

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.123 OF 2021

DISTRICT: THANE

Shri Pradip Babudal Pwar ,)
Age:-52 yrs, Occ. Govt. Service,)
R/at A-702, Sunflower, Flower Valley, Khadakpada,)
Kalyan (W), Dist. Thane.)... **Applicant**

Versus

1) The State of Maharashtra,)
Through Additional Chief Secretary,)
Rural Development Department,)
Mantralaya, Mumbai-32.)...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Archana B.K., learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 17.02.2022.

ORDER

1. The Applicant has challenged the order dated 12.01.2021 whereby his request to treat the period from 24.10.2019 to 05.08.2020 as waiting period has been rejected invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving to Original Application are as under:-

The Applicant is serving in the cadre of Block Development Officer. While he was serving as Block Development Officer in Panchayat Samiti, Roha, Dist. Raigad, he was suspended by order dated 13.03.2019 in view of the registration of Crime No.12/2019 under Section 7 of Prevention of Corruption Act. He was in custody for more than 48 hours and

accordingly, by order dated 13.03.2019, he was suspended as deemed suspension under Rule 4(2) (a) of Maharashtra Civil Services (Discipline & Appeal) Rules 1979 (hereinafter referred to as 'Rules 1979' for brevity).

3. The Applicant has challenged the suspension order dated 13.03.2019 by filing O.A.No.627/2019 before this Tribunal. During pendency of it, the Government by order dated 24.10.2019 revoked the suspension of the Applicant and reinstated him in services as Block Development Officer, Panchayat Samiti, Pusad, Dist. Yeotmal. When O.A.No.627/2019 was taken for hearing on 12.02.2020 that time order dated 24.10.2019 was brought to the notice of Tribunal. That time, however, Applicant's Counsel has pointed out that the post of Block Development Officer, Panchayat Samiti, Pusad given to him was of selection grade and Applicant could not be posted there. That time, after hearing Applicant's Counsel as well as learned P.O., the Court has passed following order :-

“1. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant and Ms N. G. Gohad, learned Presenting Officer for the Respondents.

2. Government by order dated 24.10.2019 revoked the suspension of the Applicant and reinstated him as Block Development Officer, Panchayat Samiti, Pusad, Dist. Yavatmal.

3. On last date, learned Counsel for the Applicant has pointed out that the post of Block Development Officer is of selection grade, and therefore, could not have been posted on that post. The Government has also realized the mistake and matter is now again placed before the Hon'ble Chief Minister for modification of posting order.

4. In view of above, Respondent No.1 is directed to ensure that appropriate orders are passed within two weeks from today.

5. Hamdast granted.

6. S.O. to 26.02.2020.”

4. In view of the aforesaid order, the Respondent No.1 was obliged to take appropriate steps and give suitable posting to the Applicant so that he could join there. However, no such steps were taken by the Respondent No.1. The Tribunal in O.A.No.627/2019, therefore, passed orders on 12.02.2020, 23.06.2020, 30.06.2020 and 14.07.2020 directing the Respondent No.1 to issue appropriate orders without any delay. On all these dates, the matter was adjourned on request of Chief Present Officer as well Presenting Officer seeking time for issuance of orders by the Government. Finally, the Tribunal disposed of O.A.No.627/2019 on 21.07.2020 with direction to Respondents to issue appropriate posting order within ten days. It is on this background, Respondent No.1 passed order dated 05.08.2020 and posted the Applicant as Deputy Chief Executive Officer, Zilla Parishad, Dhule. Accordingly, the Applicant joined there. When O.A.No.627/2019 was disposed of, liberty was given to Applicant to make representation about the treatment to the intervening period. Accordingly, he made representation on 05.08.2020 with request to treat the period from 24.10.2019 to 05.08.2020 as waiting period and for pay and allowances. The representation came to be rejected by impugned order dated 12.01.2021.

5. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

6. Learned Counsel for the Applicant urged that blame lies with the Respondent in not issuing appropriate posting order which resulted in loss of pay and allowances to the Applicant for the period from 24.10.2019 to 05.08.2020. He has further pointed that the Government realized the mistake in posting the Applicant at Pusad, and therefore, modified posting order ought to have been issued immediately but ultimately it was issued belatedly on 05.08.2020. The sum and substance of the submission is that the Applicant cannot be blamed for

this situation, and therefore, entitled to treat the period from 24.10.2019 to 05.08.2020 as waiting period with pay and allowances.

