

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.637/2023

DISTRICT:- BEED

Sheshrao s/o. Laxman Wagatkar,
Age - 34 years, Occ.: Police Constable,
B.No.1848, R/o. Near Rest house,
Police Colony, Ambejogai,
Tq. Ambejogai, Dist. Beed.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Additional Chief Secretary,
Home Department, Mantralaya,
Madam Cama Road, Mumbai- 32.

2. The Director General of Police (M.S.),
State Police Headquarter,
Shahid Bhagatsing Marg,
Kulaba, Mumbai - 400 005.

3. Special Inspector General of Police
Aurangabad, Range Aurangabad,
Vishrambagh Colony, Padampura Road,
Aurangabad - 431 005.

4. Superintendent of Police,
Barshi Road, Near Civil Hospital,
Beed - 431 122.

...RESPONDENTS

APPEARANCE :Shri O.D.Mane, Counsel for Applicant.
:Shri V.G.Pingle, Presenting Officer for the
respondent authorities.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

**Reserved on : 03-05-2024
Pronounced on : 04-07-2024**

O R D E R**[Per : Shri Vinay Kargaonkar, M (A)]**

1. Heard Shri O.D.Mane, learned Counsel for the Applicant and Shri V.G.Pingle, learned Presenting Officer for the respondent authorities.

Applicant was dismissed from service after conducting departmental enquiry. Applicant filed appeal before various appellate authorities i.e. Special I.G.P., Aurangabad Range, D.G.P. Maharashtra and Additional Chief Secretary, Home. All these appellate authorities rejected the appeals made by the applicant and the Applicant has, therefore, filed this O.A.

2. Pleadings of the Applicant and brief facts :-

[a] Applicant submitted that, he was recruited as Police Constable in Beed District on 27-07-2010 on compassionate ground. In the year 2014 a departmental enquiry was initiated against him on following charges:

“i) From 30.03.2012 to 22.11.2012 applicant remained unauthorizedly absent from the duty and left the headquarter without permission of the Superiors and the total period of absentee is 233 days.

ii) The applicant on the cause of sickness remained absent from the duty for the period from 22.02.2014 to 06.05.2014. Total days of absentee are 74 days.

iii) Applicant on the cause of sickness frequently remained unauthorizedly absent from duty for avoiding duty and the said fact is mentioned in the charges. Applicant was frequently punished for the default of absenteeism from service.”

After conducting departmental inquiry Superintendent of Police, Beed dismissed him from service.

[b] Applicant submitted that only once he remained absent for 233 days and again on second time he remained absent for 74 days. Superintendent of Police, Beed has sanctioned leave without pay for his absence of said 74 days. During the absentee period of 230 days, applicant was produced before Medical Board, Aurangabad and his sick period from 30-03-2012 to 04-04-2012 i.e. 5 days Medical leave was sanctioned by the Medical Board, Aurangabad. In all, applicant's absentee period of 79 days is validated by the concerned authority.

[c] Applicant further submitted that in the year 2012, he met with an accident and was seriously injured and sustained multiple injuries in that accident. He was

under treatment of SRTR Medical College and Hospital, Ambejogai and he was advised rest from 04-04-2012 to 25-07-2012 by the Resident Medical Officer SRTR, Medical College and Hospital, Ambejogai. After the rest period as was advised by the Resident Medical Officer, applicant was not completely recovered and hence he took rest up to 20-11-2012 and joined duty on 22-11-2012. Applicant submitted that he only took 120 days extra rest in violation of the advice of the Medical Officer. Applicant submitted that only the period of 120 days is controversial period in his unauthorized absence from duty.

[d] In the year 2014, applicant again met with an accident and was admitted in Ward No.13 of SRTR Medical College and Hospital, Ambejogai from 24-02-2014 to 07-05-2014 and was advised rest from 07-03-2014 to 11-04-2014. Since the applicant was not feeling perfectly well, he extended his rest period up to 06-05-2014. Total sick period of applicant was 74 days and this 74 days' period is granted as a leave without pay by the Superintendent of Police, Beed.

