

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.600 OF 2017

(Subject :- Minor Punishment)

DISTRICT : AURANGABAD

Lata Balasaheb Darade,)
Age:39 years, Occu. Service)
(as Lady P.C., B.No.2041,)
Satara P.S.), R/o: Emrol City,)
Row House No.36, Shivani Nagar,)
Aurangabad.)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Home Department,)
M.S., Mantralaya, Mumbai -32.)
2. **The Director General of Police,**)
M.S., Mumbai.)
3. **The Deputy Commissioner**)
of Police [Headquarter],)
Aurangabad.) **....Respondents.**

Shri A.S. Deshmukh, learned Advocate for the Applicant.

Smt. M.S. Patni, learned Presenting Officer for the Respondents.

CORAM : B.P. Patil, ACTING CHAIRMAN

RESERVED ON : 19.08.2019.

PRONOUNCED ON : 23.08.2019.

ORDER

1. The Applicant has challenged the order dated 9.12.2015, 10.01.2011 and 24.06.2009 passed by the Respondent Nos.1,2 and 3 respectively imposing the punishment of keeping the Applicant on the minimum basis pay of her post for a specified period of time by filing the present Original Application. She has also sought direction to the Respondents to grant 'hospital leave' to her during the period from 04.03.2003 to 31.10.2006 in view of the provision of Rule 77 of Maharashtra Civil Services (Leave) Rules, 1981.

2. The Applicant is belonging to the NT-D category. She entered in the service of the Government of Maharashtra in Police Department as Lady Police Constable (L.P.C.) under the Respondent No.3 in Aurangabad City Police Commissionerate. Since then, she is working on the said post and presently posted at the Satara Police Station, Aurangabad. In the year 2003 she was posted at the Police Headquarter, Aurangabad City and that time she had proceeded on Medical Leave by obtaining a 'Sick Memo' from the Reserve Police Inspector (RPI) in the Police Headquarter as she was suffering from a psychological ailment and the ailment of blood pressure. She had undergone a prolonged treatment for ailment in Murtuza General Hospital at Aurangabad as the specialized

treatment for such Psychiatry and Hyper Tension was not available in the 'Police Hospital at Aurangabad'. She had undergone prolonged treatment. During that period she suffered from the shock due to untimely death of her father. Her family had also faced with tremendous financial crunch as her husband was not doing any job. Therefore, it was difficult for him to run the day-to-day affairs of the family and also to incur heavy expenditure on Applicant's prolonged treatment. Because of the said reason, neither the Applicant herself nor her husband could intimate the Respondent No.3 regarding her prolonged treatment. After undergoing the prolonged treatment in Murtuza General Hospital and after recovery, she had reported back to the duty in the year, 2006 and submitted fitness certificate dated 31.10.2006 issued by Dr. Shaikh Murtuza. The Respondent No.3 directed the Applicant to appear before the Medical Board. Accordingly, she appeared before the Medical Board. The Medical Board issued fitness certificate in her favour and on the basis of same, she was permitted to join back the duty by the Respondent No.3.

3. On the backdrop of above said facts, on 21.2.2007, the Respondent No.3 issued an order and initiated departmental enquiry against her on the charge that she remained absent for prolonged period of 3 years, 7 months and 27 days i.e. from

04.03.2003 to 31.10.2006 without intimating her superiors or the Police Station about her ailment and without submitting Medical Certificate of authorized medical officer. It is further alleged that she disobeyed the order of her superior dated 07.10.2005 and 13.12.2005 by which she was directed to appear before the Medical Board. An enquiry officer has been appointed by the Respondents for conducting the enquiry in to the alleged charged leveled against the Applicant. The enquiry officer conducted the enquiry and on conclusion of enquiry, submitted his final report to the Respondent No.3 on 13.05.2008. The Respondent No.3, thereafter, issued show cause notice to the Applicant on 25.11.2008, calling her explanation as to why the punishment of keeping her on the minimum basic pay of her post for a period of five years should not be imposed upon her as a charges leveled against her has been proved in the enquiry. Thereafter, the Applicant had given reply to the said notice on 22.12.2008. Thereafter, the Respondent No.3 passed the impugned order dated 24.6.2009 and imposed punishment upon her as proposed in the show cause notice.

