

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 939 OF 2017

DISTRICT : BEED

Dattatraya s/o Shankarrao Bargaje,)
 Age. 48 years, Occu. : Service,)
 As Lab Technician at Sub-District Hospital,)
 Mukhed, Dist. Nanded. R/o Anandvan,)
 Infrant India, Near Bindusara Dam,)
 N.H. 211, At Pali, Dist. Beed.).. **APPLICANT**

V E R S U S

1. The Secretary,)
 Public Health Department, Mantralaya,)
 Mumbai - 32.)
2. The Director of Health Services,)
 Maharashtra State,)
 Government Dental College & Hospital)
 Building, Saint Georges Hospital)
 Compound, Mumbai – 1.)
3. The Joint Director of Health Services,)
 Directorate of Health (Malaria & Falaria)),)
 Maharashtra State, Pune – 1.)
4. The Deputy Director of Health Services,))
 Mahatma Gandhi Chowk, Latur,)
 District - Latur.)
5. The Medical Superintendent,)
 Sub-District Hospital, Mukhed,)
 Tq. Mukhed, Dist. Nanded.) **..RESPONDENTS**

Appearance : Shri S.D. Joshi, learned counsel for the
 applicant.

: Smt. Deepali S. Deshpande, learned
 Presenting Officer for the respondent
 authorities.

CORAM : **Hon'ble Shri Justice V.K. Jadhav,**
Vice Chariman
AND
Hon'ble Shri Vinay Kargaonkar,
Member (A)

RESERVED ON : **21.03.2025**
PRONOUNCED ON : **22.04.2025**

ORDER

(Per : Justice V.K. Jadhav, Vice Chairman)

1. Shri S.D. Joshi, learned counsel for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent authorities.
2. The matter is finally heard with consent of both the sides at the admission stage.
3. By filing this Original Application the applicant is seeking quashing and setting aside the impugned communication dated 30.10.2017, thereby rejecting the appeal preferred by the applicant challenging the order of his dismissal dated 14.03.2013 issued by the respondent no. 04, thereby imposing punishment of removal/dismissal with retrospective effect w.e.f. 14.07.2010 as being arbitrary, irrational, highly disproportionate to the nature of charge leveled against the applicant. The applicant is also seeking direction to the

respondents to reinstate him on the post of Laboratory Technician and take an appropriate decision in respect of absence period of the applicant in terms of the provisions of the Maharashtra Civil Services (Leave) Rules, 1981.

4. Brief facts giving rise to this Original Application are as under:-

(A) On 12.10.1998, the applicant came to be appointed on Class-III post as Laboratory Technician (Annexure A-2). Thereafter, the applicant came to be transferred at various places.

(B) The applicant had worked at District Hospital, Beed from 2003 to 2010 and while discharging duties as Laboratory Technician, he came to be transferred to Sub-District Hospital, Mukhed in the general transfers.

(C) The applicant contends that as a matter of fact, while discharging the duties at Beed, the applicant was undergoing treatment on account of his illness and, therefore, he has orally requested the authorities to retain him at Beed. However, his request was not considered. The applicant was left with no option than to obey the order of transfer and join at Sub-District Hospital, Mukhed. The applicant was undergoing treatment since November, 2009 at Ambejogai and on account of the same he was required to proceed on leave.

(D) Pursuant to the order of transfer, the applicant has joined at Mukhed on 05.05.2010. The applicant has

submitted an application on 06.05.2010 to the office of respondent No.5 for permission to leave the headquarters on 08.05.2010 by granting casual leave. The applicant had expressed his wish to avail casual leaves on 08.05.2010 and 10.05.2010 including 09.05.2010, which happens to be public holiday and accordingly he proceeded on leave on 08.05.2010 in order to shift his family to Mukhed. However, when the applicant had been to Beed, he fell ill and, therefore, he has decided to extend the leave. Accordingly, he has sent a telegram to the office of respondent no. 05 on 10.05.2010.

(E) The respondent no. 04, however, by communication dated 10.06.2011 served a show cause notice on the applicant regarding his continuous absence from duties and he was called upon to explain as to why a disciplinary action should not be initiated against him.

(F) Under communication dated 19.03.2012, the applicant came to be served with a charge-sheet with solitary charge in respect of his absence w.e.f. 14.07.2010. The charge sheet was served along with statement of imputation of misconduct, the statement of witnesses and the list of documents on the basis of which the charges were to be sustained. Copy of the charge sheet dated 19.03.2012 is marked as Annexure A-8.

(G) The applicant has denied the charge of absence by submitting his reply to the show cause notice, however, departmental enquiry against the applicant was initiated by appointing the Enquiry Officer. The applicant has

caused his appearance before the Enquiry Officer and has categorically denied the allegation of willful absence leveled against him. The applicant has also submitted communication dated 22.08.2012 to the office of respondent no. 04 along with the medical certificate dated 20.08.2012.