[e] Applicant further submitted that, he belongs to Police Department and he is a Police Constable and he is

below the rank of Head Constable under the Maharashtra Civil Services (Leave Rules) 1981 [Hereinafter referred to "Rules of 1981"]. Under Rule 77 of Rules of 1981, there is a provision of hospital leave. Said provisions of Exception is as under:

"77. Hospital leave,- (1) The authority competent to grant leave may grant hospital leave to-

(a)

(b)

Exception,- The hospital leave may also be granted on account of 'ill-health' to Government servants specified below whose duties expose them to risk of accidents or illness even though the illness or injury may not be directly due to risk incurred in the course of their official duties:-

i) Police officer including trainees of a rank not higher than that of 'Head Constable'.

ii) Government Servant of the prohibition and excise department other than clerical establishment.

iii) Forest sub-ordinate other than clerks in receipt of not exceeding Rs. 225/-."

As per the legal provision made in the Rule 77 of Maharashtra Civil Service (leave) Rules 1981 exception (i), applicant is entitled for the hospital leave.

[f] Applicant has further submitted that charge leveled against him that he is not interested in the service and is least worried about his job is not true. He had entered in the police service on compassionate ground. It is further submitted that, the applicant is entitled for the provision made under Rule 77 of Maharashtra Civil Service (Leave) Rules, 1981 and that hospital leave shall not be debited against the leave account and may be combined with any other kind of leave which may be admissible, provided, the total period of leave after such combination does not exceed 28 months.

[g] Applicant submitted that after getting punishment of dismissal from service, he made appeal to various appellate authorities i.e. from Special I.G.P. Range Aurangabad to Additional Chief Secretary, Home Department, Maharashtra but all authorities turned down his appeals. Hence, the applicant had filed review application to Additional Chief Secretary, Home Department

and in review also his request was turned down. Applicant has, therefore, prayed for allowing the O.A.

3. Submissions of the Respondent nos.1 to 4:-

[a] Respondent nos.1 to 4 have filed their affidavit in reply. Learned P.O. submitted that, respondent no.4 had initiated departmental enquiry against the applicant on 17-05-2014 with 4 charges. Charges against the applicant are as follows (paper book page 46 of O.A.):

“परिशिष्ट-२

अपचारी पोशि/१८४८ एस.एल.वागतकर, नेमणुक पोलीस मुख्यालय बीड, यांचे विरुद्धचे विभागीय चौकशी मध्ये त्यांचेवर ठेवावयाच्या दोषारोपाचे अभिकथनपत्र.

दोषारोपाचे अभिकथनपत्र :

अत्यंत, निष्काळजी व बेजबाबदापणाचे वर्तन की ज्यात तुम्ही अपचारी पोशि/१८४८ एस.एल. वागलकर, नेमणुक पोलीस मुख्यालय बीड.

१. ज्यात तुम्ही अपचारी पोशि/१८४८ एस.एल.वागतकर, पो.मु.बीड येथे नेमणुकीस असून तुम्ही दिनांक ३०.३.२०१२ आजारपणाचे कारणावरून सिक मध्ये जाऊन दिनांक २२.११.२०१२ रोजी कर्तव्यावर हजर होऊन, एकुण (२३३) दिवस आजारपणाचे कारणावरून कर्तव्यावरून अनाधिकृतरीत्या गैरहजर राहिला आहात.

२. तुम्ही प्रकृती खराब झाल्यावर सिकमेमो दिल्या नंतर शासकिय रुग्णालयात दाखल होऊन औषधोपचार केले नाही, बिनापरवानगी मुख्यालय सोडून अंबाजोगाई येथे निघून गेलात. व एकुण २३३ दिवस आजारी नसतांना आजारपणाचे खोटे कारणावरून गैरहजर राहिलात.

३. तुम्ही आजार पणाचे कारणावरून सिक गैरहजर राहिल्याने तुम्हास मेडीकल बोर्ड औरंगाबाद येथे वैद्यकिय तपासणी करणे करिता दिनांक

२६.९.२०१२ रोजी पाठविण्यांत आले असता तुमची वैद्यकिय तपासणी होऊन मेडीकल बोर्ड औरंगाबाद यांनी तुमची फक्त दिनांक ३०.३.१२ ते ४.४.२०१२ पावेतो (५) दिवसाची आजारपणाची रजा मंजूर करण्यास शिफारस केलेली आहे. यावरून तुम्ही आजारी नव्हता, व जाणून बुजून हेतुपुरस्कर आपल्या कर्तव्यावरून दिर्घ काळ गैरहजर राहिल्याचे दिसून येत आहे.

