

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.1101OF 2019

(Subject –Compassionate Pension)

DISTRICT:AURANGABAD

Maruti s/o IrannaGovindwar,)
Age:53years, Occu.: Junior Clerk,)
(Terminated), R/o c/o Shri Karbhari, House)
of Mr. Mohan Gungarde, LaxmanBhau Nagar,))
Chitegaon, Tq. Paithan, Dist. Aurangabad.)
.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through :TheSecretary,)
Public Works Department,)
Madam Kama Road, HutatmaRajguru)
Chowk, Mantralaya,Mumbai-32.)

2. The Superintending Engineer,)
(Vigilance & Quality Control),)
Circle, Aurangabad.)
... **RESPONDENTS**

APPEARANCE : Shri S.D. Joshi, Advocatefor theApplicant.

: Shri M.P. Gude,PresentingOfficerfor
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE :**23.02.2022.**

ORDER

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned order dated 06.12.2019 (Annexure A-1) issued by the respondent No. 1, whereby the representation of the applicant dated 28.01.2019 (part of Annexure A-4, page No. 26 of the paper book) for grant of compassionate pension in accordance with Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 was rejected.

2. Facts in brief giving rise to this application are as follows :-

(a) The applicant joined the services in the office of respondent No. 2 i.e. the Superintending Engineer (Vigilance & Quality Control), Circle Aurangabad in the year 1986 as Junior Clerk-cum-Typist. He rendered the service till 31.12.1999 i.e. for the period of 13 years before he visited with the order of removal from service dated 31.12.1999 (part of Annexure A-3, page No. 18 of the paper book). He removed from the service after holding Departmental Enquiry against him leveling charge that the applicant accepted sum of Rs. 35,000/- from one Shri Ganesh SakharampantLakras on the assurance of

providing him with a job under Public Works Department. The respondent No. 2 initiated the Departmental Enquiry against the applicant upon the complaint of the said Shri Ganesh SakharampantLakras. During pendency of the saidDepartmental Enquiry, the complainant withdrew the complaint filed against the applicant. The applicant in fact had borrowed the said amount from the said Shri Ganesh SakharampantLakras on account of financial stringency. However, since the applicant could not return the same in a stipulated period, a false complaint was lodged against him. The Enquiry Officer filed his report dated 19.07.1999 (Annexure A-5, page No. 34 of the paper book). The Enquiry Officer has observed in the said report that during course of the said enquiry, the complainant Shri Ganesh SakharampantLakras gave application in writing to the authority of Divisional Commissioner to the effect that he has received the amount of Rs. 35,000/- and therefore, he was withdrawing the complaint against the applicant. However, despite the same, the Enquiry Officer proceeded with the Departmental Enquiry. The Enquiry Officer, however, categorically has not given findings that the charge was proved against the applicant and only observed

that the applicant has received amount of Rs. 35,000/-is only proved and it was not proper on the part of the applicant to accept such amount, when he has no authority to appoint anybody.

(b) It is further stated that thereafter, the applicant in view of the said Enquiry Report was removed from the service vide order dated 31.12.1999 (part of Annexure-3 collectively, page No. 18 of paper book).

(c) The applicant challenged his removal order dated 31.12.1999 (part of Annexure-3 collectively, page No. 18 of paper book) by filing O.A. No. 291/2000 before this Tribunal. However, the same was rejected by the order dated 24.11.2000 (part of Annexure A-3 collectively, page No. 20 of paper book) for want of availing alternate remedy and therefore, the applicant preferred representation in the form of appeal to the appellate authority i.e. the office of Chief Engineer, Public Works Department, Division Aurangabad and the same was rejected by the order dated 15.05.2001 (part of Annexure A-3 collectively, page No. 22 of paper book).

(d) It is further stated that at that point of time, the applicant could not approach this Tribunal immediately in the year 2001 or 2002 for want of proper guidance. The applicant was rendered in frustration during the said period. It was as late as in 2013, he preferred Original Application along with Misc. Application No. 233/2013 for condonation of delay. However, that was rejected at the threshold. The applicant challenged the said order by filing W.P. No. 5325/2018 before the Hon'ble High Court of Bombay, Bench at Aurangabad. The said W.P. was dismissed vide order dated 07.06.2018 (part of Annexure A-3, page No. 23 of paper book).

