

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

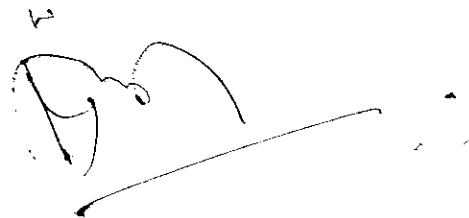
ORIGINAL APPLICATION NO.64 OF 2016

DISTRICT : PUNE

Shri Mohammad Rafiq Gulab Shaikh,)
Age 48 years, Occ. Nil,)
Ex-Ward Boy, Central Hospital, Ulhasnagar-3,)
District Thane)
R/o Nagpur Chawl, Opp. Buddha Vihar,)
Near Lomesh Gadling, Yerawada, Pune-6)..Applicant

Versus

1. The Civil Surgeon,)
Central Hospital, Ulhasnagar-3,)
District Thane)
2. The Deputy Director,)
Health Services, Thane)
3. The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400032)..Respondents



Shri G.A. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri R.B. Malik, Member (J)

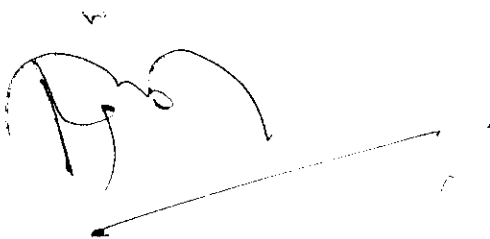
DATE : 23rd March, 2016

J U D G M E N T

1. This OA seeks to challenge the order dated 21.11.2015 made in departmental appeal preferred on 27.10.2014 against the order dated 15.6.2013 of the disciplinary authority whereby the applicant was compulsorily retired from service on account of what was considered as proved misconduct including misbehaviour with ladies.

2. I have perused the record and proceedings and heard Shri G.A. Bandiwadekar, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

3. It is not necessary in this OA to deal with the facts falling within the domain of the disciplinary authority itself. He received the report of the enquiry officer and about one and half years thereafter made the order of compulsory retirement which was challenged in appeal.

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4. The appeal was preferred after about one year and three months which was beyond the period of limitation of 45 days. It appears that the applicant sought condonation of delay in the memo of appeal itself. I must make it clear that it is not for that reason alone that the OA is being disposed off in the manner it is because in administrative enquiries the strict procedural rules of a separate application for condonation of delay may not be strictly necessary although it must be so much the better if that course of action was adopted.

5. The appellate order discloses that the said authority dismissed the appeal only on the ground of limitation. Going thereby the applicant had set up a case of his own disturbed mental condition on account of loss of job and also the ill health of his daughter, son, wife and himself. The appellate authority was apparently of the view that the medical certificates submitted by the applicant were for the period pre and post the order impugned in that appeal. In my view the treatment given to the delay aspect of the matter especially on the anvil of condonation of delay is not satisfactory at all. I am quite conscious of the fact that in administrative orders one need not necessarily expect a refined and sophisticated order that one associates with the judicial pronouncements. However, it is also equally significant to note that wherever appeals are provided they are substantive rights of the person

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concerned whose job is on the firing line and hence, significance of a serious and careful treatment to it by the appellate authority. That is the only the appellate forum available to an aggrieved employee in which he can question even the factual findings.

6. That being the state of affairs, I am of the opinion that the treatment given by the appellate authority to the condonation of delay aspect of the matter leaves much to be desired and it cannot be sustained in its entirety. The matter is, therefore, destined to be remitted back to the appellate authority. Shri G.A. Bandiwadekar, learned advocate for the applicant contends that a direction be given to the appellate authority not just to condone the delay but also to decide the appeal on merit. The Ld. PO was opposed to every aspect of the case including this one.

7. Now, in my view if the delay was of one year and three months there has to be some convincing reasons for the same. No doubt such applications viz. for condonation of delay are required to be liberally considered bearing in mind the interest of justice. However, regard being had to the extent of the delay, I am not so inclined as to direct straightaway the hearing of the main appeal. The promptitude and due dispatch with which applicant should have been conducted himself must be examined. I must, however, make it very clear that I express



no opinion about the merit of the delay aspect of the matter. The appellate authority shall however bear in mind the legal principles alluded to hereinabove that interest of justice should be preferred to technicalities.

8. The impugned appellate order is quashed and set aside. The matter is remanded back to the appellate authority from the stage it was when the appeal was lodged. The appellate authority shall consider the issue of condonation of delay by affording an opportunity of being heard to the applicant and also to allow him to adduce evidence apart from taking into consideration the evidence already on record. The appellate authority is hereby directed to decide the said issue within two months from today and communicate his decision within one week thereafter and in case the delay is condoned then to hear and decide the main appeal within three months thereafter. The OA is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)
23.3.2016

Date : 23rd March, 2016

Dictation taken by: S.G. Jawalkar.