vacant post to transfer the Applicant to the office of the Minister, State Excise. In addition, looking into the requirement of persons working in the Directorate of Economics and Statistics, Minister of State, Planning did not approve the proposal to relieve the Applicant from the Department to join the office of Minister, State Excise, who informed the Minister, State Excise accordingly by letter dated 12.12.2013 (Exhibit 'G'). G.A.D has also informed the office of the Minister, State Excise on 2.6.2014, that the Applicant could not be posted to the office of Minister, State Excise (Exhibit 'K'). The Applicant was fully aware

that he could not have joined the office of Minister, State Excise, without a proper order from the Respondents no 1 & 2. The Respondent no. 1 did not give consent to post the Applicant in the office of the Minister, State Excise on loan basis or by transfer. Ultimately, the Respondent no. 1 gave consent to appoint the Applicant as Personal Assistant (P.A) to the Minister from 1.3.2014. The Applicant was unauthorizedly absent from his post from 1.6.2013 to 28.2.2014. The Applicant did not submit any application for leave during this period. The question regarding regularization of the period from 1.6.2013 to 28.2.2014 was resolved by treating this as Extra Ordinary Leave without pay under Rule 63(6) of the Maharashtra Civil Services (Leave) Rules, 1981. Learned Presenting Officer stated that before the impugned order was passed a show cause notice was given to the Applicant on 3.8.2015. He submitted his explanation on 14.8.2015, and then the order was passed on 3.11.2015. Learned Presenting Officer argued that this order is not a punishment order as no such punishment is prescribed under Rule 5 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

5. The Applicant is a Group 'B' officer under the Respondent no. 1. He was posted as Research Officer in the office of the Respondent no. 3. On 1.6.2013, he joined the personal office of the Minister, State Excise.



There was no order issued by G.A.D posting him in the office of Minister, State Excise, when the Applicant joined the office of Minister, State Excise. Hon'ble Chief Minister approved deputation of the Applicant to the office of the Minister, State Excise only from 1.3.2014 to 29.9.2014. The order regularizing this period was issued by G.A.D on 13.1.2015. The period from 1.6.2013 to 28.2.2014, remained unregularized as the Applicant was absent from the post in which he was posted. He has himself decided to work in the office of the Minister, without orders from the competent authority. He did not apply for leave for this period. However, the Respondent no. 1 gave a show cause notice to the Applicant on 3.8.2015, asking him to show cause why this period should not be treated as leave without pay and break in service. After considering his reply dated 14.8.2015, the impugned order dated 3.11.2015 was passed to treat the period from 1.6.2013 to 28.2.2014 as Extraordinary leave without pay. The Applicant has challenged this order on the ground that this amounts to punishment. This objection is without any basis. The Applicant was found absent from his post from 1.6.2013 to 28.2.2014 without any proper orders. He might have been working in the office of Minister, State Excise, during that period. But that was unauthorized and the Competent Authority has not issued any such orders. A Government servant cannot decide to work in a post by himself. The impugned order only regularizes the unauthorized

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absence of the Applicant from duty. It has been passed after opportunity of being heard was given to the Applicant. I do not find any reason to interfere with this order.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**  
**Date : 16.06.2016**  
**Dictation taken by : A.K. Nair.**