

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 308 of 2014 (D.B.)**

Chandrakant Trimbak Wankhade,  
Aged about 63 years, Occ. Retired,  
R/o Jivanjyoti Apartment,  
Darda Galli, Rahate Colony,  
Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Public Works Department, Mantralaya,  
Mumbai.
- 2) The Chief Engineer,  
Public Works Division, Civil Lines,  
Nagpur.
- 3) The Superintending Engineer,  
Public Works Department, Circle Office,  
Civil Lines, Nagpur.
- 4) The Executive Engineer,  
Public Works Department Division No.1,  
Sadar, Nagpur.

**Respondents.**

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**Shri Madhav M. Pathak, Advocate for applicant.**

**Shri M.I. Khan, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Shree Bhagwan,  
Vice-Chairman and  
Hon'ble Shri Justice M.G. Giratkar,  
Vice-Chairman.**

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**Date of Reserving for Judgment : 29<sup>th</sup> August,2022.**

**Date of Pronouncement of Judgment : 16<sup>th</sup> September,2022.**

## **JUDGMENT**

**(Delivered on this 16<sup>th</sup> day of September, 2022)**

**Per : Shri Justice M.G. Giratkar, Vice-Chairman.**

Heard Shri D.T. Shinde, learned counsel holding for Shri Madhav M. Pathak, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed as a Receptionist on 03/11/1970 in the pay scale of Rs.150-300 against the post created for the maintenance for new MLA Hostel, Nagpur. The applicant was working under the supervision of establishment of Executive Engineer, Public Works Division, Nagpur. The applicant fell ill and therefore could not remain present on duty for the period from 01/02/1984 to 30/05/1984. He was on medical leave for 120 days. The same was sanctioned by the non-applicant no.3. The applicant further applied for leave on medical ground. He was on leave from 01/02/1984 to 30/04/1992. Every application for medical leave, applicant has submitted Doctor Certificate. The respondent no.3 not granted the leave.

3. The respondent no.3 initiated departmental inquiry. The said departmental inquiry was completed. The respondent no.3 passed an order of compulsory retirement w.e.f. 30/04/1994 with

further direction that the applicant is not entitled any monetary benefits in respect of his absence period. The applicant preferred an appeal before respondent no.2. The respondent no.2 without giving any sufficient opportunity confirmed the order passed by respondent no.3. The applicant filed revision before respondent no.1. The respondent no.1 also confirmed the order of authorities without any cogent reason. Hence, the present O.A. is filed for quashing and setting aside the impugned order dated 05/12/2006 passed by the Disciplinary Authority.

4. The application is opposed by filing reply-affidavit by respondent nos.2 and 3. It is submitted that the applicant was absent from duty w.e.f. 01/02/1984. He had applied for leave from the period from 01/02/1984 to 30/05/1984. The said leave of 120 days was granted. The applicant thereafter had to join duty, but since 31/05/1984 to 31/03/1992 he was absent from duty without any permission and without having any legal right to that effect. Therefore, he had committed breach of Rule 48 (2) of the Maharashtra Civil Services (leave) Rules, 1981. The absence from duty is a misconduct. The applicant remained absent for a long period from 1984 to 1992. In the meantime, the applicant was informed by letter dated 07/07/1984 to submit medical certificate of District Civil Surgeon. He was also informed to give explanation in respect of absence from

01/02/1984 to 13/03/1984, but the applicant did not give any response to the said letter. He was given another letter thereby informing him to give explanation within a period of seven days in respect of unauthorised absenteeism, failing which departmental action would be initiated against him. Thereafter, on 03/04/1992 he was informed to bring authentic certificate from the Medical Board and fitness Certificate. The applicant though received the said letter, had not submitted Medical Board Certificate. On the contrary, he submitted that the Medical Board refused to give Certificate after examination.

5. It is further submitted that the applicant remained absent unauthorisedly for a long period of eight years, i.e., from 31/05/1984 to 31/03/1992, therefore, departmental inquiry was initiated against him. In the departmental inquiry, Shri L.D. Kedare, retired Superintending Engineer has stated in his deposition before the Enquiry Officer that the applicant was not absent on the reason of ill-health, but he had decided to remain absent by way of taking resort of medical ground Certificate issued by the private Doctors. It can also be seen from the record that the concerned Doctors issued certificate by stating different types of illness suffered by the applicant on each and every date. The dates written on the Certificates were different. The applicant had failed to submit report of Civil Surgeon. In the inquiry, the misconduct is proved. The applicant remained absent

unauthorisedly without any proper ground. Applicant is rightly punished by respondent no.3 by imposing the punishment of compulsory retirement. It is not a harsh punishment. At last submitted that the O.A. is without any merit and liable to be dismissed.

6. The applicant has filed written notes of argument. In the written notes of argument, it is submitted that the respondents / department not issued any letter to the District Civil Surgeon for examination of applicant. The respondent no.3 intentionally not granted leave to the applicant. The applicant was not allowed to join duty. The appropriate opportunity was not given in the departmental inquiry. Hence, the O.A. be allowed and punishment order be set aside.

