

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

DIST. BEED.

ORIGINAL APPLICATION NO.485/2016.

Ravindra s/o Ashok Ghadge,
Age 29 years, Occu. Nil,
R/o Sneha Nagar, Subhash Road,
Behind Moti Mahal, Beed,
Tq. & Dist. Beed.

-- **APPLICANT**

VERSUS

1. The State of Maharashtra
Through the Secretary,
Information and Public Relation
Department, Mantralaya, Mumbai.
2. The Director (Information),
Information and Public Relation
Department, New Administrative
Building, Infront of Intralaya, Madam
Kama Marg, Hutatma Rajgur Chowk,
Mumbai 400 012.
3. The Director (Information)
Information and Public Relation,
Marathwada Division, Near
Khadekeshwar, Aurangabad.
4. Senior Assistant Direcot (Information)
Information and Public Relation
Directorate Maharashtra Govt.,
Mahalaxmi Building, Dr. Dada Vaidya
Road, Panji, Goa 403 001.

-- **RESPONDENTS.**

APPEARANCE : ShriM.S.Taur, learned Advocate for the Applicant.

: Smt D.S.Deshpande, Learned Presenting Officer
for the Respondents.

CORAM : **Hon'ble Shri JD Kulkarni, Member (J).**

DATE : 20.12.2016.

JUDGMENT

(Delivered on this 20th day of December, 2016)

1. The applicant Ravindra Ashok Ghadge has claimed the following reliefs :-

“B) The respondent authorities may please be directed to release the arrears of subsistence allowance to the applicant for the period from 01.01.2013 to 07.03.2015 of Rs.3,87,099/- (Rs.14,337/- x 27 months) with the interest of 9% p.a.

C) The respondent authorities may please be directed to decide the representation dated 20.05.2015 filed by the applicant within the stipulated period of time.”

2. It seems that earlier the applicant has filed similar application vide O.A. No.494/2015. The said application came to be disposed of by this Tribunal by order dated 10.2.2016. In the said O.A. the Tribunal gave liberty to the applicant to file necessary representation in view of the reply and communication dated 20.11.2014 filed by

the Respondents therein. The representation was to be filed within two weeks and the respondents were to take decision within a period of four weeks thereafter.

3. The applicant accordingly filed representation on 18.2.2016 and requested that the period of suspension i.e. from the date of suspension till reinstatement be treated as extra-ordinary leave and the admissible amount be paid to the applicant. The said representation has been answered by the respondents vide impugned order dated 2.3.2016. The said order is at paper book page nos. 51 & 52. Vide impugned order the respondent authorities have treated the period of suspension till the date of reinstatement i.e. from 12.8.2013 to 28.12.2014 as extra ordinary leave without pay and allowances. Being aggrieved by the said order the present O.A. is filed.

4. The respondents no.1 to 4 in their affidavit in reply have stated that the applicant was served with a notice on 3.11.2015 as per the provisions of Rule 70 (4) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 from 3.11.2015. The applicant however, did not reply to the said notice. It is stated that, the competent

authority has not treated the suspension period as duty period and therefore, the competent authority has rightly rejected the applicant's claim for mandatory benefit.

5. The respondents further submitted that, as per Rule 68 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981. The subsistence allowance has been sanctioned to 50% of salary vide office order dated 17.8.2012 and the applicant has already been paid the subsistence allowance from time to time as under :-

Sr.No.	Period	Bill No.	Bill date	Amount(Rs.)
1.	From dated 19.6.2012 to 30.6.2012.	50	6.10.2012	1721.
2.	July 2012	51	6.10.2012	4500/-.
3.	August, 2012	52	12.10.2012	4750/-.
4.	September, 2012	67	7.11.2012	4750/-.
5.	October, 2012	77	26.11.2012	4750/-.
6.	November, 2012	88	18.12.2012	4948/-.
7.	December, 2012	109	28.1.2013	4948/-.
8.	January, 2013	10	26.4.2013	4948/-.