(H) On 28.07.2012, the enquiry was concluded. The Enquiry Officer has held that the solitary charge of absence is proved under his report dated 20.11.2012 (Annexure: A-10).

(I) The said enquiry report was served on the applicant on 10.12.2012 with a direction to submit his final statement of defence. The applicant has accordingly submitted his defence statement on 12.12.2012, however, he do not have the copy of the same.

(J) By order dated 14.03.2013, the applicant came to be inflicted with the punishment of removal/dismissal from service w.e.f. 14.07.2010. The applicant got perturbed and further due to want of knowledge submitted representations dated 01.02.2016, 01.04.2016 to the office of respondent no. 04. Copy of the representation dated 01.02.2016 along with appeal dated 01.04.2016 are marked as Annexure A-12 collectively. The respondent no. 03 has rejected the appeal under his communication dated 30.10.2017 and confirmed the order of removal/dismissal dated 14.03.2013 passed by the disciplinary authority. Hence, this Original Application.

5. The learned counsel for the applicant submits that the applicant was in service from 1998 to 2010 without any incidence of longstanding leave. On account of his ill-health, the applicant was required to proceed on leave. This incidence of absence is a solitary incidence during the span of his 12 years' service. It is not the case that, the applicant was termed to be habitual absentee and, therefore, his services are required to be brought to an end.

6. The learned counsel for the applicant submits that considering the nature of delinquency alleged in the charge sheet and the punishment imposed on the applicant, the respondents have imposed very high and disproportionate punishment. The punishment of stoppage of increment or bringing his pay down in the time scale of pay would have been the commensurate punishment. However, for the solitary incidence of long absence, the applicant has been imposed with the capital punishment with retrospective effect from the date of his absence, which is unjust, improper, arbitrary and bad in law.

7. The learned counsel for the applicant submits that the Enquiry Officer has not followed the procedure laid down in Rule 8 of the Maharashtra Civil Services (Discipline & Appeal)

Rules, 1979 inasmuch as he has failed to assess the evidence available before him. As a matter of fact, there was no sufficient evidence before the Enquiry Officer to record the findings of guilt. Further, the applicant was not given adequate opportunity of presenting his case. Thus, there was a blatant violation of the principles of natural justice.

8. The learned counsel for the applicant submits that the manner in which the enquiry was conducted is also highly objectionable. The statement of witnesses, their cross-examination, opportunity to applicant to bring his witnesses, all these essential elements does not appear in the report of enquiry. It appears from the enquiry report that the Enquiry Officer himself was convinced of the fact that, because the applicant remained absent for 2 years, there is no necessity to record anything except to record the finding of his guilt against the solitary charge. Thus, on all these grounds, the report of enquiry and the findings recorded are perverse and the same needs to be interfered.

9. The learned counsel for the applicant submits that the appellate authority has also concurred with the impugned order dated 14.03.2013 and has not given any reasons for dismissing the appeal preferred by the applicant. The decision

on appeal does not reflect the application of mind to the contentions raised by the applicant as regards the proportionality of the punishment, ailment of the applicant etc. The learned counsel submits that this Original Application deserves to be allowed.

10. The learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Krushnakant B. Parmar Vs. Union of India & Ors., 2012 (3) SCC 178.**

11. The learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent nos. 01 to 05 submits that though the applicant has sent a telegram to the office of respondent no. 05 mentioning therein that he is unable to attend the office due to his illness, it was incumbent upon the applicant in terms of clause 41(1) of the Maharashtra Civil Services (Leave) Rules, 1981 to submit medical certificate in Form-4 in Appendix-V given by an authorized Medical Attendant or registered Medical practitioner defining therein as clearly as possible the nature and probable duration of the illness.

12. The learned Presenting Officer submits that the applicant was appointed in Health Services on the post of Laboratory Technician and it was his duty to assist to the Govt. Doctor for confirming diagnosis of the patient by testing Urine & Blood samples and also providing blood & urine examination report, which is essential for surgical procedures. The Laboratory Technician of Government Hospitals is required to provide health services to the people approaching for treatment at Govt. Hospitals. Thus, continuous and unauthorized absence of applicant is a misconduct adversely affecting the health services. Therefore, the respondent No. 5 has issued various communications to applicant for joining the duties, but the applicant had not obeyed the order. In the past also, the applicant remained absent from his duties on medical ground while working at Beed. Considering all these facts, the respondent No. 4 has issued a show cause notice dated 10.06.2016 to the applicant.

