

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.931 OF 2021

DISTRICT : MUMBAI
Sub.:- Pay & Allowances

Shri Bhimrao Ganpat Sagare.)
Age : 56 Yrs, Working as Forest Guard in)
the Office of Range Forest Officer, Thane)
Creek, Flamingo Centaury, Airoli,)
Sector – 10, Navi Mumbai – 9 and)
Residing at 7/B, Room No.505,)
New MHADA Tower, Kannamwar Nagar-II,)
Vikhroli (E), Mumbai – 400 083.)...**Applicant**

Versus

1. The Chief Conservator of Forest and)
Director, Sanjay Gandhi National)
Park, Borivali (E), Mumbai – 66.)
2. The Chief Conservator of Forest,)
Mumbai Mangrove Conservation)
Unit, Mumbai, having Office at)
S.R.A. Building, A-Wing, 2nd Floor,)
Behind HDIL Tower, Bandra [E],)
Mumbai – 400 051.)
3. The Deputy Conservator of Forest,)
Thane Forest Division, Thane,)
Having Office at Marathon Circle,)
L.B.S. Marg, Naupada, Thane – 2.)
4. The Range Forest Officer.)
Tulsi, Sanjay Gandhi National Park,)
Having Office at Borivali (E),)
Mumbai.)
5. The Director.)
Forest Guard Training Center,)
Shahapur, District : Thane.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 15.02.2023

JUDGMENT

1. The Applicant has challenged the communication dated 17.06.2021 issued by Respondent No.1 – Chief Conservator of Forest and Director, Sanjay Gandhi National Park, Borivali, Mumbai whereby his service period from 01.05.2015 to 31.03.2017 is treated as unauthorized absence without pay and allowances.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is Forest Guard serving on the establishment of Respondent No.1. By order dated 18.04.2015, Respondent No.1 deputed the Applicant for training at Training Centre, Shahapur starting from 01.05.2015 to 31.10.2015 for six months. In terms of this order, he was to obtain Medical Fitness Certificate from Civil Surgeon and to report at Training Centre on 30.04.2015. Accordingly, Applicant presented himself before Civil Surgeon for medical examination, but his ECG was found abnormal, meaning thereby he was not fit to undertake the training. He submits that he was again called for medical test by Hospital. Thus, because of medical unfitness, he could not remain present for training at Shahapur. He contends that on 16.07.2015, he was found fit. He, therefore, approached Training Centre, Shahapur on 16.07.2015 to include him in Training. However, since training was already started from 01.05.2015 and more than two months' training was over, he was sent back directing him to report to Respondent No.1 – Chief Conservator of Forest and Director, Sanjay Gandhi National Park. Accordingly, on 20.07.2015, he approached Respondent No.1 and made an application requesting him to allow him to join duty. However, no further order was passed on his application. Again on 24.07.2015, he

made an application with a request to get him joined, but in vain. Thereafter also, he made various representations allowing him to join with an application for commuted leave for the period from 28.04.2015 to 14.07.2015, but it was not responded in any manner. He then approached the Government by representation dated 11.01.2016, but it did not yield any fruits. Ultimately, he was allowed to join on 18.05.2017 at Mangrove Cell in view of his transfer order dated 26.05.2015 whereby he was shown transferred to Mangrove Cell, Mumbai. However, Applicant contends that he was not served transfer order dated 26.05.2015 nor informed about his transfer in any manner and it is only in information sought under R.T.I Act, he came to know about his transfer and thereafter immediately joined at Mangrove Cell, Mumbai. Thus, according to him, there was no such willful absence and despite his representations, he was not allowed to join. It is on this background, he has challenged the order dated 17.06.2021 passed by Respondent No.1 stating that in the period from 01.05.2015 to 31.03.2017, he was absent from duty unauthorizedly and the said period is treated as unauthorized absence without pay and allowances.

3. The Respondents resisted the O.A. by filing Affidavit-in-reply stating that Applicant avoided to remain present at Shahapur Training Centre and thereafter, he was transferred by order dated 26.05.2015 to Mangrove Cell, Mumbai, but did not join there. He joined at Mangrove Cell, Mumbai on 18.05.2017 only. Therefore, his absence from 01.05.2015 to 31.03.2017 is rightly treated as unauthorized absence without pay and allowances.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

5. In view of pleadings and submissions, the issue posed for consideration is whether impugned order dated 17.06.2021 is legal and valid.

6. Indisputably, Respondent No.1 by order dated 18.04.2015 deputed the Applicant for six months' training at Shahapur and he was to report there on 01.05.2015 with Medical Fitness Certificate. There is specific mention in order dated 18.04.2015 (Page No.76 of Paper Book) that he has to obtain fitness certificate at Training Centre. However, Applicant was found medically unfit, and therefore, he was unable to participate in training. In this behalf, perusal of letter dated 20.07.2015 issued by Director, Training Centre, Shahapur (Page No.25 of P.B.) reveals that Applicant approached Training Centre on 20.07.2015 stating that he got Medical Fitness Certificate on 16.07.2015 and requested to include him in training. However, Director, Training Centre did not allow him to join Training Centre on the ground that training is already started and period of more than two months' is over. He was, therefore, sent back with direction to remain present in the Office of Respondent No.1 for further orders. Notably, in deference to it, Applicant presented himself before Respondent No.1 and made an application on 20.07.2015 (Page No.24 of P.B.) stating all these things that due to medical unfitness, he could not join training earlier and requested Respondent No.1 to allow him to resume his normal duties. However, no order was passed on his application. Resultantly, he remained out of duty. Then again, he made an application on 21.07.2015 (Page NO.26 of P.B.) requesting Respondent No.1 for resuming his normal duties as Forest Guard, but no order was passed on his application. It was kept pending without any orders. He again made representation on 14.09.2015 for allow him to join (Page No.27 of P.B.), but it was not responded. Then again, he made an application on 06.10.2015 (Page No.28 of P.B.) with copies to other Respondents requesting grant of Commuted Leave on medical ground for the period from 28.04.2015 to 14.07.2015 and allow him to join since for long time, he is kept out of work and suffering monetary loss, but in vain. He also approached Government, as seen from letter dated 11.01.2016 (Page No.30 of P.B.).

