

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.701 OF 2016

District : Thane

Mr. Devanand Ramnath Dighole)
Age : 40 years, Occ : Police Naik,)
R/at. D2 201, The Rutu Estate,)
Opp. T.M.C. Commissioner Bunglow,)
Near Hiranandani Estate, Ghodbundar Rd.)
Patlipada, Thane.)

...Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai.)
2. The Special Inspector General of)
Police, Kokan Range, Kokan Bhavan)
Navi Mumbai.)
3. The Superintendent of Police,)
Thane Rural, Dist. Thane.)

...Respondents.

Mr. K.R. Jagdale, learned Advocate for the Applicant.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : JUSTICE MRIDULA BHATKAR, CHAIRPERSON
MS. MEDHA GADGIL, MEMBER (A)**

DATE : 06.07.2023

PER : MS. MEDHA GADGIL, MEMBER (A)

J U D G M E N T

1. Applicant working as Police Constable challenges the impugned order dated 05.10.2013 by which he was compulsorily retired from the service and also challenges order dated 10.03.2015 passed by the Appellate Authority confirming his compulsory retirement from the service.

2. Learned Advocate for the Applicant has submitted that the reason for compulsory retirement of the Applicant was absenteeism for 1206 days during the period from 01.03.2009 to 18.06.2012. Learned Advocate has submitted that the Applicant was suffering from mental depression during the said period. Learned Advocate refers to the certificate issued by the Private consultant psychiatrist Dr. Dilip Joshi stating that the Applicant was under his treatment for major depression disorder.

3. Learned Advocate for the Applicant has submitted that the applicant being mentally disabled is entitled to get the benefits of Section 37 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as 'Disabilities Act 1995' for brevity). The applicant has to prove the fact of his mental disability relying on the Medical Certificate dated 14.1.2013, issued by Dr Y.A Matcheswala, Professor of Psychiatrist and Hon. Consultant, Grant Medical College, Sir J.J Group of Hospitals, Mumbai. In the said Certificate it is stated that the applicant was taking treatment from the private Psychiatrist during the period 1.3.2009 to 1.8.2012. He also relied on the document, i.e., Discharge Card issued by Dr. Matcheswalla, wherein, he has mentioned about depression and that the applicant took treatment from 1.3.2009 to 1.8.2012 and at present not suffering from active psychiatric illness and fit for duty.

4. After hearing the learned counsel for the applicant, we are of the view that the applicant first should prove the fact of his mental disability. After going through the documents, it cannot be proved that

Dr. Matcheswalla was a Surgeon or Practitioner under whom the applicant was treated when he was under mental depression. These two documents are Certificates of Fitness of the applicant. However, the applicant is required to prove the fact of his mental illness and the percentage of such illness to claim the benefits of Section 37 of the Disabilities Act 1995.

5. Learned Advocate for the Applicant relies on the testimony of the witnesses of one Mr. Yogesh U. Patil, who went to the residence of the Applicant to serve the notice. He states that the messenger, Mr. Yogesh Patil states that whenever he visited the Applicant, the Applicant used to sit alone. The messenger, Mr. Yogesh Patil also stated that the wife of the Applicant also said that the Applicant is suffering from mental disorder. Learned Advocate referred to the report given by the Enquiry Officer. Learned Advocate pointed out that in the said report the Enquiry Officer also relied on the messenger, Mr. Yogesh Patil. Learned Advocate refers to the findings of the Enquiry Report and documents of Dr. Dilip Joshi regarding his illness. Learned Advocate pointed out that the Enquiry Officer should have examined the Applicant personally if he had any doubt about the Applicant's mental illness. Learned Advocate states that the punishment of compulsory retirement for absenteeism of 1207 days is disproportionate as it is not a misconduct. Learned Advocate states that this is double jeopardy because the Applicant's absenteeism was treated as leave without pay as well as order dated 02.08.2014 issued by Respondent No.3, the Superintendent of Police, Thane regarding compulsory retirement of the Applicant. Learned Advocate has submitted that the Government admitted that the Applicant was suffering from mental illness. Learned Advocate states

that the Respondent No.3 had called the Applicant to the office to confirm his mental and physical condition and found that he was not in proper condition. Learned Advocate has submitted that apart from absenteeism Applicant's service record is unblemished.

6. Learned Advocate refers to the order dated 27.07.2021 passed in M.A.No.248/2021 filed for amendment to incorporate one more ground in the present O.A. In the amended ground learned Advocate relied on Section 34(d) of the Rights of Persons with Disabilities Act, 2016 wherein it is stated that no certificate is required.

7. Learned Advocate for the Applicant relies on the following judgments :

- a. Mandeep Kumar & Ors. Versus State of Haryana and Ors., reported in MANU/SC/0990/1996
- b. Bhagwan Lal Arya Versus. Commissioner of Police, Delhi reported in 2004(3)
- c. Roop Singh Negi Versus Punjab National Bank and Ors. reported in 2009(120)FLR610.
- d. Smt. Iravati Shamsundar Mulgaonkar Versus The State of Maharashtra in O.A.No.248/2014 dated 12.04.2022.