(e) It is further stated that after dismissal of above W.P., the applicant learnt that he could pursue his cause before the respondent No. 1 as regards grant of compassionate pension. Therefore, he preferred representation dated 28.01.2019 (part of Annexure A-4, page No. 26 of paper book) to the respondent No. 1, thereby requesting for consideration of his case for grant of compassionate pension to the extent of 2/3rd pension that would have been admissible that he had retired on superannuation. The applicant had about 13 years' service to his credit, so as to

claim grant of compassionate pension. In the said representation, he relied upon the judgment rendered by the Bombay High Court in the case of **Anna DeoramLondhe deceased through his Lrs. Smt. Indirabai Anna LondheVs. State of Maharashtra** delivered on 10.06.1998. Copy of which is part of Annexure A-4 collectively at page No. 31 of the paper book. In the said citation case, the petitioner therein was removed from the service in view of his conviction under Section 325 of the Indian Penal Code, 1860. In the said citation, it was held that the alleged misconduct was not connected with his service and as he had rendered over 30 years of service entitling him for superannuation/ retiring person, he cannot be denied pension on compassionate grounds merely because he was convicted under Section 325, I.P.C.

(f) It is further stated that the applicant waited for decision on his representation dated 28.01.2019 for a period of about six months. However, when the same was not decided, the applicant approached this Tribunal by filing O.A. No. 789/2019 in September 2019, treating the same as rejected. The said O.A. was decided vide order

dated 09.09.2019 (Annexure A-2, page No. 15 of paper book) by giving direction to the respondents to decide the applicant's representation dated 28.01.2019 within a period of 6 months from the date of the order on merits.

(g) Thereafter, the respondent No. 1 vide impugned order dated 06.12.2019 (Annexure A-1, page No. 13 of paper book) rejected his representation wrongly observing that no case is made out by the applicant for grant of compassionate pension as contemplated under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982, specifically observing that the applicant was held guilty of misconduct of accepting Rs. 35,000/- assuring government employment to Shri Ganesh Sakharampant Lakras.

(h) Being aggrieved by the said impugned order dated 06.12.2019 (Annexure A-1) issued by the respondent No. 1, the present Original Application is filed contending that the applicant lost his fight against the order of his removal technically on the ground of limitation and not on merits. In the Enquiry Officer's Report dated 19.07.1999 (Annexure A-5, page No. 35 of paper book), there is no clear-cut finding that the charge of accepting Rs. 35,000/- for giving

assurance of Government employment to Shri Ganesh SakharampantLakras is proved. It is only observed that it was not proper on the part of the applicant to accept money from the complainant, when the applicant was not having authority of giving Government employment. It is further stated that the case law relied upon by the applicant in the matter of **Anna DeoramLondhe deceased through his Lrs. Smt. Indirabai Anna Londhe Vs. State of Maharashtra** was not considered, though the case of the applicant is much better footing, as there was no criminal prosecution against the applicant about alleged incident, as against the fact of the citation case, where the petition therein was convicted of the offences punishable under Section 325 of IPC. It is further stated that the alleged incident cannot be said to be arising out of discharge of duties by the applicant and therefore, the alleged incident is unconnected with the duties performed by the applicant. In the circumstances, according to the applicant, he has a good case on merits for grant of compassionate pension as contemplated under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982. However, the claim of the

applicant is wrongly rejected by the respondent No. 1.
Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 1 and 2 by one Shri Suresh S/o GopalraoDeshpande working as the Superintending Engineer, Public Works Circle, Aurangabad and having additional charge of Vigilance and Quality Control Circle (P.W.D.) Aurangabad, Dist. Aurangabad, thereby he has not denied the factual aspect of holding of Departmental Enquiry and various orders being challenged by the applicant up to the Hon'ble High Court as pleaded by the applicant. However, adverse contentions raised in the present Original Application are denied. It is specifically stated that in the Departmental Enquiry, the applicant was held guilty of accepting of Rs. 35,000/- from one Shri Ganesh SakharampantLakras to assure him for giving Government employment and failing to refund the said amount. In the circumstances, the order of removal of the applicant dated 31.12.1999 has attained the finality, as the applicant has lost litigations challenging the said order up to the Hon'ble High Court. The applicant was charged of violating of provisions of Rule 3(1)(one) and Rule 3(1)(three) of the Maharashtra Civil Services (Conduct) Rules, 1979 based on acceptance of money by assuring Government job to the

complainant Shri Ganesh SakharampantLakras. The said misconduct of the applicant is connected with role of the applicant as a Government servant. In view of the same, he has justified the order of rejection of representation of the applicant. No case is made out by the applicant showing sufficient cause as contemplated under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982. In the circumstances, the present Original Application is liable to be dismissed.

