

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.819 OF 2017

DISTRICT : Sindhudurg
Sub.:- Cancellation of Appt.

Smt. Valia Punathil Vrinda Valsam)
(since after marriage Vrinda A. Nair))
Age : 26 Yrs, Occ : Nil,)
Ex. Dy. Executive Engineer, Medium)
Project Division, Ambadpal, Tal. Kudal,)
Dist. Sindhudurg.)
R/o. 814, Sai Dham, Anand Nagar, A/p)
Oras, Tal. Kudal, Dist. Sindhudurg 416812)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)

2. The Executive Engineer, Medium)
Project Division, Ambadpal,)
Tal. Kudal, Dist. Sindhudurg.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Ms S. P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J
DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 01.08.2023

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has challenged order dated 11.08.2017 issued by the Respondent No.1 whereby State Government cancelled her appointment order dated 14.12.2015 by which she had been appointed

on the post of Assistant Engineer- Class I invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Following are the admitted facts giving rise to this O.A. :-

(A) The Respondent No.1- State Government by order dated 14.12.2015 appointed Applicant on the post of Assistant Engineer, Class-I and having being included at Sr. No.145 of Annexure 2, as per Clause-2 of appointment order, she was required to join for training at Maharashtra Engineering Training Academy (META), Nashik on 01.01.2016. Further, as per subsequent Clause-3 of the appointment order, if any of the 27 identified candidates included in Annexure 1 fail to join within 15 days at their places of appointment as directed in the order, their appointment orders would stand cancelled automatically. It is further stated in Clause-3 that Head of the Department should not allow any among these 27 identified candidates to join after expiration of 15 days period. The Applicant was required to join M.E.T.A. on 01.01.2016. The Applicant contends that she could not submit an application to seek extension of time nor join M.E.T.A. for training on 01.01.2016 because of her Ophthalmic Ailment.

(B) The Applicant was later allowed to join by Chief Engineer and accordingly she joined at Minor Project Division, Ambadpal, Tal. Kudal, Dist. Sindhudurg on 01.02.2016.

(C) Thereafter, the Superintendent of Engineer by his order dated 27.12.2016 relieved the Applicant on the ground that in terms of appointment order, she was required to join within 15 days but she failed to do so and, therefore, came to be relieved.

(D) The Applicant has challenged order dated 27.12.2016 issued by Superintendent Engineer by filing O.A. No.72/2017 *inter-alia* contending that because of Ophthalmic Ailment, she could not join within 15 days and the Superintendent Engineer was not competent to relieve her unilaterally. The Tribunal by order dated 01.02.2017 granted Interim Relief in favour of the Applicant staying operation of order dated 27.12.2016 of Superintendent Engineer with observations that since the Applicant worked for more than 11 months, the order passed by Superintendent Engineer was incorrect and he was not competent to relieve her. On the basis of order of Interim Relief, the Applicant was continued in service of State Government.

(E) The Superintendent Engineer later withdrew the order dated 27.12.2016 and referred the matter to State Government. Therefore, O.A.No.72/2017 was disposed of.

(F) It is on the above background, the Respondent No.1- State Government belatedly issued order dated 11.08.2017 thereby cancelling appointment order dated 14.12.2015 on the sole ground of non-joining the post within 15 days as mentioned in Clause 4 of appointment order.

3. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the legality of order dated 11.08.2017 *inter-alia* contending that in first place stipulation mentioned in Clause 4 of the appointment order that if a candidate failed to join within 15 days, the appointment is liable to be cancelled, is totally arbitrary and unconstitutional. He emphasized that where candidate for some genuine and valid reasons could not join the post within stipulated period of 15 days in that event, all that he would lose is seniority as provided in Rule 4(2) of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 and cancellation of appointment is too harsh and arbitrary. He has further pointed out that though the Applicant did not make any application for extension of time

nor joined M.E.T.A. on 01.01.2016 for training, she was later allowed to join by the order of Chief Engineer and accordingly joined on 01.02.2016. He has further pointed out that after joining, she produced Medical Certificates showing her Ophthalmic Ailments as well as treatment undergone and it was forwarded to State Government through Chief Engineer. On this line of submissions, he further urged that it is not a case that Applicant delayed joining intentionally but she was not able to join because of Ophthalmic Ailments and in such situation, cancellation of appointment order particularly after Applicant worked in State Government on the post of Assistant Engineer-Class I for 18 months is totally arbitrary and unsustainable in law.