4. The Applicant has preferred an appeal against the said order before the Respondent No.2 on 02-07.08.2009, which came to be allowed partly on 10.01.2011 by the Respondent No.2. The

Respondent No.2 was pleased to impose the punishment of keeping the Applicant on the minimum basic pay of her post for a period of three years instead of the period of five years as ordered by the Respondent No.3. The Applicant has preferred a Revision Application before the Respondent No.1 on 25.03.2011 challenging the order passed by the Respondent No.2 on 10.01.2011. It was pending for long period before the Respondent No.1. On 09.12.2015, the Respondent No.1 passed order in Revision Application and allowed it partly and reduced the punishment of keeping her on the minimum basic pay of her post for a period of three years for the period of keeping her on the minimum basic pay of her post from a period of two years.

5. It her contention that the Respondent Nos.1 to 3 had not considered the documents produced by her. They have not considered the fact that the Applicant had undergone medical treatment in the private hospital. It is her contention that the Respondents have wrongly observed that she had not produced the documents in support of her contention though the Respondent No.3 had directed her to produce such documentary proof. It is her further contention that the Respondents have not sanctioned the Medical leave for the period from 04.03.2003 to 31.10.2006 in view of the provision of Rule 77 of the Maharashtra Civil Services (Leave)

Rules, 1981 and therefore, she has prayed to give direction to the Respondents in that regard.

6. The Respondent Nos.2 & 3 have filed their affidavit-in-reply and resisted the contention of the Applicant. It is their contention that the Applicant submitted Sick Memo and thereafter failed to produce medical certificate from authorized medical officer for the period of three years, seven months and twenty seven days. It was the duty of the Applicant to submit her medical certificate in time but she failed to do so. Therefore, the departmental enquiry was initiated against her by order dated 21.2.2007. It is their contention that there is nothing on record to show that she herself approached them and joined the duty. It is their contention that only after initiation of the departmental enquiry, the Applicant filed reply to the notice. She participated in the departmental enquiry but failed to produce the documentary evidence like prescriptions of treatment taken by her, the documents regarding medicines purchased by her in support of her contention. The medical certificate produced by her was not counter signed by Civil Surgeon, Aurangabad and therefore, it cannot be relied upon.

7. It is their contention that the medical certificate must be signed by Civil Surgeon and the Applicant must have obtained the signature of Civil Surgeon, Aurangabad before submitting it. But

the same was not produced by the Applicant. Therefore, she was referred to medical board as a procedural office formality. The Medical Board declared her fit to resume the duty and thereafter, she was allowed to join the duty. It doesn't mean that she was not at fault. It is their contention that proper opportunity of hearing was given to the Applicant in the departmental enquiry, appeal and revision. After considering her defense and grounds raised by her in appeal and revision, the Respondent Nos.1 to 3 had decided the same. It is their contention that there is no illegality in the impugned orders and therefore, they have prayed to reject the Original Application.

8. I have heard Shri A.D. Deshmukh, learned Advocate for the Applicant and Smt. M.S. Patni, learned Presenting Officer for the Respondents. I have perused the documents on record.

9. Admittedly, the Applicant entered in the service of Government of Maharashtra in Police Department as a Lady Police Constable (L.P.C.) under the Respondent No.3, Aurangabad City Police Commissionerate. Admittedly, in the year 2003, she was posted at Police Headquarter, Aurangabad City. When she was posted at Police Headquarter, Aurangabad City, she went on Medical Leave by obtaining a 'Sick Memo' from the Reserve Police Inspector (RPI) in the Police Headquarter. Admittedly, she had not

returned back to her duty during the period from 04.03.2003 to 31.10.2006 and she remained absent for the period of three years, seven months and twenty seven days. Admittedly, the Applicant remained absent on duty on the ground of her illness. Admittedly, the Applicant joined her duty in late 2006 and produced the certificate issued by Dr. Shaikh Murtuza.

