

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.714 OF 2017**

DISTRICT : MUMBAI

Shri Madhukar Kashinath More,)
Age 57 years, occ. Nil, Ex. Craft Instructor (Electrical),)
with his last posting at ITI, Nagothane, Dist. Raigad)
R/o F-2/10, Jambo Darshan, Koldongare Road,)
Andheri (E), Mumbai-69)..Applicant

Versus

1. The Joint Director of Vocational Education and)
Training, Regional Office, 49, A.J. Marg,)
Bandra (E), Mumbai 400051)
2. The State of Maharashtra,)
Through Principal Secretary,)
Skill Development and Entrepreneurship,)
Mantralaya, Mumbai)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
RESERVED ON : 29th August, 2019
PRONOUNCED ON : 4th September, 2019

J U D G M E N T

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

2. The applicant was working as Craft Instructor under the office of respondent no.1. The applicant was proceeded against in Departmental Enquiry (DE) and was removed from service after completing the same on 14.7.2003. The appellate authority confirmed the punishment of removal. The applicant agitated against the same in this Tribunal wherein the OA was rejected on merits. The applicant filed Writ Petition No.5213 of 2009 against the same in the Hon'ble Bombay High Court. The Hon'ble High Court refused to interfere in the order issued by the Tribunal. The applicant submitted application on 30.9.2011 for compassionate pension. The same was submitted to the Government. The Government directed respondent no.1 to decide the matter as per the delegated authority as communicated in the GR No.SNV 1001/130/Seva-4 dated 2.6.2003 (Item No.14 Exhibit R-1 page 81 of OA). Accordingly as per rule 101 of MCS (Pension) Rules, 1982 the representation made by the applicant was considered and a conscious decision was taken to reject his prayer for compassionate pension as a special case. The order dated 10.4.2017 (Exhibit A page 24 of OA) has been impugned in this OA.

3. The applicant has prayed to quash and set aside the impugned order dated 10.4.2017 (prayer 9(a) of the OA). The applicant has submitted that the respondents did not consider the following documents:

- (i) (a) The order of the Accountant General, (MS), Mumbai dated 10.9.2015, (b) the report of the Principal dated 23.10.2015 and (c)

the report of the respondent no.1 dated 22.3.2016, while passing the impugned order dated 10.4.2017.

- (ii) No special consideration has been given in his representation.
- (iii) The impugned order has been issued without applying mind.
- (iv) The applicant is discriminated against, since in a similar case of one Shri Pradeep Dattatraya Shinde, Instructor, ITI, who was removed has been granted compassionate pension.
- (v) The principles of natural justice have been violated, since he was not issued notice before issuing the impugned order.

4. The Ld. Advocate for the applicant has relied on the judgment of the Hon'ble Supreme Court in Anna Deoram Londhe Vs. State of Maharashtra 1998(3) Mh.L.J. 435. The relevant portion of the same reads as under:

“7. In the present case, the petitioner (since deceased) was removed from service for misconduct on account of his conviction under [section 325](#) of the Indian Penal Code for which he was sentenced to suffer R.I. for four years. This conduct, however, is not connected with the discharge of his duties as such. Moreover, there is no dispute that the petitioner had put in more than 30 years of service and he was otherwise eligible for superannuation or retiring pension. He was, however, removed from service on account of the aforesaid conviction. Therefore, merely because the petitioner (since deceased) was removed from service for the aforesaid misconduct, that alone will not furnish a ground to deny him the benefit of compassionate pension. On going through the return filed on behalf of the respondents, we find that the only reason assigned for rejection of representation for compassionate pension was that the petitioner was convicted for offence

under section 325 of the Indian Penal Code, which was considered to be serious offence. In our considered opinion, in terms of provision of Rule 101, the respondent ought to have considered the representation of the petitioner from a point of view if the case is deserving of a special consideration for grant of compassionate pension independently. Since that has not been done and nothing is on record adverse to the interest of the petitioner (since deceased) for grant of compassionate pension, we find that the impugned order suffers from legal infirmity, namely non application of mind. That necessary follows that the impugned order deserves to be set aside. In the facts and circumstances of the case discussed above, we find that the petitioner was entitled to compassionate pension.”

