

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 278 OF 2022
(Subject :- Compassionate Pension)**

DISTRICT:- AURANGABAD

Anwar Khan Aziz Khan Pathan,)
Age : 59 Yrs., Occu: Nil,)
R/o: Bismillah Colony,)
Kannad, Tal. Kannad,)
Dist. Aurangabad)... **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Addl. Chief Secretary,)
Home Department, M.S.,)
Mantralaya, Mumbai-32.)
- 2. The Director General of Police,**)
Maharashtra State,)
Police Headquarters,)
Old Council Hall,)
Shaheed Bhagat Singh Marg,)
Mumbai- 01.)
- 3. The Commissioner of Police,**)
Aurangabad City,)
Mill Corner, Dr. Ambedkar Road,)
Aurangabad- 01.)...**RESPONDENTS**

APPEARANCE : Shri Saket Joshi, learned counsel
holding for Shri A.S. Deshmukh,
learned counsel for the applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **13.08.2024.**

PRONOUNCED ON : **24.09.2024.**

ORDER

Heard Shri Saket Joshi, learned counsel holding for Shri A.S. Deshmukh, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking quashing and setting aside the communication dated 01.11.2021 (Annexure 'A-1-a') issued by the respondent No.2 by which the applicant's request for grant of compassionate pension under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 is rejected. The applicant is also seeking direction to the respondent No.1 to consider and grant compassionate pension to the applicant as prescribed under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 along with all the consequential benefits to which he would become entitle.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant had entered in the service of the Government of Maharashtra in its Home/Police Department

as a Police Constable in the Aurangabad District Police Force on 27.02.1985. In the year 1992, he was promoted from the cadre of Police Constables to the cadre of Police Head Constables and in the year 2002, the applicant was further promoted to the cadre of Assistant Sub-Inspectors of Police (A.S.Is.). In the year 2002 itself the applicant had also passed the departmental examination for promotion to the cadre of Police Sub-Inspectors (P.S.Is.) along with others and consequently he was appointed as a Police Sub Inspector by respondent No.2 vide an order dated 03.07.2003.

(ii) The applicant further contends that in the beginning of the year 2007, the respondent No.2 was pleased to issue an order on 31.01.2007 reverting him from the cadre of P.S.Is. to the cadre of A.S.Is. Being aggrieved by the said order, the applicant had approached to the Tribunal by filing the Original Application No. 171/2007. By order dated 06.07.2007 the Original Application was dismissed by this Tribunal. Thus the applicant had approached to the Hon'ble High Court of Bombay, Bench at Aurangabad by filing the Writ Petition No. 5155/2007. The said Writ Petition was allowed by the judgment and order dated 31.03.2008 and the order of applicant's reversion to the post of A.S.Is. was

quashed and set aside and he was reinstated on the post of P.S.I. However, it was clarified by the Hon'ble High Court of Bombay, Bench at Aurangabad that if there were grounds for which the applicant was required to be subjected to departmental action, his reinstatement shall not be an impediment in the departmental proceedings.

(iii) It is the applicant's submission that in the year 2012 the departmental enquiry was initiated against the applicant and the Assistant Commissioner of Police (Administration) in the office of respondent No.3 was appointed as an enquiry officer. In due course of time, the said enquiry officer has conducted the enquiry and submitted his report to the respondent No.2 through the respondent No.3. On 03.02.2014, the respondent No.2 had issued a show cause notice to the applicant as to why he should not be dismissed from service for his acts of misconduct which were considered and enquired in the departmental enquiry held against the applicant. The respondent No.2 had also given the personal hearing to the applicant on 02.12.2015. By order dated 08.12.2015 (Annexure 'A-3'), the respondent No.2 has inflicted the punishment on the applicant as "removal from service".

(iv) The applicant further contends that being aggrieved by the said order of punishment of removal from service the applicant had preferred the appeal and also review application before the respondent No.1. However, the appeal was dismissed by an order dated 15.01.2019 and review application was rejected by an order dated 02.08.2021.

(v) It is the further case of the applicant that in the meanwhile after the decision passed in the appeal by the respondent No.1 dated 15.01.2019, the applicant had submitted an application to the respondent No.1 on 04.12.2019 urging therein that he be granted compassionate pension under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules, of 1982').

