

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.422 OF 2023

DISTRICT : Kolhapur

SUB : reinstatement

Shri. Pravin Ashok Waidande,)
Age 47 Years, Occu: Medically retire)
Police Constable, R/o A/p Kothali,)
Taluka Shirol, Dist. Kolhapur.).....Applicants

V/s

1. The State of Maharashtra, Through the)
Addl. Chief Secretary, Home Department,)
Mantralaya, Mumbai - 400 032.)
2. The Superintendent of Police, Kolhapur)
Kasba Bawda Road, Dist Kolhapur-)
426006.)
3. The Special Inspector General of Police,)
The Revali, Police Head Quarter Road,)
Tarbai Park, Kolhapur 426 003.)
4. The Dean, B. J. Medical College, Sasoon)
Hospital, (Refree Medical Board), Pune.).....Respondents.

Shri R. M. Kolge, learned Advocate for the Applicant.

Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman.
Hon'ble Shri Debashish Chakrabarty,
Member (A)

Reserved on : 04.02.2025

Pronounced on : 06.02.2025

Per : Hon'ble Shri M. A. Lovekar, Vice-Chairman.

JUDGEMENT

Heard Shri R. M.Kolge, learned Advocate for the Applicant and Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The Applicant was working as Police Constable. He met with an accident on 20.10.2015. He sustained grievous injuries including fracture of right leg. He was taking treatment. He was discharged on 01.11.2015. He received a letter from the department to appear before the Medical Board. The Medical Board examined him on 20.10.2016. The Respondent No.2 passed an order (Exhibit 'B') retiring the Applicant on medical ground. Eventually, the Applicant recovered sufficiently to resume duty. Therefore, on 19.04.2022, he made a representation to the Respondent No.2 (Exhibit 'D') to let him resume duty. This representation was rejected by the Respondent No.2 and this rejection was communicated by letter dated 16.06.2022 (Exhibit 'E'). The Applicant had also requested for fresh examination by the Medical Board. By letter dated 23.08.2022 request of the Applicant to supply him copy of Certificate issued by the Medical Board was also rejected. The Applicant thereafter made a detailed representation to Special Director General of Police, Kolhapur on 12.12.2022. In this representation, he stated –

“माझे वय ४६ वर्षांचे असून मी कोणत्याही प्रकारे अपंग अथवा माझे पायास झालेली दुखापत ही सध्या पूर्णतः सक्षम असून माझी तब्येत पूर्णतः बरी आहे. याकरिता मी. मा.पोलिस अधीक्षक, कोल्हापूर यांचेकडे मला पुन्हा सेवेत रुजू करून घेणेकरिता अर्ज सादर केलेला होता परंतू, तो अर्ज त्यांनी नाकारलेला आहे, परंतू, माझी तब्येत पूर्णतः बरी असल्याने मला सेवेत रुजू करून घेणे आवश्यक असताना माझा अर्ज नाकारणे न्यायोचित नाही. यास्तव, माझी आपणांस नम्र विनंती कि, माझी वैद्यकीय अपिल मंडळाकडून तपासणी होणे आवश्यक व न्यायोचित ठरेल.”

He further stated –

“शासन परिपत्रक क्र.पीएमआर-०३११/प्र.क्र/३४७/पोल-५अ मंत्रालय मुंबई ४०० ०३२ दिनांक ०८.०८.२०११ नुसार पोलिस दलात सेवेत असताना अपंगत्व आलेल्या कर्मचा-यास रुग्णता अपात्र अथवा रुग्णता सेवानिवृत्त केले जाते, त्यामुळे ही कृती अपंग कायदा १९९५ च्या कलम

४७ चे उल्लंघन करणारी ठरत असल्याने सेवेत असताना अपंगत्व आलेल्या कर्मचा-याच्या प्रकरणी अपंग कायदा (समान संधी, हक्काचे संरक्षण व पूर्ण सहभाग) कायदा १९९५ च्या कलम ४७ मधील तरतूदी विचारात घेवून त्यानुसार योग्य ती कारवाई करण्यात यावी.’’

By order dated 16.01.2023 (Exhibit 'H'), the Respondent No.2 rejected representation dated 12.12.2022.