13. The learned Presenting Officer submits that the applicant neither submitted his medical leave in terms of rule 41 of the M.C.S. (Leave) Rules, 1981 nor answered the show cause notice issued to him. The respondent no. 04 has decided to initiate a departmental enquiry against the applicant by

issuing a charge-sheet for his continuous unauthorized absence w.e.f. 14.07.2010. The respondent authority has appointed the Enquiry Officer to conduct the enquiry initiated against the applicant, who submitted his final enquiry report on 20.11.2015. The enquiry officer in his enquiry report has concluded that the charge framed against the applicant is proved and thus the applicant can be terminated from the Government service. In view of the recommendations of the Enquiry Officer, the respondent no. 04 has terminated the services of the applicant w.e.f. 14.07.2010 vide order dated 14.03.2013. The applicant has preferred an appeal against the order passed by respondent no. 04 dated 14.03.2013 after a gap of 03 years when the appeal was to be filed within a period of 45 days. However, the Department has provided him an opportunity of being heard. Thus, the respondent no. 03 vide his order dated 30.10.2017 has decided the appeal filed by the applicant and upheld the order passed by the respondent no. 04. The learned P.O. submits that, there is no substance in this Original Application and the same is liable to be dismissed.

14. The learned Presenting Officer has placed reliance on the following cases:-

(i) State of Punjab Vs. Dr. P.L. Singla, Civil Appeal No. 4969/2008 (arising out of SLP (C) No. 13011/2006), dated 31.07.2008.

(ii) Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu, Civil Appeal No. 1941/2024 (arising out of SLP (C) No. 15530/2014, dated 10.02.2014.

(iii) Government of India & Anr. Vs. George Philip, Appeal (Civil) No. 4998/2006 (arising out of SLP (C) No. 2023/2006), dated 16.11.2006.

15. We do not find any procedural faults in the instant case. There is a charge about unauthorized absence on duty against the applicant since 14.07.2010 and the applicant said to have been flouted the provisions of rule 3 of the M.C.S. (Conduct) Rules, 1979. The applicant has failed to maintain devotion to duty by remaining absent on duty un-authorizedly, which is unbecoming on part of a Government servant.

16. It is the part of record that the applicant remained absent from 14.07.2010 continuously unauthorizedly till he was served with the charge sheet in the year 2012 i.e. almost for 02 years. It is also part of official record about his unauthorized absence on duty and the applicant has also not denied the

same. Thus, the departmental enquiry was entirely based on the official record and the oral evidence hardly matters.

17. Though, the applicant has sent the telegrams about his ill-health, however, it is also the part of record that the respondent nos. 04 and 05 have repeatedly instructed to the applicant to join the duties and many opportunities have been provided to the applicant to join the duties. The Enquiry Officer has specifically marked non-cooperation of the applicant in completion of the departmental enquiry. The Enquiry Officer has specifically recorded in his enquiry report that despite repeated letters issued to the applicant by respondent nos. 04 and 05 i.e. on 20.08.2010, 10.06.2011, 23.06.2011, 28.07.2011 and 19.03.2012 (page nos. 17 to 20 of the enquiry papers), the applicant did not join his duties even 2½ years after the absenteeism commenced from 14.07.2010. The Enquiry Officer has observed and recorded the findings that the applicant is not interested in continuing with the Government service.

18. There may not be a finding recorded by the Enquiry Officer in a specific language that the absenteeism of the applicant on duty is willful. However, there are specific observations and finding, which is certainly in the nature that the absenteeism of the applicant for 2½ years is willful.

19. On the basis of one medical certificate produced by the applicant belatedly, but not along with his telegram or by other mode of communication under rule 41(1) of M.C.S. (Leave) Rules, 1981, it is specific case of the applicant that from 14.07.2010 to 20.08.2012 he was under medical treatment of DR. N.U. Pansambal at Beed. We have carefully perused the said certificate issued by Dr. Pansambal (page 39 of paper book). It is dated 20.08.2012. We could not understand the contents of the said certificate. Even we are unable to find out as to what disease the applicant was suffering from. It is also not clear from the said certificate as to whether the applicant was treated as a 'Indoor Patient' or 'Outdoor Patient'. Even the learned counsel for the applicant is unable to read and explain the disease from which the applicant was suffering from during the said period. It is neither possible for the learned counsel to explain it nor he has received any instructions in this regard from the applicant. We are unable to pursue ourselves that for such a long period, the applicant remained under treatment of a private practitioner. There must be various documents pertaining to investigation, the medicines prescribed from time to time and the period of treatment as Indoor Patient or Outdoor Patient as the case may be.

20. We have also gone carefully through the statement recorded by the applicant during the enquiry on 12.07.2012. The applicant has simply denied the charge and explained that he was suffering from illness and sent the telegrams time to time to the respondents conveying his ill-health. It is also stated by the applicant in his statement that he is undergoing the treatment at Beed in the Hospital and after he would get well, he will join the duties. The applicant has explained that during his absence, he has sent 05 telegrams. The applicant has never placed either before the Department or before the Enquiry Officer the medical papers and the medical certificates about his ongoing treatment and in view of the same he is unable to attend the duties.