(vi) The applicant further contends that by communication dated 01.11.2021 issued by the respondent No.2 by which the applicant's request for grant of compassionate pension under Rule 101 of Pension Rules of 1982 came to be rejected. Hence, this Original Application.

4. Learned counsel for the applicant submits that the impugned action of the respondent No.2 is against the

basic principles of justice, equity and good conscience. It is illegal, irrational and illogical and as a result of total non-application of mind. Learned counsel for the applicant submits that the respondent No.2 has failed to consider that the basic intention behind imposition of punishment of 'removal from service' instead of punishment of 'dismissal from service' which is lesser punishment and the same was imposed considering the circumstances of the case of the applicant. Learned counsel for the applicant submits that very purpose of imposition of lesser punishment than the capital punishment could be defeated.

5. Learned counsel for the applicant submits that the applicant had rendered the service for about 31 years in the Police Department in which he had got 106 rewards without any major punishment and was visited with the punishment of removal from service, in spite of issuing the show cause notice of dismissal from service to the applicant. Thus the very intention of respondent No.2 of imposition of lesser punishment of removal from service upon the applicant was to see that the applicant would be in a position of seeking benefit of compassionate pension on the basis of service of more than three decades rendered in the police department.

Learned counsel for the applicant submits that this Original Application deserves to be allowed.

6. Learned counsel for the applicant in order to substantiate his contention placed his reliance in a case of **Anna Deoram Londhe deceased through his L.Rs. Smt. Indirabai w/o Anna Londhe Vs. State of Maharashtra (Writ Petition No. 2032 of 1995)**, reported in **1998 (4) Bom. C.R. 772,** wherein the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in almost similar set of facts held that the petitioner therein was entitled for the compassionate pension.

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that the applicant's service record is not satisfactory. The respondent No.2 has considered all the evidence discussed in the order dated 08.12.2015 and thereupon passed the order of removal from service of the applicant.

8. Learned Presenting Officer submits that the departmental enquiry was initiated against the applicant by office order dated 14.12.2012 on four charges. The enquiry officer was conducted the enquiry on the aforesaid charges

and recommended the punishment for the applicant by his letter dated 26.11.2013. Pursuant to the conclusion of the departmental enquiry, the office of respondent No.2 has issued show cause notice as to why the applicant should not be dismissed from service. The applicant had submitted his reply and representation to the show cause notice and after taken into consideration all the materials on record, by order date 08.12.2015 the respondent No.2 has imposed the punishment of removal from service on the applicant. The said order passed in the departmental enquiry dated 08.12.2015 stood confirmed in the departmental appeal so also in the review application.

9. Learned Presenting Officer submits that the departmental enquiry was initiated against the applicant on the grave charges. The charges have been proved in the departmental enquiry and the punishment of removal from service was imposed on the applicant. The said punishment is proportionate to the charges proved against the applicant in the departmental enquiry.

10. Learned Presenting Officer submits that the applicant has submitted an application dated 04.12.2019 for

giving compassionate pension. It was duly considered and the same has been rejected by the respondent No.2 by impugned communication dated 01.11.2021 as the charges proved against the applicant are very serious in nature. The punishment imposed on the applicant is without malafide and free of any vindictiveness. As a matter of fact, the applicant has made a similar application to the State Government for seeking compassionate pension and the Government called the information from the respondent No.2 and accordingly, the respondent No.2 has communicated the aforesaid order to the State Government.

11. Learned Presenting Officer submits that the applicant cannot claim compassionate pension as provided under Rule 101 of the Pension Rules of 1982 as a matter of enforceable right. The compassionate pension can be granted under special consideration in a deserving case. There is no substance in the Original Application and the same is liable to be dismissed.

12. Learned Presenting Officer in order to substantiate his contention placed reliance on the following case laws:-

- (i) **Kulkarni Shashikant Bhavani Vs. Bombay Physical Culture Association & Ors. (Writ Petition No. 1576 of 2014).**

- (ii) **Nalini W/o Natthuji Shende Vs. the State of Maharashtra & Ors. (Writ Petition No. 3468 of 2022).**

13. Rule 101 of Pension Rules of 1982 prescribes the provisions for grant of compassionate pension in deserving case by the Government. Rule 101 of Pension Rules of 1982 is reproduced herein below:-

“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 dismissed Government servant is not eligible for compassionate pension.”