3. With covering letter dated 10.02.2023, the Applicant received copy of Certificate issued by the Medical Board on 23.09.2016. In this Certificate, the Medical Board had recorded opinion that the Applicant had become permanently disabled (to discharge his duties). Hence, this Original Application.

4. Stand of the Respondents is as follows:-

On the basis of Medical Certificate dated 23.09.2016, the Applicant was retired on medical ground on 20.10.2016. Against the order dated 20.10.2016, the Applicant filed appeal on 19.04.2022 under Rule 74(1)(a)(b) of Maharashtra Civil Services (Pension) Rules, 1982. This appeal was clearly barred by limitation. The appeal came to be dismissed. This fact was communicated to the Applicant by application dated 21.07.2022. The Applicant sought from the Respondents copy of Medical Certificate dated 23.09.2016 whereby the Board had concluded that he was 'unfit for duty'. Again, by letter dated 16.01.2023, the Respondent No.2 communicated to the Applicant that his request for letting him to resume duty was rejected. The copy of Certificate issued by the Medical Board was then supplied to the Applicant after lapse of 5 ½ years from the date on which it was issued by the Medical Board declaring him to be 'unfit for duty'. The Applicant made a representation that he be permitted to resume duty. This request was barred by limitation and hence, it was rightly rejected. The Medical Board concluded that the Applicant had become totally and permanently incapacitated to perform his duty.

Further stand of the Respondents is as follows :-

“ The Applicant has referred to the statutory provisions of Rule 30 Maharashtra Civil Service (Pension) Rules, 1982. However, looking at the details of the Applicant's total unpaid period and suspension period during his service in the police force, his total service from recruitment dated 20/08/2004 to their sick retirement dated 20/10/2016 is 12 years and 2 months, but the non-commissioned service is 3 years, 7 months and 21 days less. The Applicant has completed a total & 8 years 6 month and 9 days of professional service. Government of Maharashtra finance dept., Govt. decision [no.सेनिवे/१००९/प्र.क्र.३३/सेवा](#) , दिनांक ३०/१०/२००९.

15.1. As per paragraph no.5, no pension is payable to the employees, who retire before completion of ten years of professional service. However, there is a provision that gratuity will be payable in proportion to his specialized service. Therefore, as service of the Applicant was not completed, the pension is not payable to him. The service gratuity amount was payable to the Applicant. Accordingly, proposal has been submitted regarding the approval of the service gratuity amount to the Applicant.”

5. It is apparent that the Applicant has taken contrary stands. On the one hand, he claims to have regained fitness to resume duty and on the other hand, he is claiming benefits of ‘Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. I have quoted relevant portion of his representation dated 12.12.2022. According to the Applicant, an opportunity deserves to be given to him to be examined again by the Medical Board (So that his fitness to resume duty can be assessed). Stand to the contrary taken by the Applicant is based on Section 47 of ‘Act 1995’. This provision reads as under :-

“47. (1) No establishment shall dispense with, or reduce in rank, an employee who acquired a disability during his service :

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits,

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

Aforequoted Section 47 is replicated in the Act of 2016 as Section 20.

6. The Applicant has relied on the following observations in **Kunal Singh V/s Union of India, 2003 AIR (SC) 1623 :-**

"An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

Aforequoted observations show that Section 47 of the 'Act of 1995' casts an obligation on the employer to suitably accommodate an employee who has acquired disability during the course of his service. Considering this aspect of the matter, the Applicant cannot be non-suited on the ground of limitation. In the facts and circumstances of the case, the Original Application deserves to be allowed by directing the Respondents to arrange for fresh medical examination of the Applicant by the Medical Board. Thereafter, depending upon assessment of fitness or otherwise of the Applicant to resume duty, the Respondents may pass appropriate order. Hence, the order :-

ORDER

The Original Application is allowed in the following terms –

The Respondents are directed to arrange for fresh medical examination of the Applicant by the concerned Medical Board. The date of fresh medical examination by the Medical Board shall be communicated to the Applicant seven days in advance so that he can remain present before the Medical Board. Thereafter, depending upon the assessment of the Medical Board in respect of fitness or otherwise of the Applicant to resume duty, appropriate orders shall be passed. This entire procedure shall be completed within three months from the date of communication of this order.

7. No order as to costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(M. A. Lovekar)
Vice-Chairman

Place: Mumbai
Date : 06.02.2025
Dictation taken by: V. S. Mane
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