9.	February, 2013	11	3.5.2013	4948/-.
10.	March, 2013	17	7.5.2013	4948/-.
11.	April, 2013	19	9.5.2013	5828/-.
12.	May, 2013	34	29.5.2013	5200/-.
13.	June, 2013	55	3.7.2013	5200/-.
14.	July, 2013	71	24.7.2013	5200/-.
15.	From 1 st August 2013 up to 12 th August,2013.	84	20.8.2013	1859/-.
			Total	68,498/-.

Thus, the applicant has been paid subsistence allowance from 19.6.2012 to 31.12.2012 at Rs.26,599/- i.e. 50% of his salary. It was directed that the period of absence from duty from 12.8.2013 to reinstatement shall be converted into extra-ordinary leave. The applicant is not entitled to get allowance for the period from 12.8.2013 to 28.12.2014. The payment of salary and allowances from 29.12.2012 at Rs.374/- is credited in the applicant's Bank account at State Bank of Hyderabad. There is no provision in Rule 70(4) of the Rules of 1981 and whatever pay and allowances to be paid are subject to provisions of Sub Rule 6 and Sub Rule 7 to be paid full pay and allowances to which the employee is entitled.

6. It is stated that, the case of the applicant was under consideration of Directorate General of Information and Public Relations for serving notice of 60 days. Accordingly it was noticed that, the suspension period from 19.6.2012 to 12.8.2013 be treated as suspension period only and 50% pay and allowances for 1st six months and thereafter 75% pay and allowances for next period will be paid as per rules. Accordingly the notice was served on the applicant on 3.11.2015 as per Exh.R-7. The applicant however, did not reply to that notice.

7. According to respondents, the competent authority has considered the representation filed by the applicant dated 18.2.2016. The Senior Assistant Director (Information), Maharashtra Information Centre, Panji Goa accordingly sanctioned the leave without pay for the period of suspension up to reinstatement. The leave without pay was sanctioned for 504 days from 12.8.2013 to 28.12.2014. Sanction was given to 50% for 1st six months and 75% afterwards for period adjusting subsistence allowance, which was earlier paid to the applicant. It is stated that if the competent authority gives a clear order to treat period of

suspension as duty period then only the amount can be sanctioned and not otherwise.

8. Heard Shri M.S. Taur, learned Advocate for the Applicant and Smt. D.S. Deshpande, learned Presenting Officer for the Respondents. I have also perused the application, affidavit, affidavit in reply and various documents placed on record.

9. The only material point to be considered is “whether the impugned order dated 2.3.2016 treating the suspension period dated 12.8.2013 to 28.12.2014 as extra-ordinary leave without pay and allowances is legal and proper?”

10. From perusal of the order passed earlier in this O.A. by this Tribunal on 10.2.2016 it is clear that in para nos.4, 5 & 6 of said order this Tribunal has observed as under :-

“4. In the affidavit in reply in paragraph No. 12, it is stated as under: -

“12.

..... The case of the Applicant is under consideration of the Directorate General of Information and Public Relations to serve notice

of 60 days regarding his suspension period from date 19/06/2012 to 12/08/2013 for treating it as a suspension period and pay him 50% pay and allowances for first six months and afterwards 75% pay and allowances for next period as per the said Rules.”

5. The learned Presenting Officer has invited my attention to one communication issued by the respondents, a copy of which is at pages 13 to 15. On page-14, it has been mentioned as under: -

“श्री. घाडगे यांची दोन वर्षांच्या कालावधीची, रोखलेली वेतनवाढ ही काल्पनिक वेतनवाढ दर्शवून त्यापुढील वर्षाची वेतनवाढ त्यांना लागू राहिल, अशी शिक्षा देण्यात येत आहे. तसेच त्यांचा दिनांक १२.८.२०१३ रोजीपासून ते पुनःस्थापना करेपर्यंतचा कालावधी हा त्यांनी विनंती केल्यास असाधारण रजा म्हणून नियमित करण्यात येईल.”

6. The learned counsel for the applicant submits that the applicant will file necessary representation as stated in the reply and as stated in the communication dated 20.11.2014 (pages 13 to 15 of the paper book) as referred above. The learned counsel for the applicant seeks two weeks time to file such representation.”

