

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 985 OF 2014

DISTRICT : SOLAPUR

Shri Shaikh Rashid S/o Shaikh Munir)
Occ : Retd Government servant,)
Add : B-608, Karnik Nagar,)
Solapur 413 605.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Forest Ministry,)
Department of Revenue & Forest,)
Mantralaya, Mumbai 400 032.)
2. Chief Conservator of Forest &)
Dy. Director General,)
Social Forestry, Plot No. 3,)
Ramdas Tower, Kalpataru HSG Soc.)
Garkheda, Aurangabad 431 005.)...**Respondents**

Bh

Shri C.T Chandratre learned advocate for the Applicant.

Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

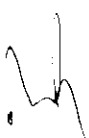
DATE : 18.02.2016

ORDER

1. Heard Shri C.T Chandratre, learned advocate for the Applicant and Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 28.2.2014 by which the Applicant has been granted 191 days Extra Ordinary Leave without pay and the period of absence has been treated as 'dies-non'.

3. Learned Counsel for the Applicant argued that the Applicant was working as Deputy Director of Social Forestry at Nanded in the rank of Divisional Forest Officer, Group 'A', when he retired on superannuation on 31.10.2013. He had earlier filed O.A no 731/2013 before this Tribunal seeking completion of his Service Book. A show cause notice dated 3.10.2013 was issued by the Respondent no. 2 to explain his absence from duty for



163 days. There was alleged absence of 17 days from 15.10.1993 to 31.10.1993 and again 11 days from 26.11.1993 to 6.12.1993. As the Applicant did not have details, he requested that the period may be regularized by granting him leave. The Applicant was directed by the Respondents to proceed on leave from 24.2.2011. He, therefore, remained absent with expectation that leave will be sanctioned till 5.8.2011. This fact was mentioned by the Applicant in his affidavit in rejoinder dated 18.12.2013 in O.A no 731/2013. In the affidavit in sur-rejoinder, dated 1.3.2013, this fact was never denied by the Respondents. Learned Counsel for the Applicant argued that the Respondents have directed him to proceed on leave and by letter dated 14.3.2011 the Applicant had informed the Director General of Social Forestry, Maharashtra State accordingly. Learned Counsel for the Applicant contended that the Applicant is eligible to get Earned Leave for the period of his absence, which were available in his account when the impugned order was passed.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has proceeded on 'leave' from 24.2.2011, when he was working as Deputy Director of Social Forestry, Nanded. He proceeded on unauthorized leave from 24.2.2011 and was absent for a total of 163 days. The Applicant had given an application on 28.2.2011, where he had

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requested for 20 days leave. The Applicant had given another application on 14.3.2011, when he claimed that he was asked to go on leave by the Director of Social Forestry, Pune. However, in his application dated 21.3.2011, he had requested for extension of leave from 21.3.2011 to 4.4.2011 on private/medical grounds. Same plea is taken in application dated 5.4.2011, 2.5.2011 and 17.5.2011. From these letters, it is clear that the Applicant had proceeded on leave before it was sanctioned and remained absent unauthorizedly. He was given a show cause notice on 3.10.2013 as to why this absence from 24.2.2011 to 5.8.2011 may not be treated as Extra Ordinary Leave with break in service. After his explanation was received, which was found unsatisfactory, the order dated 28.2.2014 was passed. Learned Presenting Officer argued that this order is perfectly legal and proper.

5. The Applicant has been working as Deputy Director of Social Forestry, Nanded. His immediate superior officer was Chief Conservator of Forests and Deputy Director General, Social Forestry Circle, Aurangabad. The next higher authority is Director General, Social Forestry & Principal Chief Conservator of Forests, Pune. The Respondent no. 2 in the present O.A is the Deputy Director General, Social Forestry, Aurangabad. The main argument of the Applicant against the impugned order dated 28.2.2014 is that he was

granted Extra Ordinary Leave without pay for the following periods though the Earned Leave was available in his account and from 24.2.2011 he had proceeded on leave as per the directions of the Director General, Social Forestry, M.S, Pune. The other absence in 1993 were long time back, and to ensure expeditious release of his retiral dues, he had applied to be granted leave for that period. The period covered by the impugned order is as below:

1. 15.10.1993 to 31.10.1993 - 17 days
2. 26.11.1993 to 06.12.1993 - 11 days
3. 24.02.2011 to 05.08.2012 - 163 days

These periods were treated as Dies-non. The Applicant's challenge to this order is on following ground, viz :-

(i) For the period from 15.10.1993 to 31.10.1993 and 26.11.1993 to 6.12.1993, the Applicant could not explain the absence after 21 years. In fact, there is nothing to show that he was actually absent during these periods.