४. तुमची भरती तारीख दिनांक २७.७.२०१० असून तुमची आजपावेतो चार वर्ष सेवा झाली असून तुम्ही आपल्या कर्तव्यावरून ब-याच वेळा सिक, गैरहजर राहिल्याचे अभिलेखावरून दिसून येत आहे. तुम्हास तुमच्या कसुरा बाबत किरकोळ स्वरूपाच्या शिक्षा देण्यांत आल्या परंतु तुमच्या वर्तनात सुधारणा नाही. व या नंतरही तुम्ही दिनांक २२.२.१४ ते ६.५.२०१४ पावेतो (७४) दिवस गैरहजर राहिला आहात. तुम्ही (२३३) दिवस गैरहजर राहिल्या बाबत तुमची प्राथमीक चौकशी झालेली आहे हे माहित असतांनाही तुम्ही पुन्हा गैरहजर राहुन कसुर केला आहे. अशा प्रकारे तुम्ही तुमच्या आजपावेतो सेवाकाळात जवळ जवळ (४००) दिवस गैरहजर राहिला आहात.

अशा प्रकारे तुम्ही अत्यंत, निष्काळजी व बेजबाबदापणाचे वर्तन केले आहे.

(नविनचंद्र रेडडी)

पोलीस अधीक्षक बीड तथा

शिस्तभंग विषयक प्राधिकारी

प्रति,

पोशि/१८४८ एस.एल.वागतकर, नेमणुक पो.मु.बीड.

मार्फत- पो.नि.ओ.बी. आकोसकर, पो. नि. कक्ष बीड”

The Medical Board, Aurangabad recommended only 5 days' sick leave period out of 233 sick days. The charges leveled against the applicant for unauthorized absence from duty have been proved in the departmental enquiry.

[b] It is further submitted by the respondents that, Rule 77 of the Rules of 1981 provides exemptions but those

exemptions are for the Government servants who are performing official duties. Applicant has remained absent and for that reason, respondent no.2 had initiated preliminary enquiry. The Preliminary Enquiry Officer had recorded statement on 25-05-2013 in which the applicant stated that he met with an accident on 03-06-2012. At that time, applicant was on sick leave and he was not performing any official duty. In the present case, the applicant had met with an accident when he was not performing his official duty. Hence, provisions of Rule 77 and Exceptions therein of the Rules of 1981 will not be applicable to him.

[c] Learned P.O. further submitted that, appellate authorities as well as the revisional authority after considering all the material on record and after giving full and sufficient opportunity of being heard had rejected the applicant's appeal and review application as per rules and law. Applicant had submitted an application to respondent no.1 on 01-08-2022. Respondent no.1 had rejected the said application as per Rule 18 of the Mumbai Police (Punishment & Appeal) Rules, 1956 and under Rule 27(b) of the Bombay Police Act, 1951. Respondents have,

therefore, prayed for dismissal of the O.A. stating that there is no merit and substance in it.

4. Analysis of facts and conclusions:-

[a] We have heard the learned Counsel for the applicant as well as learned Chief Presenting Officer for respondent authorities. We have also gone through the documents placed on record by the parties. Learned counsel for the applicant has mainly argued that Applicant was not granted "Hospital Leave" under Rule 77 of Maharashtra Civil Services (Leave) Rules 1981. He argued that case of the applicant is fully covered under "Exception" of Rule 77. Rule 77 of Maharashtra Civil Services (Leave) Rules, 1981 is reproduced below:

"77. Hospital leave,- (1) The authority competent to grant leave may grant hospital leave to-

(a) Class IV Government servants; and

(b) such Class III Government servants whose duties involve the handling of dangerous machinery, explosive materials, poisonous drugs and the like, or the performance of hazardous tasks;

while under medical treatment in a hospital or otherwise, for illness or injury, if such illness or injury is directly due to risks incurred in the course of their official duties:-

Exception. The hospital leave may also be granted on account of health to Government servants specified below whose duties expose them to special risk of accident or illness even though the illness or injury may not be directly due to risk incurred in the course of their official duties:-

(i) Police officers, including trainees of a rank not higher than that of Head Constable:

(ii) Government servants of the Prohibition and Excise Department other than clerical establishments;

(iii) Forest Subordinates, other than clerks in receipt of pay not exceeding Rs. 225.