11. In view of the aforesaid submission in the written statement the applicant was allowed to file representation and it seems that the applicant has accordingly filed representation on 18.2.2016, which is at Annexure A-4 at page no.50. In the said representation the applicant has requested the competent authority to treat his

suspension period as extra ordinary leave and to pay him pay and allowances as admissible under rules. It is material to note that, while allowing the appeal filed by the applicant against the order of punishment in D.E., the Appellate Authority has not fully exonerated the applicant, though his termination was set aside. The Appellate Authority has only reinstated the applicant, but penalty was imposed and as per the order of the Appellate Authority the applicant was given liberty to apply for extra ordinary leave for the period under which the applicant was under suspension.

12. As per the provisions of Rule 70(5) the suspension period can not be treated as duty period unless the same is specifically ordered. Rule 70 (5) and its proviso reads as under :-

“(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall

be converted into leave of any kind due and admissible to the Government servant.”

13. From the order passed by the Appellate Authority it is clear that, the punishment given to the applicant was reduced by showing leniency and instead of removing the applicant from service, he was reinstated with some minor punishment, but it is material to note that, his period of suspension was never treated as duty period, though it was observed that the said period can be adjusted against the admissible leave.

14. Perusal of the impugned order shows that, the Respondent authority has not considered the suspension period as duty period and therefore, as per Rule 70 all actions have been taken. It seems that the respondent has also issued a notice dated 3.11.2015. The said notice is at paper book page nos.164 to 166 (both inclusive). However, the applicant has not replied the said notice, and therefore, whatever stated in the said notice has got unchallenged. The applicant, now, cannot say that he was not given an opportunity.

15. The learned Advocate for the applicant submits that, the entire leave of the applicant has been treated as extra-ordinary leave

without pay, and the admissible leave has not been considered for encashment or payment of salary. Perusal of the impugned order shows that, the total leave period for which extra-ordinary leave has been granted without pay and allowances is 504 days, but it is not known as to how much leave was admissible. The said fact is not clear as to whether no admissible leave was due. It is also not clear as to why the entire period of suspension has been treated as leave without pay and allowances, and whether really the request of the applicant has been considered in true sense. It is simply stated that, the competent authority has considered the request of the applicant as per representation dated 18.2.2016 for treating his suspension period as extra-ordinary leave. No reasons are mentioned in the said order stating as to how much leave was admissible for pay and how much was not admissible. The impugned communication therefore, seems to be vague. There is a reference of Rule 63 of the Maharashtra Civil Services (Leave) Rules, 1981, which deals as regards extra-ordinary leave. The said rule says that extra-ordinary leave may be granted to a Government servant in special circumstances – a) when no other leave is admissible; b) when other leave is admissible the Govt. servant apply in writing for grant of extra-ordinary leave. Rule 63 (2) also

states about the exceptional circumstances when such extraordinary leave is to be granted.

16. As already stated perusal of the impugned order dated 2.3.2016 does not state as to what was the reasons and circumstances under which the leave was not admissible with full pay or allowances and therefore, the said impugned communication is vague.

17. In the reply affidavit it is stated that though on 3.11.2015 the notice was given to the applicant as per Rule 70(4) of the Rules, 1981; the respondent no.2 did not decide the applicant's case as per notice dated 3.11.2015. In such circumstances, the communication dated 3.11.2015 does not seem to be basis for rejection of extraordinary leave with pay and allowances.

18. I am therefore, satisfied that the impugned communication is vague and since the respondent authority has not taken benefit of the notice dated 3.11.2015, it should have possess detailed order stating therein as to how much leave was admissible as per Rules for the pay and salary and how much leave was not admissible for

pay and salary. In view thereof the impugned order dated 2.3.2016 is required to be quashed with liberty to the respondent to issue fresh order considering all pros and cons in details and to pass necessary order accordingly. The applicant may also file fresh representation giving details of admissible leave and details regarding how much leave can be treated as leave without pay and allowances and how much leave can be treated as extra-ordinary leave without pay and allowances. Such representation may be filed within two weeks from today and on receiving such representation and after giving opportunity of personal hearing, necessary order may be passed within two months thereafter and the same shall be communicated to the applicant in writing.

19. With above directions, the O.A. is disposed of with no order as to costs.

MEMBER (J)

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