14. It is clear from the bare language of the Rule itself that the compassionate pension can be granted if the case is deserving of a special consideration. It is granted only in case if the Government servant is removed from service. However, a dismissed Government servant is not eligible for compassionate pension.

15. Learned counsel for the applicant submits that though the respondent No.2 has issued show cause notice to the applicant on conclusion of the departmental enquiry as to why he would not be dismissed from service, however, considering the services rendered by the applicant for more than three decades in the police department, awarded with the punishment of removal from service. Learned counsel for the applicant submits that the same has been done with a sole reason that the applicant should get the pensionary benefits in terms of the Rule 101 of Pension Rules of 1982.

16. It is necessary to find out whether the applicant has made out the case of special consideration to grant him the compassionate pension. The departmental enquiry was initiated against the applicant by office order dated 14.12.2012 on the following charges:-

- (a) In connection with the FIR No. 65/2004 registered at Usmanpura Police Station, Aurangabad the applicant has helped the accused therein by filing report under Rule 169 of C.R.P.C. for closing his case without carrying out any investigation into it.

- (b) In connection with the FIR No. 37/2004 registered at Usmanpura Police Station, Aurangabad the applicant has helped the accused therein to release him and accepted the money for that purpose from the relatives of the accused.
- (c) That the applicant has harboured hardcore and habitual criminal namely Kalim Khan, who has escaped from the custody of police.
- (d) In connection with the FIR No. 48/2009 registered at Usmanpura Police Station, Aurangabad for the offence punishable under Section 3, 4 and 5 of Prevention of Immoral Trafficking Act, some women accused were arrested. The applicant had forceful sexual relation with the arrested accused.

All the charges have been proved against the applicant and the enquiry officer has recommended the punishment for the applicant by his letter dated 26.11.2013.

17. On careful perusal of the enquiry report and the observations made therein by the enquiry officer, I am shocked to see grave and serious misconducts of the applicant. It is important that all the charges proved against

the applicant are connected with the discharge of his duties. The applicant who was working as a police officer has not only helped the accused in connection with the serious crime by filing the report under Rule 169 of C.R.P.C. but also released one another accused in connection with the different crime by accepting the money from the relatives. It is shocking to note that the applicant being a police officer has given shelter to the hardcore and habitual criminal in his house who has escaped from the custody of the police. The last charge is a climax wherein the applicant has established forceful sexual relation with the arrested accused woman in connection with crime registered for the offence punishable under Section 3, 4 and 5 of the Prevention of Immoral Trafficking Act.

18. I do not find that the applicant has made out any special case for grant of compassionate pension to him in terms of Rule 101 of the Pension Rules of 1982. In a case **Anna Deoram Londhe deceased through his L.Rs. Smt. Indirabai w/o Anna Londhe Vs. State of Maharashtra (Writ Petition No. 2032 of 1995)** relied upon by the learned counsel for the applicant in paragraph No. 7 the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in the

facts of the said case considered that the petitioner (Government employee) was removed from service for the misconduct on account of his conviction under Section 325 of the Indian Penal Code for which he was sentenced rigorous imprisonment for four years and this conduct, however, is not connected with the discharge of his duties. In the instant case, however, all the proved charges against the applicant in the departmental enquiry are in connection with the discharge of his official duties.

19. I find no substance in the submissions made on behalf of applicant by his learned counsel that the lesser punishment of removal from service came to be imposed upon the applicant for the reason that he should get the benefit of compassionate pension. On the other hand, the removal from service is also major penalty and it is no way a lesser punishment. Removal from Service is not a disqualification for future employment under Government. However, dismissal from Service shall ordinarily be a disqualification for future employment under Government. On careful perusal of the impugned order dated 01.11.2021 passed by the respondent No.2, I find that it is well reasoned order by

correctly applying the provisions of Rule 101 of the Pension Rules of 1982. I find no substance in the Original Application. The Original Application is liable to be dismissed. Hence, the following order:-

ORDER

- (A) The Original Application is hereby dismissed.
- (B) In the circumstances, there shall be no order as to costs.
- (C) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 24.09.2024

SAS O.A. 278/2022 (S.B.) Compassionate Pension