4. I have heard the arguments advanced by Shri S.D. Joshi, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer for the respondents on the other hand.

5. Undisputedly, the applicant has completed 13 years of service in the cadre of Clerk-cum-Typist from 1986 till his removal from service by the order dated 31.12.1999 (part of Annexure A-3, page No. 18 of the paper book). The applicant sought compassionate pension under the provision of Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982. The minimum qualifying service for claiming pension including compassionate pension is provided under Rule 110 of the Maharashtra Civil Services (Pension) Rules, 1982. In view of the

same, the provisions of Rule 101 and Rule 110 of the Maharashtra Civil Services (Pension) Rules, 1982 are reproduced herein, as those would be relevant for deciding the present Original Application :-

“101. Grant of Compassionate Pension in deserving cases by Government.

- (1) A Government servant who is removed from service shall forfeit his pension and gratuity :
Provided that if the case is deserving of special consideration, Government may sanction a Compassionate Pension not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compassionate pension.*
- (2) A Compassionate pension sanctioned under the proviso to sub-rule (1) shall not be less than the minimum pension as fixed by Government.*
- (3) A dismissal Government servant is not eligible for Compassionate Pension.*

110. Amount of Pension.

- [(1) In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate*

of half month's pay for every completed six monthly period of qualifying service.]

[(2) (a) In case of Government Servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than twenty years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of Rs. 67,000/- plus admissible grade pay.

(b) In the case of Government Servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules before completing qualifying service of twenty years but after completing qualifying service of ten years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of Rs. 67,000/- plus admission grade pay and in no case the amount of pension shall not be less than Rupees One Thousand Nine Hundred and Thirteen per month.]

(3) In calculating the length of qualifying service, fraction of a year equal to [three months] and above shall be treated as a completed one-half year and reckoned as qualifying service.

(4) The amount of pension finally determined under clause (a) or clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.”

Perusal of the abovesaid rules would show that the Rule 101 deals with grant of compassionate pension in deserving cases by Government servant and Rule 110 deals with amount of pension. However, close perusal of Rule 110 would show that the minimum qualifying service for seeking compassionate pension would be 10 years. In the present case, the applicant has completed 13 years of service. Hence, there is no dispute that the applicant was eligible for applying for compassionate pension. However, it is to be seen as to whether the applicant has made out a case as contemplated under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 for special consideration.

6. Perusal of the rival pleadings as above would show that the applicant was removed from the service vide order dated 31.12.1999 (part of Annexure A-3, page No. 18 of the paper book), as he was held guilty in Departmental Enquiry conducted against him. In the said Departmental Enquiry, the applicant

was charged that while he was working at Aurangabad as Clerk-cum-Typist between 30.11.1991 to 25.05.1995, he accepted amount of Rs. 35,000/- on 05.08.1994 from complainant Shri Ganesh Sakharampant Lakras assuring Government job to the said complainant. The said complainant did not get any Government job by 10.01.1998 and the applicant also did not return the said amount of Rs. 35,000/- to the complainant. The Enquiry Report dated 19.07.1999 thereof is at Annexure A-5. In view of the findings of the said Enquiry Report, final order dated 31.12.1999 (part of Annexure A-3, page No. 18 of the paper book) came to be passed and thereby, the applicant was removed from the servicew.e.f. 31.12.1999 noon. The said order of removal has attained finality, as the challenges made by the applicant to the said order were dismissed as discussed while narrating the facts.

7. Learned Advocate for the applicant strenuously urged before me that the Enquiry Report would show that there is no clear cut finding that the charge framed against the applicant was proved. Further the challenge to the order of removal was dismissed only on account of applicant failing to give sufficient cause for condonation of delay and not on merits. He further submitted that for the purpose of considering claim of the applicant for compassionate pension under Rule 101 of the

Maharashtra Civil Services (Pension) Rules, 1982 the only relevant factor is of special consideration as contemplated under the said rule.

8. The above-said submissions made on behalf of the applicant were opposed by the learned Presenting Officer representing the respondents.