7. Despite the aforesaid factual position as clearly borne out from the record, the learned P.O. sought to contend that Applicant was meantime transferred by order dated 26.05.2015 from Sanjay Gandhi National Park, Borivali, Mumbai to Mangrove Cell, Mumbai, but he did not join there. Thus, according to him, the Applicant remained absent from duty willfully, and therefore, his absence period is rightly treated as unauthorized absence without pay and allowances. Whereas, Applicant's Advocate vehemently urged that there was no service of transfer order upon the Applicant nor he was aware of transfer order and for the first time, he got knowledge of transfer order under Right to Information Act.

8. During the course of hearing, the Tribunal repeatedly raised query to learned P.O. about the record of service of transfer order or any other material to show that Applicant had knowledge of transfer order. For this purpose, enough time was also given to enable the Department to trace any such material. However, learned P.O. fairly concedes that no such record is forthcoming. Strangely, Respondent No.1 while passing order dated 17.06.2021 also noted that Applicant had obtained information under R.T.I. Act. What striking to note that before passing impugned order, the Respondent No.1 did not bother to ascertain about knowledge of transfer order dated 26.05.2015 to the Applicant. All that, he jumped to the conclusion that he was unauthorizedly absent.

9. Indeed, the perusal of record particularly applications / representations made by the Applicant, as referred to above, clearly demonstrate that Applicant approached the Respondents from time to time requesting them to allow him to join, but he was not allowed to join. The Applicant was to report at Training Centre, Shahapur on 01.05.2015, but he was found medically unfit. Later, he got Fitness Certificate and on 16.07.2015, he approached Training Centre, Shahapur by his letter dated 20.07.2015 requesting Director for inclusion in training, but he was sent back stating that more than two months' period is already over. He was, therefore, directed to report to

Respondent No.1. Pertinently, on the same day, he approached Respondent No.1 and made application (Page No.24 of P.B.) and requested to get him joined. However, he was not allowed to join. Even thereafter also, he made various representations, but in vain. What striking to note that when all these applications and representations were made, he was not informed by the Respondents by any other authority that he is already transferred and should join at Mangrove Cell, Mumbai. This shows total non-coordination between the Departments and also reflects their own ignorance about the transfer of the Applicant. Otherwise, when those applications and representations were made, at that point itself, he ought to have been directed to join at Mangrove Cell, Mumbai. In such situation, it cannot be said that Applicant remained absent unauthorizedly from duty. On the contrary, in view of his representations/applications made from time to time, his willingness to resume the duty is clearly spelt out. It was the failure of the Respondents not to allow him to join or to inform that he was already transferred and should join at Mangrove Cell, Mumbai. The Applicant run from pillar to post approaching various Departments requesting them to allow him to join, but his request went unheeded and abruptly, impugned order is passed that he remained absent unauthorizedly. Suffice to say, the impugned order stating that Applicant was unauthorizedly absent is totally arbitrary, outcome of non-application of mind and liable to be quashed.

10. True, the Applicant by his letter dated 06.10.2015 prayed for Medical Leave from 28.04.2015 to 14.07.2015, since in that period, he was medically unfit. Thus, considering the facts and circumstances of the case, he ought to have been granted Commuted Leave on medical ground and allowed to have joined. However, he was not allowed to join despite making various representations and willingness to work which resulted in loss of pay and allowances.

11. Indeed, after the period of illness, the Applicant attempted to report on duty on 19.07.2015, as seen from his application dated 20.07.2015. Thus, Respondent No.1 ought to have granted Medical Leave from 28.04.2015 to 19.07.2015 and ought to have allowed him to join from 20.07.2015. However, he passed above impugned order quite belatedly on 17.06.2021 stating that he was unauthorized absent from 01.05.2015 to 31.03.2017, which is totally unsustainable.

12. Now, question comes about pay and allowances of the absence period excluding Commuted Leave from 28.04.2015 to 20.07.2015. The Applicant has claimed full pay and allowances with consequential service benefits for the period from 01.05.2015 to 18.05.2017. Though record clearly exhibits Applicant's willingness to join and resume the work, the fact remains that he did not work. Therefore, it would not be appropriate to grant 100% pay and allowances. He needs to be given 50% pay and allowances for the period from 20.07.2015 to 18.05.2017.

13. The totality of aforesaid discussion leads me to conclude that impugned order dated 17.06.2021 is totally arbitrary, unjust and liable to be quashed. He is entitled to Commuted Leave on medical ground for the period from 28.04.2015 to 19.07.2019 and entitled to 50% pay and allowances for the period from 20.07.2015 to 18.05.2017. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) Impugned order dated 17.06.2021 is quashed and set aside.
- (C) Applicant be granted Commuted Leave on medical ground from 28.04.2015 to 19.07.2015 and necessary orders to that effect be passed within a month from today. In case of no such leave at his credit, he be granted Earned Leave for the said period.

- (D) Applicant is held entitled to 50% pay and allowances for the period from 20.07.2015 to 18.05.2017. He be accordingly paid within a month from today.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 15.02.2023

Dictation taken by :

S.K. Wamanse.

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