21. The learned counsel for the applicant has vehemently submitted that the punishment imposed on the applicant is disproportionate to the charge leveled against the applicant, which is merely a case of absenteeism and without recording any direct findings by the Enquiry Officer about willful absence of the applicant on duty. However, in the backdrop of the discussion in the foregoing paragraphs, particularly about the total non-cooperation of the applicant during the enquiry and for want of medical papers and

certificates explaining the nature of disease and the treatment thereof, we are not inclined to accept the submissions made by the learned counsel on behalf of the applicant. We have explained in the foregoing paragraphs that the Enquiry Officer by using some other words recorded the findings to the effect that the absenteeism on duty of the applicant is willful and the applicant is not interested in continuing with the Government service. It is also the part of record that this is not the first incidence, but even on the earlier occasion when the applicant was serving at Latur, he remained absent from the duties, and therefore, he was sent for his medical examination.

22. In the case of **Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu, Civil Appeal No. 1941/2024 (arising out of SLP (C) No. 15530/2013)** dated 10.02.2014 (supra) relied upon by the learned Presenting Officer, the Hon'ble Supreme court has seemingly referred to the judgment in the case of **State of Punjab Vs. Dr. P.L. Singla, (2008) 8 SCC 469**, wherein the Hon'ble Supreme Court while dealing with unauthorized absence has stated that,

“Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorized absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to

treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.”

and again while dealing with the concept of punishment in the case of **State of Punjab Vs. Dr. P.L. Singla** (supra) it is stated that,

“Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorized absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.”.

Thus, by referring to the aforesaid judgment in the case of **State of Punjab Vs. Dr. P.L. Singla** (supra) in paragraph nos. 30 and 32 in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu** (supra) has made the following observations:-

“30. After so stating the two-Judge Bench proceeded to say that one of the tests to be applied while dealing with the question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the major, magnitude and degree of misconduct and all other relevant circumstances after excluding irrelevant matters before imposing punishment. It is apt to note here that in the said case the respondent had remained unauthorisedly absent from duty for six months and admitted his guilt and explained the reasons for his absence by stating that he neither had any intention nor desire to disobey the order of superior authority or violated any of the rules or regulations but the reason was purely personal and beyond his control. Regard being had to the obtaining factual matrix, the Court interfered with the punishment on the ground of

proportionality. The facts in the present case are quite different. As has been seen from the analysis made by the High Court, it has given emphasis on past misconduct of absence and first time desertion and thereafter proceeded to apply the doctrine of proportionality. The aforesaid approach is obviously incorrect. It is telltale that the respondent had remained absent for a considerable length of time. He had exhibited adamant attitude in not responding to the communications from the employer while he was unauthorisedly absent. As it appears, he has chosen his way, possibly nurturing the idea that he can remain absent for any length of time, apply for grant of leave at any time and also knock at the doors of the court at his own will. Learned counsel for the respondent has endeavoured hard to impress upon us that he had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of "habitual absenteeism" is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate.

32. We respectfully reiterate the said feeling and re-state with the hope that employees in any organization should adhere to discipline for not only achieving personal excellence but for collective good of an organization. When we say this, we may not be understood to have stated that the employers should be harsh to impose grave punishment on any misconduct. An amiable atmosphere in an organization develops the work culture and the employer and the employees are expected to remember the same as a precious value for systemic development."

23. In the instant case, the applicant was serving on the post of Laboratory Technician. Thus, it was his duty to assist to the Govt. Doctors for confirming diagnosis of the patient by testing Urine & Blood samples and also providing blood & urine

examination reports, which are essential for surgical procedures. Thus, continuous unauthorized absence of the applicant in the given set of facts, without explaining the same, is a misconduct adversely affecting the health services. During the course of hearing though we have given an opportunity to the learned counsel for the applicant to explain the cause of ill-health of the applicant and place before us the medical papers, if any, however, the applicant has neither instructed his learned counsel nor placed before us anything in that regard. It is also the part of record that even after lapse of 03 years' period, the applicant has approached the departmental appellate authority against the impugned order of dismissal passed by the disciplinary authority. Though the appellate authority has sympathetically condoned the delay caused in filing the departmental appeal, but confirmed the order of dismissal passed by the disciplinary authority. We find no reason to interfere in the said order. There is no substance in this Original Application and it is liable to be dismissed. Hence, the following order:-

ORDER

- (i) The Original Application No. 939/2017 is hereby dismissed.

- (ii) In the circumstances, there shall be no order as to costs.
- (iii) The Original Application is accordingly disposed of.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 22.04.2025

ARJ O.A. NO. 939 OF 2017 VKJ DB DISMISSAL