4. Per contra, Ms S. P. Manchekar, learned Chief Presenting Officer in reference to stand taken in Affidavit in Reply sought to contend that in terms of appointment order, the Applicant was required to join within 15 days but neither she made any application for extension of time nor joined M.E.T.A. for training on 01.01.2016 and, therefore, even if, she was allowed to join later by order of the Chief Engineer, that hardly matters. According to learned C.P.O., the Applicant has committed breach of terms and conditions set out in appointment order. She has further pointed out that other 18 candidates who were appointed along with Applicant made an application to State Government within period of 15 days for extension of time to join citing some difficulties but their requests were rejected by State Government and they were directed to report for training at META on 01.01.2016. She, therefore, submits that Applicant cannot ask for special treatment and appointment is rightly cancelled on 11.08.2017 by the State Government.

5. In view of submissions, the issue posed for consideration is whether impugned order dated 11.08.2017 is sustainable in law.

6. The facts as narrated above are not in dispute. Though in term of appointment order, the Applicant was required to report for training at META on 01.01.2016, she failed to join at M.E.T.A. It is also not in dispute that she did not make any application for extension of time and failed to join within 15 days. However, at the same time, we cannot be oblivious of admitted fact that later by order of Chief Engineer, she was allowed to join on 01.02.2016. Admittedly, she served for 18 months up to cancellation of appointment order on 11.08.2017. This is one of the important distinguishing circumstances to be borne in mind. As such, the case of the Applicant is required to be decided, considering this material aspect.

7. We need to see whether there is enough material on record to show that Applicant was really suffering from any such Ophthalmic Ailment which prevented her from joining M.E.T.A. for training on 01.01.2016. In this behalf, the Applicant has produced voluminous records in the form of Medical Certificates. True, before appointment order, the Applicant was sent for Medical Examination and she was found fit for employment. However, perusal of medical certificates dated 19.01.2016 reveals that Applicant was treated in Divyadrishti Eye Clinic & Laser Centre. She has also produced receipt dated 21.01.2016 for payment of Rs.42,000/- in the hospital which shows that she has undergone some procedure mentioned as 'SBK' in both eyes. Later, again she was admitted in the same hospital for treatment on 23.01.2016 and was discharged on same day. In discharge card, she was diagnosed suffering from myopia. The applicant has also produced Medical Certificate issued by Dr. Nagesh Ingale, dated 12.02.2016 whereby she was advised for Ophthalmic Laser Treatment under Ophthalmic Laser Surgeon. As such, these Medical

Certificates clearly spells that she was suffering from serious Ophthalmic Ailment which was the reason for not joining M.E.T.A. for training on 01.01.2016. There is no reason to doubt all these Medical Certificates. Suffice to say, this is not a case where candidate intentionally delayed joining M.E.T.A. for training on 01.01.2016. Rather this is a case where Applicant could not even seek extension of time to join nor could join M.E.T.A. for training on 01.01.2016 as per appointment order only because of Ophthalmic Ailment. We do not think that any candidate who is appointed on Class-I post of State Government would delay the joining without compelling situation taking risk of cancellation of appointment to his/her peril.

8. That apart, admittedly, the Applicant was allowed to join on 01.02.2016 as per the order of the Chief Engineer. Notably in the appointment order under Clause 3, there is specific mention that Head of Department should not allow the candidates to join after 15 days but this condition was made applicable as per Clause 3 only in respect of 27 identified candidates in Annexure A. The Applicant is included in Annexure B at Sr. No.145 and thus Clause 4 was applicable to her. Clause 4 did not include any such specific directions to Head of Department not to allow candidates to join. Be that as it may, once the Applicant was allowed to join by Chief Engineer on 01.02.2016 and she served on that post for 18 months, the impugned action of cancellation of appointment on 11.08.2017 is definitely arbitrary and harsh.

