

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.14 OF 2019**

DISTRICT : NASHIK

Shri Dinkar Madhavrao Nikale,)
Age 56 years, Peon in the office of Respondent No.3,)
R/o Palkhed Vasahat, Sambhaji Chowk,)
Untwadi Road, Nashik 422002)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Water Resources Department, Mantralaya,)
Mumbai 400032)
2. Superintending Engineer & Administrator,)
Command Area Development Authority,)
Sinchan Bhavan, Tryambak Road, Nasik-422002)
3. Executive Engineer,)
Nashik Irrigation Division, Sinchan Bhavan)
Parisar, Tryambak Road, Nashik 422002)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

Miss N.G. Gohad – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
RESERVED ON : 15th July, 2019
PRONOUNCED ON : 17th July, 2019

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Miss N.G. Gohad, learned Presenting Officer for the Respondents.

2. The applicant a Group IV employee, who is working under the control of respondent no.3, is due to retire on 31.8.2021. From January, 2007 for family reasons he remained absent unauthorisedly. In December, 2009 he approached respondent no.3 to permit him to join the duties, when he was referred to the medical board and obtain the fitness certificate. He remained present before the medical board and obtained the fitness certificate on 4.2.2010 (Exhibit A-1). On the same day he produced the same with a request to permit him to join the duties.

3. The respondents, it is alleged that, did not allow him to join and a Departmental Enquiry was initiated against him. On completing the enquiry, the enquiry officer submitted his report on 30.3.2012 and recommended minor punishment (Exhibit A-3). The respondent no.2 by order dated 21.4.2012 withheld two increments (Exhibit A-4). The respondent no.2 directed respondent no.3 to submit a proposal for regularization of the period of absence from 5.1.2007 till joining his duties to respondent no.1. Thereafter he was allowed to join his duties on 19.4.2012. The applicant submits that his absence needs to be considered in two parts. First from 5.1.2007 to 4.2.2010 when he submitted his medical fitness certificate totaling to 3 years and 1 month and second from 5.2.2010 to 19.4.2012 when he was not allowed to join the duties as the enquiry was going on totalling to 2 years and 2 months.

The respondent no.1 vide impugned letter dated 31.1.2015 has informed respondent no.2 that as the applicant was absent from 5.1.2007 to 20.4.2012, the applicant is not entitled for pension (Exhibit A-5). The applicant submitted a representation against the same on 18.2.2015 and the same has not yet been decided.

4. The applicant has submitted representation dated 25.6.2018 that since respondent no.2 is the appointing authority, the respondent no.2 may decide his matter in view of Rule 47 (2) of MCS (Pension) Rules, 1982 (page 35-38 of OA) and GR dated 2.6.2003 (page 39 of OA). The applicant has submitted that the action by respondent no.1 is in the form of arbitrary communication and forfeits his right of pension without considering relevant material fact. He has, therefore, prayed as under:

“9(b) The Hon’ble Tribunal further be pleased to direct the respondent no.2 to decide the representation dated 25.6.2018 in the light of the grounds raised in the present Original Application and pass the suitable order within period of 2 months from the date of the order passed by this Hon’ble Tribunal.

(c) The Hon’ble Tribunal be pleased to direct the respondent no.1 and 2 to reconsider the entire issue in the light of Rule No.47(2) of MCS (Pension) Rules, 1982, along with other directions issued from time to time and regularize the period of absence from 5.1.2007 to 20.4.2012 as extraordinary leave and to treat the past service of the applicant for the purpose of retiral benefits by invoking Rule No.4 if found necessary.”

(Quoted from page 8 of OA)

5. During hearing the Ld. Advocate for the applicant mentioned that he does not want to press prayer clause 9(a) stating that the communication is illegal and therefore should be quashed and set aside.

6. The respondents no.2 and 3 have filed their reply in the form of affidavit. The affidavit points out that the applicant remained absent stating that he was ill but subsequently mentioned that he remained absent due to family problems. Hence, the reasons given by the applicant are non-satisfactory and non-reliable. The affidavit mentions that though the applicant submitted his medical certificate on 22.2.2010, departmental enquiry was recommended against him which held him guilty. According to the affidavit the applicant informed first on 2.12.2009 and therefore the medical board recommended not to grant medical leave to the applicant. The applicant remained absent before the enquiry officer and delayed the process and, therefore, cannot bifurcate his absence in two parts for his own benefit. The affidavit further mentions as under:

“18. With reference to contents of para no.6.13, it is submitted that due to the absence, unauthorized absence of the applicant in the period of dt.5.1.2007 to 20.4.2012, the service is discontinued under the rule MCS Pension 1982 case 47(1)(A), so the applicant has lost his right of his previous service, so pension is not facultative to him. The reasons stated in his application are contradictory and therefore the decision taken by the respondent no.1 on the basis of service rules is proper and correct.”

(Quoted from page 49 of OA)

7. The respondents have, therefore, submitted that the applicant is not entitled for any relief.

8. The impugned order dated 31.1.2015 reads as under:

“श्री. दिन्कर माधव निकाले, शिपाई यांच्या दिनांक ५ जानेवारी, २००७ ते दिनांक २० एप्रिल, २०१२ या कालावधीमधील अनधिकृत रजेवरील अनुपस्थितीमुळे महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम १९८२ मधील नियम ४७ (१)(ए) नुसार सेवेत खंड पडला आहे. त्यामुळे श्री. निकाले यांनी त्यांच्या मागील सेवेवरील हक्क गमावला आहे. सबब, त्यांना निवृत्ती वेतन अनुज्ञेय नाही.

सदर निर्णय हा शासनाच्या वित्त विभागाच्या अनौपचारिक संदर्भ क्र. २४७/सेवा ६ दिनांक २७ नोव्हेंबर, २०१४ व अनौपचारिक संदर्भ क्र. ४३४ सेवा ७ दिनांक ८ डिसेंबर, २०१४ अन्वये दिलेल्या अभिप्रायानुसार घेण्यात आला आहे.”

(Quoted from page 24 of OA)

9. It is true that the applicant has remained unauthorisedly absent for a prolonged period, but as stated by the enquiry officer in their report, on humanitarian grounds lenient punishment was recommended. The applicant has done 22 years of service prior to remaining absent and has also served for more than six years after resuming his duties. He stands deprived of retirement benefits. Being Class IV employee, he has very little means to survive. On grounds of equity; and looking at 28 years of service rendered by the applicant, it would be fair and justified to consider his representation, afresh.

10. In view of the above, the Original Application is partly allowed. The respondents are directed to decide the representation dated 25.6.2018 of the applicant on merits as mentioned in prayer clause 9(b) and (c) within a period of two months. No order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
17.7.2019

Dictation taken by: S.G. Jawalkar.