

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI**  
**BENCH AT AURANGABAD.**

**DIST.BEED.**

**ORIGINAL APPLICATION NO.640/2014.**

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Baban S/o Dagduba Gadekar,  
Age 60 yrs, Occu. Retired,  
R/o Mauli Nagar, Near Bus Stand,  
Patoda, Tq. Patoda, Dist. Beed.

-- **APPLICANT**

**VERSUS**

1. The State of Maharashtra  
Through Secretary in the  
Department of General Administration,  
Mantralaya, Mumbai.
2. The Director,  
Sainik Kalyan Division, Near National  
War Monument, Ghorpadi,  
Solapur Road, Pune -1.
3. The District Sainik Kalyan Officer,  
Nandanwan Colony, Bhavsingpura Road,  
Aurangabad.

-- **RESPONDENTS.**

**APPEARANCE** : Shri V. M. Maney, learned Advocate for the  
Applicant.

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

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

**DATE** : 27.01.2017.

**JUDGMENT.**

**(Delivered on this 27<sup>th</sup> day of January, 2017)**

1. Heard Shri V. M. Maney, learned Advocate for the Applicant and Smt D.S. Deshpande, learned Presenting Officer for the Respondents.

2. The applicant has claimed for quashing and setting aside the order dated 6.1.2012 issued by Dy. Director (Adm) and claimed that he be granted pension by condoning deficiency of 8 months period in the qualifying service for pension.

3. The applicant worked in Indian Army for about 26 years and got retired from the said service on 1.2.1998. Thereafter, he was appointed on the post of non-Government Hostel Supervisor vide order dated 22.5.2002 on temporary basis at Non-Govt. Boys Hostel at Latur. Thereafter in the selection process the applicant was selected and was appointed on the post of Govt. Hostel Supervisor from 4.10.2002. He was posted at Kolhapur in the pay scale of Rs.4000-100-6000/-.

4. On 26.9.2008 the applicant was dismissed on the ground that, he was not fulfilling the eligibility criteria. The applicant therefore, filed appeal to the Chief Secretary. The Chief Secretary and Special Enquiry Officer Grade-1 of Mantralaya vide order dated 10.8.2009 partly allowed the appeal, set aside the dismissal and directed that the applicant be reinstated on the post of Kalyan Sanghatak. While 1.2.2010 the applicant working on that post, on 26.2.2010 a show cause notice was served on the applicant and he was called upon to explain as to why he remained absent from 26.9.2008 to 31.1.2010 and why said period shall not be treated as absence period. The applicant replied the notice and requested for regularization of the period and also for financial benefits. Vide order dated 3.3.2010 the respondents treated the applicant's absence period from 26.9.2008 to 9.8.2009 as service period for the purposes of pension. However, the salary and allowances for the said period were denied. The period in between 10.8.2009 to 1.2.2010 was treated as compulsory waiting period.

5. The applicant after reinstatement got retired on superannuation on 1.12.2012. His pay was also fixed during that period. It is submitted that as per the pension rules minimum service of 10 years is required for getting pension. The applicant

has completed service of 9 years and 4 months and there is shortage of 8 months period for getting pension. The applicant has therefore, made a representation on 11.11.2012 and requested that the said period be condoned. The respondent no.2 the Director, Sainik Kalyan Division, Pune vide impugned communication dated 6.1.2012 informed the applicant that in view of Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 his proposal cannot be accepted and therefore, the applicant was constrained to file this original application.

6. The Respondents no.1 to 3 filed their reply affidavit and submitted that the applicant is a defence pensioner and his pension from defence service in full for 26 years of service he rendered there and therefore, he is not entitled to further pension. There is no special reason for condoning the period of 8 months and therefore, his case was not recommended to the competent authority and the proposal was rejected by Dy. Director of Sainik Welfare. It is further stated that, the applicant has worked for 9 years and 4 months and requested that the deficiency of 8 months to become eligible to get pension be condoned, but as per Rule 54 (2) of the M.C.S. (Pension) Rules 1982 deficiency less than one year can be condoned by Govt. for special reasons in writing.

7. The applicant files rejoinder and has placed reliance on the judgment passed by Tribunal in OA No.453/2014 in the case of Subhash Rambhau Fere Vs. The State of Maharashtra & Ors. On 1.9.2015, wherein in the similar circumstances directions were issued to the Government.