5. As far as delegation of authority is concerned, the Ld. Advocate for the applicant submits that the same is invalid and relied on the judgment given by this Tribunal in OAs No.1067 & 1068 of 2013 Shri Ladoba R. Gaonkar Vs. The State of Maharashtra & Ors. decided on 30.6.2014 and OA No.701 of 2008 Shri Tanaji Krishna Babar Vs. State of Maharashtra & Anr. decided on 23.4.2012.

Submissions by the respondents:

6. The respondents no.1 and 2 have filed affidavit in reply and contested the claim made by the applicant. These are summarized below:

(i)(a) The Accountant General in his letter dated 10.9.2015 informed the respondent that the decision regarding compassionate pension is to be taken by the competent authority and details of non qualifying to be furnished to the same (Exhibit E page 35 of OA).

(i)(b) The Principal, ITI, has submitted letter to respondent no.1 for guidance and not giving his opinion about recommending or otherwise.

(ii) The applicant had remained absent for more than 7 years from 1993. Even then he was allowed to resume in 2001. Again the applicant remained absent for three years. The applicant was not serious in deciding the Government dues and it resulted into loss of training for the trainees. The applicant was proceeded against in the DE. Among other charges there was a charge against him that even though the supplier did not provide transistor ratio kit, payment was made to the supplier. Another charge was that he furnished false address on which he was not available. As such the applicant had indulged in grave misconduct for which he was removed and the same was confirmed by this Tribunal as well as by the Hon'ble High Court.

(iii) After all the facts on record and after applying their mind the respondents have taken conscious decision not to grant him compassionate pension.

(iv) Shri P.D. Shinde, Instructor, ITI, was removed from service for unethical behavior such as forging certificates of students and mark-sheets. On the other hand the present applicant was absent for more than 10 years and indulged in activities which were directly harming training of the trainees which is the main function of the ITI. Thus, there was no discrimination in deciding the case against the present applicant qua Shri P.D. Shinde.

(v) No principles of natural justice have been violated as representation made by the applicant and details of the proceedings against him as well as the order issued by the Tribunal and Hon'ble High Court were available on record.

7. The respondents have therefore submitted that the applicant is not entitled for any relief and the OA may be dismissed.

8. I have perused the order issued in the DE and the record furnished by the applicant as well as respondents. I find that the respondents have carefully considered the facts such as his unauthorized absence for a prolonged period of 10 years and came to the conclusion that the same was effecting training of the trainees adversely. On the other hand in case of Shri P.D. Shinde the misbehavior is restricted to one incident of forging the mark sheet followed by his removal. Hence, his case has been considered for granting compassionate pension. Thus, there is no discrimination against the Applicant.

9. The prolonged absence of the applicant further indicates that he was not interested in the Government job and appeared as and when he felt so. Whenever he was posted outside of Mumbai, he preferred not to join. The judgment by the Hon'ble Supreme Court that misbehavior of the applicant if not connected with the discharge of his duties may entitle him for consideration as a special case for granting compassionate pension. This reinforces that the Government servant who misbehaves repeatedly in discharge of his duties may lose his right to be considered as a special case for compassionate pension. Though the applicant joined in the year 1980 and was removed in 2003, he remained unauthorisedly absent for a prolonged period from 1994 onwards. Looking at the facts of the case I do not find any reasoning in his alleged claim of injustice to him due to rejecting his case for special consideration for granting compassionate pension.

10. For the reasons stated above the OA is devoid of any merit and the applicant has failed to demonstrate any sound reasons to interfere with the impugned order.

11. Original Application is therefore dismissed. No order as to costs.

(P.N. Dixit)
Vice-Chairman (A)
4.9.2019

Dictation taken by: S.G. Jawalkar.

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