7. Per contra, learned P.O. sought to justify the impugned order stating that there was no stay of the Tribunal or any other authority in favour of the Applicant for not joining at Pusad and admittedly, the Applicant being not worked from 24.08.2019 to 05.08.2020 is not entitled to pay and allowances on the principle 'no work no pay'.

8. In view of the submission advanced, the small issue posed for consideration is whether the Applicant abstained from attending duties so as to deny the claim to treat the period from 24.10.2019 to 05.08.2020 as compulsory waiting period.

9. Indisputably, when the suspension came to be revoked, the Applicant was reinstated in service by giving him positing as Block Development Officer, Pusad, Panchayat Samiti, Dist. Yeotmal by order dated 24.10.2019 when O.A.No.627/2019 challenging the suspension was pending before this Tribunal. Perusal of order dated 12.02.2020 passed by the Tribunal in O.A.No.627/2019 reproduced above clearly shows that the posting of the Applicant as Block Development Officer, Panchayat Samiti, Pusad by order dated 24.10.2019 was not correct since that post was of selection grad. It is apparent from order dated 12.02.2020 that the Government also realized the mistake and modified order was to be issued with approval of Competent Authority immediately. Indeed, as per order dated 12.02.2020 passed by the Tribunal in O.A.No.627/2019 that time proposal for modification was pending before the Hon'ble Chief Minister. However, no such decision was taken within reasonable time despite several orders passed by this Tribunal in O.A. No.627/2019 from time to time. As such, the lapse on the part of Respondent for not taking remedial measures within reasonable time even after realizing the mistake is obvious from record.

10. The submission advanced by learned P.O. that there was no stay to the posting order dated 24.10.2019 and the Applicant ought to have joined there is totally misconceived. During the pendency of O.A.No.627/2019, the Government itself realized the mistake in passing order dated 24.10.2019 that the Applicant was not entitled for posting at Pusad, therefore, the Applicant cannot be blamed for not joining at Pusad.

11. It may be noted that before issuance of order dated 05.08.2020 giving posting to Applicant at Dhule, the proposal was moved before the Hon'ble Chief Minister for giving posting to the Applicant in Public Health Department as apparent from letter dated 23.07.2020 issued by Respondents. The copy of letter dated 23.07.2020 was also forwarded to the Applicant. Indeed, as per this letter dated 23.07.2020, the Applicant submitted joining report dated 24.07.2020 in Health Department without getting formal transfer orders. It shows he was always ready to join. However, the Health Department did not accept his posting stating that D.E. was pending against him.

12. It is thus manifest that the Applicant is kept away from duty due to sheer lapses on the part of Respondent in not issuing proper posting order. Indeed, at the time of reinstatement itself, care ought to have been taken to issue appropriate posting order. The Respondents realized the mistake of wrong order dated 24.10.2019 but failed to take further steps immediately or in the reasonable time for giving appropriate posting to the Applicant. Despite various orders passed by the Tribunal, during the pendency of O.A.No.627/2019, no such steps were taken. Suffice to say, lack of due diligence on the part of Respondent is writ at large. This is not a case where a Government servant himself abstained from attending duties for one or other reason. It is because of incorrect posting order, the Applicant is kept away from duties. Therefore, the Applicant's claim to treat the period from 24.10.2019 to 05.08.2020 as waiting period ought to have been accepted.

13. No doubt, the Applicant has not worked in the period from 24.10.2019 to 05.08.2020. However, the fact remains that he was kept away from duty to sheer lethargy on the part of Respondents for not taking immediate remedial measures. Therefore, the principle of 'no work no pay' could not attract fully. In my considered opinion, his period from 24.10.2019 to 05.08.2020 has to be treated as waiting period and the Applicant deserves 50% pay and allowances for the said period.

14. The totality of the aforesaid discussion leads me to sum up that the impugned order dated 12.01.2021 is totally bad in law and deserves to be quashed. Hence the following order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned order dated 12.01.2021 is quashed and set aside.
- (C) The Applicant's period from 24.10.2019 to 05.08.2020 shall be treated as waiting period and he be given 50% pay and allowances with other consequential service benefits for this period within one month from today
- (D) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 17.02.2022
Dictation taken by: Vaishali Santosh Mane