(2) Hospital leave shall be granted on the production of medical certificate from an Authorised Medical Attendant.

[b] As per the legal provision made in the Rule 77 of Maharashtra Civil Service (leave) Rules 1981 exception (i), applicant is entitled for the hospital leave. But in this case risk of accident or sickness to the applicant is not due to exposure to special risk of accident or illness related to duty of constable. In fact Applicant met with an accident on 03-06-2012 when he was absconding from duty since 30-03-2012. Therefore, "Exception" under Rule 77 of Maharashtra Civil Services (Leave) Rules, 1981 will not be applicable to the applicant.

[c] "Hospital Leave" has to be granted on the production of medical certificate from an Authorised

Medical Attendant. In this case, Applicant was referred to the Medical Board at Aurangabad and it did not grant him "Hospital Leave" and only 5 days sick leave was granted to the applicant.

[d] Applicant's appeal was rejected by Inspector General of Police, Aurangabad Range. Applicant's Review appeal was also rejected by the Director General of Police. Applicant had appealed to the Government after his appeals were rejected by Inspector General of Police and Director General of Police. Minister of State for Home (Rural) has rejected the appeal of the applicant. Relevant part of order of Minister of State for Home (Rural) is reproduced below (paper book page 36 of O.A.):

“उपरोक्त बाब पाहता तसेच अपिलार्थी सेवाकालावधीमध्ये सदर शिक्षेव्यतिरिक्त इतर ०३ सौम्य शिक्षा आहेत. अपिलार्थी यांनी सुनावणी दरम्यान उपस्थित केलेले मुद्दे व विभागाकडून दाखल केलेल्या कागदपत्रांची सूक्ष्मपणे तपासणी करून मी या निष्कर्षाप्रत आलो आहे की, अपिलार्थी यांना देण्यात आलेली शिक्षा ही कसुरीच्या मानाने कठोर आहे.”

The Minister has commented that the punishment imposed on the Applicant is disproportionately severe considering his misconduct. Before being dismissed from service, the Applicant had only received three minor punishments.

[e] Police Constables often face challenging circumstances both professionally and personally. Without prejudging the specifics of this case, it is important to consider factors such as personal issues, health problems, or family emergencies that may have contributed to the constable's absence. It is plausible that the Constable may have faced circumstances beyond his control, leading to an unintended prolongation of absence.

[f] Dismissal from service is a severe punitive measure that not only affects the Constable's livelihood but also tarnishes his career permanently. Instead of ending the Constable's career abruptly, a lesser punishment could focus on rehabilitation and corrective measures. This could include counselling, motivating or a structured return-to-work program designed to address the root causes of absenteeism and prevent recurrence.

[g] It is crucial to assess the Constable's overall service record and contributions to the Department before making a final decision of dismissal from service. If the Constable has otherwise been diligent and dedicated in his duties over the years, a lesser punishment would recognize his past service while addressing the current issue

effectively. Applicant had received only 3 minor punishments before being dismissed from service.

[h] Dismissal for absenteeism, while justifiable in extreme cases, can have demoralizing effects on the entire police force. A judicious approach, tailored to the circumstances of each case, demonstrates fairness and compassion in dealing with disciplinary matters, thereby maintaining morale and cohesion within the department. It is essential to ensure that the disciplinary actions taken are in line with legal regulations and departmental policies. While discipline is necessary to uphold standards, it should also be proportionate and reflective of the specific circumstances involved.

[i] In conclusion, we strongly believe that reconsidering the dismissal of PC Laxman Wagatkar is warranted, and we propose that a lesser punishment be considered in light of the factors discussed above. This approach not only upholds principles of fairness and rehabilitation but also acknowledges the complexities of human circumstances that can contribute to lapses in attendance.

5. While we understand the seriousness of absenteeism and its impact on departmental operations, we suggest reconsideration of punishment of dismissal and propose a lesser punishment i.e. any punishment other than dismissal, removal or compulsory retirement. Hence following order:

ORDER

[i] Order of Punishment passed by the respondent No.4 dated 24/03/2015 is quashed and set aside.

[ii] Respondents shall reconsider the punishment of dismissal and inflict any lesser punishment i.e. any punishment other than dismissal, removal or compulsory retirement.

[iii] O.A. stands allowed in the aforesaid terms, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 04-07-2024.