8. The learned Advocate for the applicant submits that, the representation submitted by the applicant for condonation of deficiency of 8 months service in getting pension be condoned. The power to condone such deficiencies is with respondent no.1 i.e. Govt. of Maharashtra. However, the respondent no.2 instead of forwarding the proposal to the Govt. decided itself not to submit the proposal to the competent authority. The respondents no.1 to 3 have admitted in their affidavit dated 16.2.2015 that, since there was no special reason for condoning the period the request of applicant was not recommended to the competent authority and the same was rejected by Department to Sainik Welfare. It is not known as to why the Respondent no.2 did not forward the proposal of the applicant to the competent authority. It is admitted fact that, to condone the deficiency or not is under the power of Govt., and in any case the Respondent no.2 was not authorized to condone the deficiency and therefore, in such circumstances, there was no

reason for respondent no.2 not to forward the applicant's proposal to the competent authority.

9. It seems that the earlier also the respondent no.2 had shown some high handedness and this has been observed by this Tribunal in OA No.453/2014. The copy of the said judgment is placed on record at paper book page nos.47 to 57 (both inclusive). In the said judgment in para no.11 onwards it was observed as under :-

“11. In this regard, it is material to note that, according to respondent no.4 it is for the Head of the office to submit the proposal in prescribed format along with requisite documents and then only the respondent no.4 will pass necessary orders. In this case it is not known as to why the applicant's case was not recommended as has been made recommended in case of Dulange and other employees. Rule 110 (3) of the Maharashtra Civil Services (Pension) Rules is incorporated properly, the services of the applicant will definitely fall within the category of “qualifying service of 10 years”.

12. It is also material to refer various relevant provisions under MCS (Pension) Rules, 1982. As per Rule 4, there is a power of relaxation if the Govt. is satisfied that, it is necessary to relax rules to avoid the undue hardship to the Govt. servant. As per Rule 8, the reason for concession is to be communicated to the Audit Officer. There are other rules also like Rules 30, 33, 38, and 48 of the MCS (Pension) Rules will

gives power to the competent authority to relax the rules in favour of employees to avoid hardship to the employees in getting pension & pensionary benefits.

13. In this case, the applicant has served as Ex-serviceman in the Indian Army till 30.3.1974, and he completed his military service unblemished. On the post of Hostel Superintendent also, he has earlier worked temporary for more than one year, and thereafter, has completed continuous service for 9 years and 10 months. As already stated earlier, the respondents have applied Rule 110 (3) of the MCS (Pension) Rules, and granted concession of 75 days to one Dulange. In such circumstances, the respondents should have applied the same scale to the applicant also. In view thereof, I pass the following order.

ORDER.

- i. The Original Application is allowed.
- ii. The impugned order dated 18.9.2013 passed by respondent no.4 is hereby quashed and set aside.
- iii. The respondents no.1 to 3 are directed to properly apply Rule 110 (3) and all other relevant rules under the Maharashtra Civil Services (Pension) Rules, 1982, so as to grant pensionary benefits to the applicant.
- iv. The proposal for pension shall be submitted accordingly to the respondent no.4.
- v. The respondent no.3 shall undertake the said exercise within one month from the date of this order, and after receiving the proposal the respondent no.4 shall grant

pension to the applicant within one month from the date of receipt of proposal.

vi. No order as to costs.”

10. The applicant has also placed on record the order passed by the Govt. of Maharashtra dated 21.5.2014, 7.3.2015, 19.8.2016 and 31.1.2012. The copies of the said orders are placed on record at paper book page nos.61 to 66 from which it seems that, the Govt. has considered the proposals to condone the deficiency of service period in appropriate cases. Had it been a fact that, the proposal of the applicant was submitted to the competent authority, the possibility that the competent authority ought to have condoned the deficiency of the service period of the applicant cannot be ruled out.

11. As already observed in the O.A. No.453/2014 there are number of provisions in the Maharashtra Civil Services (Pension) Rules, which empowers the respondent no.1 to condone the deficiency of period up to one year for getting pension. The deficiency in the case of applicant is of 8 months. In view thereof I am satisfied that the impugned communication issued by Respondent no.2 rejecting the applicant's claim is not legal and proper, and therefore, the same is dated 6.1.2012 is quashed and set aside. Hence the following order.



ORDER.

- i) The original application is partly allowed.
- ii) The Respondents no.2 & 3 are directed to submit the proposal as regards condonation of deficiency of 8 months period for getting pension in respect of applicant to Respondent no.1 within one month from the date of this order. On receiving said proposal from respondents no.2 & 3 the Respondent no.1 shall properly apply Rule 110 (3) and all other relevant rules under M.C.S. (Pension) Rules, 1982 so as to grant pensionary benefits to the applicant.
- iii) The Respondent no.1 shall take decision on such proposal received from Respondents no.2/3, within three months from the date of receipt of proposal.
- iv) No order as to costs.

**MEMBER (J)**

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