7. Heard Shri D.T. Shinde, learned counsel holding for Shri Madhav M. Pathak, learned counsel for the applicant. He has submitted that the written notes of argument be considered.

8. Heard Shri M.I. Khan, learned P.O. for respondents. He has pointed out the report of Enquiry Officer and punishment imposed by respondent no.3 and reasoned order passed by the Appellate Authority. The learned P.O. has submitted that the misconduct for remaining absent for about eight years without prior permission is proved. The applicant is compulsorily retired. It is not a harsh punishment. This Tribunal cannot re-appreciate the evidence. In

support of his submission pointed out decision of Hon'ble Supreme Court in the case of **State of Karnataka & Ano. Vs. N. Gangaraj (2020)3 SCC,423**. The learned P.O. has pointed out the decision of Hon'ble Supreme Court reported in **(1975) 3 SCC,108** in the case of **Shahoodul Haque Vs. The Registrar, Co-Operative Societies, Bihar & Ano.**

9. There is no dispute that the applicant was absent from duty from 1984 to 1992. As per the evidence given by then Superintending Engineer / disciplinary authority, it is clear that the applicant was not ill, but he makes a farce showing that he was ill. The documents filed by the applicant, i.e., the Medical Certificates issued by the Doctors show that in some of the Certificates it is mentioned that the applicant was suffering from vertigo and giddiness. In some of the certificates, it is mentioned that the applicant was suffering from mild hyper tension. For example the certificate issued by Dr. S. Mudholkar dated 20/05/1986 shows that the applicant was suffering from vertigo and giddiness. The same reason was given in the Certificate dated 19/03/1986. The same reason was given in the Certificate dated 18/01/1986. In one of the certificates dated 17/11/1985, it is mentioned that the applicant was suffering from vertigo and giddiness. The same reason was given in the Certificates dated 15/07/1985, 16/09/1985, 17/11/1985 and 19/03/1986. In the

Certificates dated 25/02/1989 and 25/04/1989 it is mentioned that the applicant was undergoing treatment for mild hyper tension with giddiness. All these certificates appear to be not genuine, therefore, there is a substance in the evidence of the Disciplinary Authority Shri L.D. Kedare that the applicant was not absent on the reason of ill-health, but he had decided to remain absent by way of taking resort of medical grounds / certificates issued by the private Doctors. It appears from the reply filed by the respondents that the applicant was informed by letters directing him to produce Certificate from the District Civil Surgeon, but he did not produce any Certificate.

10. The Hon'ble Supreme Court in the case of **State of Karnataka & Ano. Vs. N. Gangaraj** (cited supra) held that *“Disciplinary authority had agreed with findings of enquiry officer finding respondent guilty of misconduct and had passed dismissal order – Besides, appeal before State Government was also dismissed-In such circumstances, Tribunal and High Court could not have interfered with findings of facts recorded by re-appreciating evidence as if they were appellate authority-Orders passed by Tribunal and High Court setting aside dismissal order suffer from patent illegality and hence, unsustainable—Dismissal restored.”*

11. In the present case, the applicant has filed first appeal before the Chief Engineer. The Chief Engineer had given a detailed

reason for dismissing the same. Thereafter, he has filed revision before the respondent no.1. The revision also dismissed with reasoned order. In view of the decision of Hon'ble Supreme Court, this Tribunal cannot re-appreciate the evidence.

12. In the case of **Shahoodul Haque Vs. The Registrar, Co-Operative Societies, Bihar & Ano.** (cited supra), the Hon'ble Supreme Court has held that *"after having been taken through the assertions made by both sides, we have no hesitation in coming to the conclusion that, even if the appellant was being punished, so that Article 311 could apply, he had been, in the circumstances of the case, given sufficient opportunity to explain his conduct. He had failed to avail of that opportunity. It could not, therefore, be said that the requirements of natural justice or of Article 311 of the Constitution had been contravened. In any case, on the facts before us, we think that it will be useless to afford any further opportunity to the appellant to show cause why he should not be removed from service. The undenied and undeniable fact that the appellant had actually abandoned his post of duty for an exceedingly long period, without sufficient grounds for his absence, is so glaring that giving him further opportunity to disprove what he practically admits could serve no useful purpose. It could not benefit him or make any difference to the order which could be and has been passed against him. It would only prolong his agony."*



13. In the present matter, it appears that the disciplinary authority had given sufficient opportunity to the applicant to give explanation as to why he remained absent, but no such explanation was submitted. He was also directed to submit Certificate of Civil Surgeon about his medical leave. But no such Certificate was produced by the applicant. There is no dispute that the applicant remained absent for a long period of eight years, i.e., from 1984 to 1992 which itself shows that the applicant has abandoned his service. Looking to the misconduct punishment imposed by the respondent no.3, compulsorily retiring the applicant is not so harsh. There is no merit in the present O.A. Hence, the following order-

**ORDER**

The O.A. is dismissed. No order as to costs.

**(Justice M.G. Giratkar)**  
**Vice-Chairman**

**(Shree Bhagwan)**  
**Vice- Chairman**

**Dated** :- 16/09/2022.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 16/09/2022.

Uploaded on : 16/09/2022.