(ii) As regards 163 days absence in 2011, the Applicant states that the Applicant was directed to proceed on leave by the Director General of Social Forestry, and as such, the leave due should have been granted to him.

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(iii) Period of absence cannot be ordered to be treated as dies-non unless a D.E is held as per G.R dated 2.6.2003.

(iv) The Applicant was given a show cause notice on 3.10.2013 and asked to submit reply in 7 days before 10.10.2013 which was too short. The reply was submitted on 18.12.2013. However, the impugned order has been passed, stating that his reply was not filed.

(v) The Applicant claims that in the affidavit in rejoinder filed by the Applicant in O.A no 731/2013 dated 18.12.2013, the Applicant had clearly mentioned that he had replied to Show Cause Notice dated 3.10.2013 and he had also mentioned that he was asked by the Director General of Social Forestry to proceed on leave on 24.2.2011. These facts were not denied by the Respondents in the affidavit in sur-rejoinder filed on 1.3.2014.

6. From the affidavit in rejoinder filed by the Applicant on 18.12.2013 in O.A no 731 of 2013, the Applicant has stated in para 4 that:-

“4. I further say that it is seen from the reply that the period from 15.10.1993 to 31.10.1993 (17 days) and 26.11.1993 to 6.12.1993 (11 days), I was absent as per the record of the Respondents. By letter dated 3.10.2013 my explanation was called by

respondent no. 4. Copy of which is annexed hereto and marked as Exh. A-1. I have offered my explanation to the period of absence by my letter dated 18.12.2013. Copy of which is annexed hereto and marked as Exh.A-2.”

In letter dated 18.12.2013 the Applicant has stated as follows:-

“दिनांक १५.१०.१९९३ ते ३१.१०.१९९३ (१७ दिवस) व दिनांक २६.११.१९९३ ते ०६.१२.१९९३ (११ दिवस) या कालावधीचा अर्ज मी स्वतःहून व २० वर्षांनंतर सादर केलेला नाही. मी मॅट मध्ये मूळ अर्ज क्र.७३१/०१३ दाखल केल्यानंतर आपल्या कार्यालयाने माझे सेवापुस्तक अद्ययावत करण्याचे काम हातात घेतले. दिनांक ०७.०६.२०१३ च्या पत्रावरून प्रथमच सदर कालावधीच्या अनुपस्थितीची नोंद आपणांस आढळल्याचे दिसून येत आहे. माझा खुलासा देखील दिनांक ०७.०६.२०१३ च्या पत्रानेच प्रथमच मागविण्यात आला आहे. त्यामुळे २० वर्षांनंतर मी आवेदनपत्र सादर केले हे म्हणणे वस्तुस्थितीला धरून नाही. या काळात मी रजेवर नव्हतो. या कालावधीत मी अनुपस्थित नव्हतो. त्यामुळे हा प्रश्न का उध्दवला हे मला समजू शकत नाही. मात्र यातून मार्ग काढण्यासाठी व या कारणास्तव सेवा पडताळणीचे काम थांबू नये यासाठी मी या कालावधीचा रजेचा अर्ज भरून दिला आहे. मला देय व अनुज्ञेय रजा मंजूर करून नियमित करण्याची विनंती आहे. रजा शिल्लक नसल्यास सदर कालावधी विनावेतन रजा म्हणून मंजूर करावा, ही नम्र विनंती.

It is seen that the Applicant is denying that he was absent from duty in 1993. Now this sort of mere statement that he was not absent for this period from duty can hardly be taken as satisfactory explanation. The Applicant was working in a senior and responsible position. Senior officers are required to submit monthly



reports of work done by them to their superiors. There are other ways to show that an officer was actually working during any given period. The Applicant did not chose to produce any documentary evidence to show that he was on duty during this period. However, he admits that he had given application for sanction of leave for the period 15.10.1993 to 31.10.1993 and from 26.11.1993 to 5.12.1993. If he was actually on duty during these periods, there was no reason for him to apply for leave. The contention of the Applicant in this regard has to be rejected.

7. As for the period of absence from 24.2.2011 to 5.8.2013, in letter dated 18.12.2013, the Applicant has stated that:-

“दिनांक २४.०२.२०११ पासून मी रजेवर जावे अशा सूचना मला तत्कालीन प्रधान मुख्य वनसंरक्षक श्री.एस.डब्ल्यू.एच.नकवी साहेबांनी तोंडी दूरध्वनीवरून दिल्या होत्या. त्यांचे लेखी कनफरमेशन मी दिनांक २८.२.२०११ ला त्यांच्या कार्यालयास फॅक्सद्वारे पाठवले. ते त्यांच्या अथवा आपल्या कार्यालयाने आजपर्यंत नाकारलेले नाही. हा खुलासा मी यापुर्वी दिनांक २६.९.२०१३ च्या आत्रानुसार केला आहे.”