9. Notably, even if there is a mention in appointment order under Clause 4 that if no permission is granted for extension of time and candidate did not join in 15 days, appointment order would stand automatically cancelled, it is seen from record that in respect of the 20 candidates who did not get permission from State Government for extension of time and did not join M.E.T.A. for training on 01.01.2016, the State Government cancelled their appointment order separately and

belatedly on 11.07.2016. This shows the stipulation in Clause 4 of appointment order that failure to seek extension of time to join and not reporting for training to M.E.T.A. on 01.01.2016 would entail in automatic cancellation of appointment was not strictly adhered to and order of cancellation was passed by State Government separately and belatedly for 20 candidates only on 11.07.2016. The action of the State Government, to pass order about Applicant after 11.08.2017, therefore, appears to be an afterthought. Indeed, as per Rule 4(2) of Maharashtra Administrative Tribunal (Regulation of Seniority) Rules 1982, 30 days period is stipulated for joining from the date of issue of order or within such extended period as the competent authority may in its discretion allow and non-joining within stipulated period would entail in loss of seniority. This being so, the period of 15 days mentioned in the appointment order is only in the nature of instruction since Rule 4(2) provides for 30 days joining time.

10. In such situation, in view of Chief Engineer order allowing Applicant to join on 01.02.2016 and her continuation in post of Assistant Engineer Class-I for 18 months can be construed as an conscious act of condonation of delay and permitting her to serve in the State Government and as name of the Applicant was not included in first instance with the list of 20 candidates whose appointment orders were subsequently and belatedly cancelled on 11.07.2016, it would be very unjust, arbitrary and unfair to cancel the appointment after extracting work from her for 18 months. The 'Principle of Estoppel' also comes into force and operate against the State Government.

11. Notably, while cancelling appointment order, by impugned order dated 11.08.2017, no consideration was given to Medical Certificates tendered by the Applicant about her Ophthalmic Ailment as well as to the fact that Applicant was infact allowed to join on 01.02.2016 by responsible officer of State Government in rank of Chief Engineer. The

State Government has issued the order dated 11.08.2017 without any consideration of these material evidence on record but solely on the ground that she did not join within the stipulated period as per Clause 4 of the appointment order of 14.12.2015. In our considered opinion and fact and circumstances of present case, cancellation of appointment particularly after 18 months service in State Government is totally arbitrary exercise of power. The State Government ought to have considered inability of Applicant on the grounds of her Ophthalmic Ailment to seek extension of time and not being able to join M.E.T.A. for training on 01.01.2016. That apart, as per Rule 4(2) of Regulation of Seniority Rules where candidates failed to join within stipulated period, he or she would lose seniority, but cancellation of appointment would be harsh and arbitrary. The State Government being model employer ought to have considered the reasons and genuine problem of the Applicant not being able to seek extension of time and not being able to join M.E.T.A. for training on 01.01.2016 as per Clause 2 read with Clause 4 of appointment order dated 14.12.2015.

12. In view of above, we have no hesitation to conclude that in peculiar facts and circumstances of the matter, the impugned order of State Government dated 11.08.2017 cancelling appointment of Applicant after 18 months of service in State Government is totally arbitrary and unsustainable in law. The Applicant is required to be reinstated on the post of Assistant Engineer, Class I. Hence, the following order :-

ORDER

- (A) The Original Application is allowed.
- (B) Impugned order of State Government dated 11.08.2017 is quashed and set aside.

- (C) The Respondents are directed to reinstate the Applicant in service as Assistant Engineer, Class I within Six Weeks from today.
- (D) The Applicant will not be entitled to back-wages and intervening period should be considered only for pension purpose and for no other monetary benefits.
- (E) No order as to costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

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

Place : Mumbai

Date : 01.08.2023

Dictation taken by : Vaishali S. Mane

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