10. Admittedly, the Respondent No.3 directed the Applicant to appear before the Medical Board. Accordingly, she appeared before the Medical Board. The Medical Board issued fitness certificate in her favour and on the basis of certificate issued by Medical Board, the Respondent No.3 permitted her to join the duty. The Respondent No.3, thereafter issued charge sheet against the Applicant for the misconduct on the part of the Applicant for remaining absent on duty without intimating her superiors or the Police Station and for disobeying the orders of her superior dated 7.10.2005 and 13.12.2005. Admittedly, the Applicant has filed reply to the said memorandum. An enquiry officer had conducted the enquiry and submitted report to the Respondent No.3. Thereafter, the Respondent No.3 issued show cause notice to the Applicant and the Applicant had submitted reply to it. Thereafter, the Respondent No.3 passed the impugned order on 24.06.2009. The Applicant has challenged the said order before the Respondent

No.2 by preferring appeal. In the appeal, the order passed by the Respondent No.3 was modified by the Respondent No.2. The Applicant preferred revision application before the Respondent No.1 challenging the order passed by the Respondent No.2. In the revision application, the order passed by the Respondent No.2 has been modified.

11. Learned Advocate for the Applicant has submitted that the Applicant has suffered from ill health during the period from 4.3.2003 to 31.10.2006 for the period of three years seven months and twenty seven days as she was suffering from psychological problems. He has argued that while proceeding on leave, she took Sick Memo from concerned officer. He has argued that there was no specialized treatment for Psychiatry and Hyper Tension in the Police Hospital at Aurangabad and therefore, she took treatment in Murtuza General Hospital in Shahagunj, Aurangabad. He has argued that during the period of ill health of the Applicant, her husband was unemployed. Therefore, she was suffering from financial crunch. Not only this, but during her illness her father died and therefore, she suffered the shock. Due to said reasons, she was unable to file application for leave with the concerned authority along with medical certificate in that regard. But when she joined duty in the year 2006, she submitted medical certificate

dated 31.10.2006 to the Respondent No.3. The Respondent No.3 thereafter referred her to the medical board for medical examination. She appeared before the medical board. The medical board issued fitness certificate and thereafter the applicant joined the duty in view of the order dated 21.2.2007 issued by the Respondent No.3.

12. Learned Advocate for the Applicant has further argued that because of the said reasons she remained absent and there was no intension on the part of the Applicant to disobey the order of her superior officers. He has submitted that the Applicant has explained the said facts before the enquiry officer. Previous service record of the Applicant was unblemished. But the enquiry officer and disciplinary authority had not considered the said fact and thereafter, the disciplinary authority passed the impugned order. He has argued that in the appeal also the appellate authority has not considered the said facts and grounds raised by the Applicant but modified the order passed by disciplinary authority and reduced the punishment to some extent. He has submitted that thereafter, the Applicant approached to the higher authority by filing the revision. In the revision also the order of the enquiry officer holding her guilty has been maintained but punishment has been reduced. He has argued that the Respondents had not considered the

medical evidence produced by the Applicant and imposed punishment which is disproportionate to the charges leveled against the Applicant. Therefore, he has prayed to quash and set aside the impugned order and to exonerate the Applicant of the charges leveled against her by allowing the Original Application.

13. Learned P.O. for the Respondents has submitted that the Applicant remained absent unauthorizedly after submitting Sick Memo and she remained absent on the duty for long period of three years, seven months and 27 days i.e. from 4.3.2003 to 31.10.2006. She has argued that the Applicant had not even informed her superior officer about her ill health and the Respondent No.3 regarding her prolonged illness and treatment. Not only this, but she had not submitted application for leave during that period and thereby committed misconduct.

14. She has further argued that the Respondent No.3 issued the order dated 7.10.2005 and 13.12.2005 to the Applicant and directed to appear before the medical board. But she had not responded to the said communication and thereby disobeyed the orders. She has argued that only after receiving the notices, the Applicant joined the duty. She has argued that all these facts show that the Applicant had intentionally disobeyed the orders of her superiors and therefore it shows dereliction in the duty on the part

of the Applicant. She has argued that the absentee period of the Applicant during the period from 4.3.2003 to 31.10.2006 has been treated as unauthorized absentee. The Applicant had not challenged the said order. She has argued that all these facts show that the Applicant had disobeyed the order of the Respondents and committed misconduct by remaining absent on duty without prior permission of the proper authority for prolonged period.