The Applicant claims that he was asked by the Director General of Social Forestry, Maharashtra State, Pune to go on leave telephonically. He has not explained as to why he did not wait for written orders. It is also not explained as to why he did not rejoin after expiry of first 20 days (application dated 23.2.2011) for which he had sought

leave. In fact, subsequent leave applications make it clear that the Applicant had continued to remain absent and he had requested for extension of leave on medical / private grounds (letter dated 21.3.2011, 5.4.2011, 2.5.2011, 17.5.2011 and 2.7.2011). From all these applications, it is quite clear that the Applicant remained absent from duty due to his own reasons and sent letters for extension of leave. Though no leave was ever sanctioned, he continued to remain absent from duty. A senior officer facing work related problems chose to remove himself from the scene of action can hardly be called conduct becoming of an officer. If he was facing some danger, he could have sought Police protection. There is no averment that he sought such protection and it was denied to him. The Applicant's explanation for the absence of 163 days in 2011 can hardly be called satisfactory.

8. The above discussion is in the light of explanation, which the Applicant submitted on 18.12.2013. The show cause notice to the Applicant was issued by Deputy Director General of Social Forestry, Pune. He was asked to submit to that office. It was clearly mentioned that:-

“उपरोक्त अनुपस्थित कालावधी रजेशीवाय पूर्वपरवा ढगी शिवाय व्यतीत केल्याचे सुकृत दर्शनी निदर्शनास आल्याने महाराष्ट्र नागरी सेवा (रजा) नियम १९८१ चे नियम ६३(६) अन्वये भुतलक्ष प्रभावाने अकार्य दिव म्हणून असाधरणरजे मध्ये (with break in

service for qualifying service for pension) परिवर्तन का करण्यात येवू नये याबाबत त्यांनी त्यांचा खुलासा दि.१०.१०.२०१३ पावेतो या कार्यालयास सादर करावा. मुदतीत खुलासा न प्राप्त झाल्यास याबाबतीत आपणांस काहीही म्हणावयाचे नाही असे गृहीत धरून प्रस्तुत प्रकरणी एकतर्फी निर्णय घेण्यांत येईल. याची नोंद घ्यावी ”

He was asked to submit his explanation to the office of the Deputy Director General, Social Forestry, Pune by order dated 10.10.2013. The Applicant, as per his own admission submitted his explanation in the office of Deputy Director of Social Forestry, Osmanabad, which was received on 21.12.2013. In the affidavit in reply dated 15.4.2015, the Respondent no. 1 has stated that the reply of the Applicant was received by the Respondent no. 2 on 20.1.2014, more than 3 months after the stipulated date of 10.10.2013. It is also denied that the Director General, Social Forestry, Pune had granted any oral permission to the Applicant to proceed on leave on 24.2.2011. It has to be held that the Applicant was negligent in reply to the Show Cause Notice dated 3.10.2013 and his reply was received by the Respondent no. 2 on 20.1.2014. In the circumstances the Respondents cannot be faulted for passing the impugned order dated 28.2.2014.

9. The Applicant had claimed that his period of unauthorized absence cannot be treated as 'dies-non' as per G.R dated 2.6.2003 without conducting a Departmental Enquiry. In para (a) of grounds below para

6.10, it is stated that only after conclusion of Departmental Enquiry with finding that the unauthorized absence was without justification, Such an action can be taken. On perusal of G.R dated 2.6.2003, it is mentioned that for unauthorized absence 'शिस्तभंग विषयक कार्यवाही सुरु करण्यात यावी.' This does not necessarily mean holding a Departmental Enquiry. A show cause notice was given to the Applicant to show cause why the period of unauthorized absence should not be treated as 'dies-non'. The Applicant did not care to reply to the notice within the time given nor did he ask for extension of time. The impugned order cannot be faulted, if the Respondents did not wait for reply of the Applicant, beyond the time granted to him in the show cause notice. The Applicant, by his own admission submitted reply more than 2 months after the due date. He never asked for extension of time. It cannot be said that the impugned order is passed in violation of provisions of G.R dated 2.6.2003.

10. The Applicant has not been able to show that the impugned order is bad in law. He himself is responsible for not replying to the show cause notice in time. Even his explanation to the show cause notice in much belated reply dated 18.12.2013 is not very satisfactory. In the circumstances, no case is made out for interference by this Tribunal.

11. This Original Application is, therefore, dismissed with no order as to costs.


(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 18.02.2016

Dictation taken by : A.K. Nair.