9. I am afraid that the said submissions made on behalf of the applicant can be accepted in view of the fact that dismissal of delay condonation application filed along with O.A. challenging the order of removal itself would decide the fate of the Original Application. Unless the delay is condoned, the O.A. challenging the order of removal would not be maintainable. In these circumstances, I hold that the order of removal of the applicant dated 31.12.1999 (part of Annexure A-3, page No. 18 of the paper book) has attained the finality and in this proceeding nothing can be considered as regards the merit or demerit of the said order.

10. In the facts and circumstances, the applicant has to make out a case as contemplated under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 establishing that his case is deserving of special consideration.

11. In this regard, the applicant while making representation dated 28.01.2019 (part of Annexure A-4, page No. 26 of the paper book) relied upon the case law of the Hon'ble Bombay High Court reported in **MHLJ-1998-0-435** in the case of **Anna DeoramLondhe deceased through his Lrs. Smt. Indirabai Anna Londhe Vs. State of Maharashtra** delivered on 10.06.1998. Copy of the said judgment is at page Nos. 31 to 33 of the paper book. In the said citation case, the petitioner therein was removed from the service being convicted under Section 325 of the I.P.C. The petitioner made representation under rule 100 read with Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982. The same was rejected. The petitioner therein challenged the said rejection by filing W.P. In the said citation, the Hon'ble High Court was pleased to observe as follows :-

“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.”

12. In view of above, the learned Advocate for the applicant strenuously urged before me that the applicant's case is on better footing, as the applicant was not convicted or facing with criminal prosecution and he only faced the Departmental

Enquiry, which can be said to be of lesser gravity. According to him ratio laid down in the abovesaid citation would be aptly applicable to the present Original Applicant.

13. On the other hand, learned Presenting Officer submitted that the case of the applicant does not fall in the deserving category of special consideration as contemplated under Rule 101 of the Maharashtra Civil Services (Pension) Rules 1982, inasmuch as misconduct of the applicant was of nature of touching to his integrity as a Government servant. Hence, the impugned order dated 06.12.2019 (Annexure A-1) is justifiable.

14. After having considered the facts of this case in the background of the cited case, it can be seen that the applicant while working as a Government servant accepted amount of Rs. 35,000/- from the complainant Shri Ganesh SakharampantLakras assuring him Government job. He accepted the said money on 05.08.1994 and did not return the same by 10.01.1998. In the Departmental Enquiry, it is specifically observed that it is proved that the applicant has accepted amount of Rs. 35,000/- from the complainant Shri Ganesh SakharampantLakras and though, he was not having authority to appoint, it was not proper on the part of the applicant to

accept such money. Accordingly, misconduct under Rule 3(1)(i) and 3(1)(iii) of the Maharashtra Civil Services (Conduct) Rule, 1979 were alleged. Rule 3(1)(i) deals with maintenance of absolute integrity and Rule 31(iii) deals with do nothing which is unbecoming of a Government servant. When the said misconduct is proved against the applicant and the order of removal attained the finality, in my considered opinion, it is evident that the facts of the citation and more particularly conviction of the petitioner therein under Section 325 of I.P.C. can be said to be unconnected with discharging of duties of the petitioner in that regard. However, in the present case, that is not so. The defence of the applicant pleaded in his application that he borrowed money from the said complainant Shri Ganesh Sakharampant Lakras for his personal exigencies is not acceptable at this late stage. In these circumstances, the conduct of the applicant as regards incident of accepting money of Rs. 35,000/- giving assurance of Government job, even though not having such authority touches the integrity of the Applicant as a Government servant and that amounts to unbecoming of a Government servant. In these circumstances, in my considered opinion, the impugned order dated 06.12.2019 (Annexure A-1) cannot be said to be unsustainable in the eyes of law. The

reason stated by the applicant cannot be said to be sufficient to consider his case deserving special consideration. For the reasons stated hereinabove, in my considered opinion, the ratio laid down in the above citation case of **Anna DeoramLondhe deceased through his Lrs. Smt. Indirabai Anna LondheVs. State of Maharashtra**(cited supra)cannot be made applicable in the instant case. I therefore hold that the applicant is not entitled for relief as prayed for in the present Original Application. In the result, I proceed to pass following order :-

ORDER

The Original Application No. 1101 of 2019 stands dismissed with no order as to costs.

**PLACE : AURANGABAD.
DATE :23.02.2022.**

**(V.D. DONGRE)
MEMBER (J)**