

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.424 OF 2019
(Subject : For treating the suspension period as duty period)

DISTRICT : MUMBAI

Dr. Gajanan Keshavrao Sanap,)
Aged 46 years, working as Medical Officer)
on deputation to High Court Dispensary, Fort,)
Mumbai- 32)
R/o. Police Hospital, Doctors Quarters,)
Nagpada, Mumbai – 8) **..... Applicant.**

Versus

The State of Maharashtra,)
Through Additional Chief Secretary,)
Public Health Department,)
Having office at Mantralaya,)
Mumbai 400 032) **....Respondent.**

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

Shri S.D. Dole, the learned Presenting Officer for the Respondent.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 04.11.2019

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri S.D. Dole, the learned Presenting Officer for the Respondent.

2. In the present Original Application, Applicant has challenged the suspension order dated 05.10.2017 whereby he was kept under suspension in contemplation of the Departmental Enquiry invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 Rules 1979.

3. The Applicant was working as Medical Officer, Group-A of Police Disciplinary, Nagpada, Mumbai. On 03.12.2015, he examined one Shri B.V. Pujari in O.P.D. The Applicant found that the patient has chronic alcoholic with bilateral pedal oedema with jaundice. He was admitted in the hospital and blood transmission was made. However unfortunately, patient died on 08.12.2015. In sequel accidental death was registered. In post-mortem, it was found that he was suffering from cirrhosis of liver, anemia. Cause of death was shown due to tuberculosis and pneumonia. The Executive Magistrate conducted enquiry and death was found natural. It was on this background the Applicant was suspended by order dated 05.10.2017 in contemplation of Departmental Enquiry. However, no such Departmental Enquiry was initiated. On the contrary he was reinstated in service on 06.07.2018. After the reinstatement also no steps were taken either to initiate Departmental Enquiry or to treat the period from 05.10.2017 to 06.07.2018 as duty period. The Applicant made representation, but in vain. Indeed the Deputy Director, Health services has also submitted proposal on 15.03.2019 that as per statement of wife and son of the deceased they are not suspecting any foul play and recommended to accept the report. However, the Hon'ble Minister directed for appointment expert committee and to submit report a fresh.

4. Despite direction issued by the Hon'ble Minister no further steps were taken within stipulated time and therefore applicant has filed present O.A. challenging the suspension order.

5. When the matter was taken up for admission Tribunal has passed order on 21.08.2019 directing the respondent to file affidavit and to explain as to why no further steps were taken in the matter either in the form of initiation of Departmental enquiry or to accept report of Deputy Director dated 14.02.2019. Today Shri S.D. Dole, learned on instructions from Shri Kiran Dhavde, Under Secretary, submits that the expert Committee had submitted report on 10.10.2019 giving clean chit to the Applicant and further submits that on the basis of report of expert Committee headed by Dr. Chikarkar, Professor of Head of the Department of Medical GMC, Mumbai, proposal is in process to drop D.E. against the Applicant and to treat the period of suspension as duty period for all purposes. Learned P.O. has tendered file for perusal. Noting of the file reveals that the Principal Secretary had also approved note and file is under consideration before the Hon'ble Minister for further orders. Learned P.O. for the Respondents submits that proper order on the proposal will be passed soon.

6. Thus what transpires from the record that despite the opinion of expert Committee as well as opinion in post mortem report that death is natural, no further steps have been taken by the Respondents either to drop the Departmental Enquiry or to take appropriate decision.

7. The Applicant was suspended by order dated 05.10.2017 and the period of more than two years is over but no further steps has been taken for initiation of Departmental Enquiry. On the contrary, the record reveals that the expert Committee has already given opinion by giving clean chit to the Applicant. Though the Applicant has been reinstated on 06.07.2018 his fate is kept in abeyance in so far as initiation of Departmental Enquiry is concerned. Indeed in view of the report of expert Committee as well as Expert Committee report, Respondent ought to have taken appropriate decision much earlier. Thus it appears that the suspension of Applicant was unwarranted and nothing tangible against him surfaced in the enquiry conducted by the expert Committee.

8. In view of the above, Original Application deserves to be disposed of with suitable directions :-

ORDER

- (a) Respondent is directed to pass final order about the initiation of Departmental Enquiry against the Applicant within a month from today failing to which Departmental Enquiry is deemed to have been dropped and the Applicant will be entitled for all the service benefits.
- (b) Respondent is directed to take decision as stated above, within a month and communicate the same to the Applicant within a week thereafter.
- (c) If the Applicant is felt aggrieved by the decision he may avail further remedy in accordance with law.
- (d) Original Application is accordingly disposed of with no cost.

SD/-

(A.P. Kurhekar)
Member (J)

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