

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.893 OF 2015

DISTRICT : SOLAPUR

Shri Iqbal Mahammad Faruque Gaibu,)
Age 47 years, occ. Nil,)
R/o 205/14, Telangi Pachcha Peth, Solapur 413005)..Applicant

Versus

1. The Joint Director,)
Department of Vocational Education and)
Training, Regional Office, Ghole Road, Pune-5)
2. The Government Industrial Training Institution,)
Kalamba Road, District Kolhapur)
through its Principal)
3. The State of Maharashtra,)
Department of Technical Education,)
Mantralaya, Mumbai 400032)
Through its Chief Secretary)..Respondents

Shri Khateeb Vakeel – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
Shri A.D. Karanjkar, Member (J)

RESERVED ON : 10th June, 2019
PRONOUNCED ON : 12th June, 2019
PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Shri Khateeb Vakeel, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Brief facts of the case:

2. The Applicant, who was working as a Junior Clerk with the Respondent no.2, was proceeded against in a Departmental Enquiry (DE) as per the provisions of MCS (Conduct) Rules, 1979 for his tendency to remain absent and violating the provisions. The Enquiry Officer (EO) in his report observed that due to his absence without intimation the administrative work allotted to him suffered and thus his behavior was unbecoming of a Government servant (Exhibit R-2 page 127-128 of OA). Following the same, on 11.9.2015 Respondent no.1 issued the impugned order (Exhibit A page 9 of OA) removing him from service.

3. The Applicant has agitated against the impugned order on the grounds which are summarized below:

(1) *The DE was unnecessary.*

(2) *The punishment is harsh.*

(3) *It is in violation of the principles of natural justice, various decisions, GRs and circulars.*

(4) *The medical certificates submitted by the Applicant have not been taken into account while reaching the conclusion.*

(5) *The Applicant was denied the opportunity of cross-examining the witnesses.*

4. The Applicant has prayed to quash and set aside the impugned order and declare it as illegal, null and void.

5. Respondents no.1 and 2 have filed affidavit in reply and stated that the Applicant was given several opportunities during his period of absence without intimation to join the duty, but he did not avail the same. The DE was conducted as per the rules providing him all opportunities to defend himself. The affidavit further mentions that as a result of his absenteeism, functioning of the institute, where the Applicant was posted was disturbed. Action has been taken against him for his irresponsible behavior of remaining absent without intimation for a prolonged period. The Respondents have, therefore, submitted that the OA is devoid of any merit and deserves to be dismissed.

6. Issues for consideration:

(1) *Whether there is any illegality in conducting the DE?*

(2) *Whether the Applicant intimated his absence in time and conducted himself as a responsible Government servant?*

Discussion and findings:

7. The available record indicates that the Applicant remained absent during the following period:

Sr. No.	Period	Days
1	17.6.2008 to 9.8.2008	53 days
2.	19.9.2009 to 3.2.2011	504 days
3.	29.10.2012 to 28.1.2013	92 days

8. He further remained absent without permission from 29.6.2013 till a memo was served on him in the departmental proceedings. The Applicant was incharge of the training in the ITI and his remaining absent without intimation resulted in disturbing the working of the institute. The medical certificates enclosed by the Applicant are from the period subsequent to his joining in 2013 and not prior to his proceeding on leave without intimation or during his absence.

9. As per the settled legal principles, in order to succeed in this OA, it is necessary for the Applicant to show that the findings recorded by the Enquiry Officer are perverse or the findings are not based on reasonable evidence or the punishment awarded is shockingly disproportionate. After hearing the Ld. Advocate for the Applicant, we are unable to accept his contention that the enquiry was conducted without following the principles of natural justice. It appears from the record and proceedings that, no justification was given by the Applicant for his long absence. During this period the Applicant remained absent from duty without giving any intimation to the department as to what was his difficulty. In fact this conduct of the Applicant shows disregard towards duty and gross recklessness. It appears that the Enquiry Officer examined all the material factors. In view of this material, it is not possible to dislodge the conclusion drawn by the Enquiry Officer. This Tribunal has no jurisdiction to re-appreciate the evidence as there is no illegality or perversity.

10. So far as punishment part is concerned, considering the conduct of the Applicant remaining absent from duty without any reasonable cause, his conduct of not giving any information to the office, why he was unable to join the duty, was a sufficient ground to draw the inference that the Applicant was not in need of service. It appears that though show cause notices were issued to the Applicant to resume the duty there was no response. Keeping in view this conduct of the Applicant, we are of the view that it is not possible to accept that the punishment awarded is shockingly disproportionate.

11. During hearing the Ld. Advocate for the Applicant could not substantiate his allegations that the proceedings were conducted in an illegal manner or how the proceedings were vitiated and were against the principles of natural justice. The OA is only his dream desire and not supported by any facts to support his claim. There appears to be no reason to interfere in the impugned order and the OA deserves to be dismissed for reasons stated above.

12. Hence, OA is dismissed with no order as to costs.

Sd/-

(A.D. Karanjkar)
Member (J)
12.6.2019

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
12.6.2019

Dictation taken by: S.G. Jawalkar.