15. She has argued that the charge sheet has been issued to the Applicant. The Applicant had filed reply to it and submitted that she remained absent due to ill health and she apologized for it. She has further argued that proper opportunity of hearing was given to the Applicant. An enquiry officer passed the final order in the enquiry. On the basis of the said order, the Respondent No.3 passed the impugned order after giving opportunity of hearing to the Applicant. She has submitted there is no illegality in the impugned order passed by the Respondent No.3 in imposing the punishment against the Applicant. She has argued that the finding of the enquiry officer holding the applicant guilty of the charges leveled against her has been upheld in the appeal but the punishment imposed against her has been modified and reduced. She has argued that the appellate authority had also considered the grounds raised in the appeal and decided the same. She has

submitted that in the revision also the Respondent No.1 had considered the said facts and circumstances and maintained the order passed by the disciplinary authority holding the Applicant guilty and modified the order to the extent of imposition of penalty on the Applicant. She has submitted that the punishment awarded to the Applicant is proportionate to the charges leveled against her. Therefore there is no illegality in the impugned orders passed by the Respondent Nos.1 to 3. She, therefore, justified the impugned order and prayed to reject the Original Application.

16. On perusal of record it reveals that in the year 2003, the Applicant was serving at Police Headquarter, Aurangabad City. On 4.3.2003, she proceeded on medical leave by submitted Sick Memo but thereafter, she had not joined the duty till 31.10.2006. During that period the Applicant neither filed the application for leave nor submitted medical certificate showing that she was under treatment and not fit to join the duty. Not only this, but during that period, the Respondent No.3 issued notice dated 7.10.2005 and 13.12.2005 and directed the Applicant to appear before the medical board. But Applicant had not appeared before the medical board and disobeyed the orders of her superior authority. Therefore, the departmental enquiry has been initiated against her. The Applicant had submitted written statement of her defense and participated in

enquiry. She failed to produce the evidence in support of her defense. After considering the same, the enquiry officer submitted his report and held the Applicant guilty of the charges leveled against her. On the basis of report of the enquiry officer, the Respondent No.3 issued show cause notice to the Applicant regarding the proposed punishment. The Applicant submitted her reply to it. After considering the reply of the Applicant, the Respondent No.3 passed the order imposing punishment on the Applicant regarding her misconduct. The Applicant has challenged the order of the Respondent No.3 before the Respondent No.2 by preferring the appeal. The Respondent No.2 decided the appeal on 10.1.2011 and modified the order passed by the Respondent No.3 and reduced the Punishment. The Applicant has challenged the said order by filing revision application before the Respondent No.1. The Respondent No.1 decided the revision on 9.12.2015 and maintained the decision of the departmental enquiry holding the Applicant guilty but reduced the punishment and directed to keep the Applicant on the minimum basic pay of her post for two years instead of three years as ordered by the Respondent No.2. The Respondent Nos. 1 to 3 had given an opportunity of hearing to the Applicant in the enquiry, appeal and revision. They have followed the principles of natural justice. They considered the defense of the Applicant and severity of the charges leveled against the Applicant

and thereafter they imposed the punishment. There is no illegality in the impugned orders passed by the Respondent Nos.1 to 3. Therefore, no interference is called for in it.

17. It is also material to note here that the Respondent No.3 passed the order dated 8.7.2009 and treated the absentee period of the Applicant during the period from 4.3.2003 to 31.10.2006 as extraordinary leave. The said order has not been challenged by the Applicant. The charge against the Applicant in the departmental enquiry is regarding the unauthorized absentee of the Applicant. Had it been a fact that the Applicant had proceeded on leave admissible to her then she ought to have challenged the said order granting extraordinary leave. But she had not challenged the said order. From the said fact it appears that she remained absent during the period from 4.3.2003 to 31.10.2006 unauthorizedly. Remaining absent on duty for prolonged period amounts misconduct.

18. An enquiry officer has rightly held that the charges leveled against her have been proved. On the basis of enquiry report, the Respondent No.3 imposed the punishment upon the Applicant. The Respondent No.2 and 1 after considering the contentions and grounds raised by the Applicant in appeal and revision decided the appeal and modified the order of punishment

and reduced the punishment. They have taken lenient view. In these circumstances, in my view, there is no illegality in the orders passed by the Respondent Nos.1 to 3. Therefore, no interference is called for in it. There is no merit in the Original Application. Hence, the same deserves to be dismissed.

19. In view of the discussion in the foregoing paragraphs, the Original Application stands dismissed. No order as to costs.

PLACE :- AURANGABAD.
DATE :- 23.08.2019

(B.P. PATIL)
ACTING CHAIRMAN

Sas. O.A.No.600 of 2017. Minor Punishment.BPP VC