8. Learned Advocate states that pursuant to order dated 22.06.2022 the Applicant made number of representations to the Sir J.J. Hospital. However, the said hospital informed the Applicant that they did not have record. They have communicated the same on 01.08.2022 that they have not preserved the record. Learned Advocate states that Applicant has a clear record which is to be considered. He states that only because of mental illness he went on leave. Hence, disproportionate punishment needs to be considered in the light of his clean record. He states that the Applicant has 265 days Earned leave balance in his

account. Learned Advocate states that the Respondent should have adjusted his 265 days balance Earned leave in his leave and he should not have been compulsorily retired. Therefore, O.A. should be allowed.

9. Learned P.O. for the Respondents relies on affidavit dated 06.10.2016 filed on behalf of Respondents No.2 and 3, through Mr. Anil Gangadhar Tompe working as Police Inspector in the office of Superintendent of Police Thane Rural. Learned P.O. states that applicant was on leave during the period from 07.09.1996 to 13.09.1996 (total 7 days) which was treated as leave without pay. Thereafter, he was on patrolling duty on 06.11.1998, wherein he remained absent and he was given reprimand for that. Thereafter he remained absent during the period from 10.07.2008 to 28.07.2008 (total 19 days) which was treated as leave without pay and was given reprimand for that period. Thereafter, during the period from 01.03.2009 to 18.06.2012 (total 1206 days) Applicant remained absent and was it was treated as leave without pay. Learned P.O. has submitted that it is incorrect to say that the Applicant was working continuously for 19 years. A proper Departmental Enquiry was initiated against the Applicant and opportunity of hearing was given to the Applicant.

10. Learned P.O. has further raised grievance that the Applicant gave the certificate of Private Psychiatrist which is not acceptable as per the Government Rules. Psychiatrist from Sir J.J. Hospital has merely given fitness certificate dated 14.01.2013 to the Applicant. In the impugned order of punishment which is a reasoned order all the facts and the submissions of the Applicant were considered and thereafter order of punishment of compulsory retirement was passed. Applicant was

sympathetically viewed so that he gets pension. Learned P.O. states that the order passed by the Appellate Authority is also the speaking order. All the facts are mentioned and the reasons are given and hearing was also given to the Applicant. Pursuant to order dated 07.07.2022 passed by this Tribunal, the Applicant was unable to produce the required disability certificate which is contemplated under Section 37 of the Disabilities Act 1995.

11. Learned P.O. for the Respondents relied on the judgments of Hon'ble Supreme Court in the case Union of India and Ors. Versus P. Gunasekaran dated 19.11.2014, Civil Appeal (Arising out of S.L.P. (Civil) No.23631/2008) and State of Punjab and Others Versus Charanjit Singh reported in (2003) 8 SCC 458.

12. In the order dated 12.04.2022 passed in O.A.No.248/2014 the cause for dismissal was different and it is held that the impugned order was disproportionate. It was held that the order of Appellate Authority is cryptic and non-speaking. However, the same is challenged and pending before the Hon'ble High Court.

13. In the judgment in case of ***Bhagwan Lal Arya (supra)*** it is held by the Hon'ble Supreme Court that absenteeism cannot be termed as a misconduct. In para 10 it is observed as under:

“10. The disciplinary authority without caring to examine the medical aspect of the absence awarded to him the punishment of removal from service since their earlier order of termination of appellant's service under Temporary Service Rules did not materialize.”

14. In the case of **Roop Singh Negi (supra)** the issue involved is of marginal lapse.

15. The judgment in **Mandeep Kumar (supra)** deals with the issue of marginal lapses of absenteeism of 10 hours 35 minutes in 1991 and 22nd May 1991 for 16 hours. Hence, this cannot be compared with the present case wherein the applicant has been absent for 1206 days.

16. Learned P.O. states that the Respondent decision to treat Applicant's absenteeism as leave without pay and compulsory retirement order dated 02.08.2014 issued by Respondent No.3 cannot be considered as double jeopardy in view of the judgment of **Charanjit Singh (supra)**. Learned P.O. has submitted that in the case of **Charanjit Singh (supra)** it is held that dismissal order states that the period of absence be treated as leave and it does not amount to condonation but only regularizes the leave.

17. We have carefully considered the arguments of both the sides. There is a catena of judgments that repeated absenteeism in a disciplined force like the police cannot be condoned.

18. In so far as the issue of his being under treatment for depression is concerned the applicant is unable to produce a medical certificate from a Government Hospital as required by the Rules but relies on a certificate issued by the private practitioner. This is not acceptable to condone the long absenteeism.

19. In view of the aforesaid reasons the Original Application is dismissed. No orders as to cost.

Sd/-

**(Medha Gadgil
Member (A))**

prk

Sd/-

**(Mridula Bhatkar, J.)
Chairperson**

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