

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

**ORIGINAL APPLICATION NO. 811 OF 2019**

DIST. : DHULE

**Bhushan s/o Dilip Kagane,** )  
 Age 33 years, Occu. Nil, )  
 R/o Dondaicha, Taluka Sindkheda, )  
 Dist. Dhule. ).. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
 Through the Secretary, )  
 Home Department, Mantralaya, )  
 Mumbai – 32. )
- 2) **The Spcial Inspector General of)**  
 Police, State Reserve Police Force,) )  
 Nagpur. )
- 3) **The Instructor,** )  
 State Reserve Police Force, )  
 Division No. 6, Dhule. ).. **RESPONDENTS**

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 APPEARANCE :- Shri Deepak D. choudhari, Advocate for  
 the applicant.

: Shri Mahesh B. Bharaswadkar, learned  
 Chief Presenting Officer for the  
 respondent authorities.

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**CORAM** : **Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**  
**and**  
**Hon'ble Shri Vinay Kargaonkar,**  
**Member (A)**

**RESERVED ON** : **07.08.2024**  
**PRONOUNCED ON** : **14.08.2024**  
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**ORDER**

*[Per :- Vinay Kargaonkar, Member (A)]*

1. Heard Shri Deepak D. Choudhari, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for respondent authorities.

2. The applicant was employed as a Mess Servant in the State Reserve Police Force (S.R.P.F.) Group-6 and was removed from service by an order dated 12.07.2018, issued by respondent no. 03, due to his frequent unauthorized absences from duty. Consequently, the applicant has filed the present Original Application seeking the quashing of the order of removal from service.

3. **Pleadings and arguments by the applicant:**

(i) The applicant was appointed as Mess Servant on 08.09.2008 in the office of respondent no. 03. While the applicant was on duty at Handya Kundyia (Forest Chopada) he took weekly leave on 06.04.2016 and went to his village. At that time his mother was ill and because of financial crises he could not pay the hospital expenses of his mother. Due to financial crises there was quarrel between him and his wife and therefore the applicant's mental condition was also

affected. Due this *bona fide* reason the applicant could not attend the duty.

(ii) Respondent no. 03 i.e. the Commandant of S.R.P.F. Group-6 initiated a Departmental Enquiry against the applicant. The applicant could not attend the D.E. but he filed his say to the notice issued by respondent no. 03. The charge of unauthorized absence from duty for the period from 07.04.2016 to 06.08.2016 (153 days) was framed against the applicant. The respondent no. 03 by its order dated 12.07.2018 removed the applicant from service. Respondent no. 02 by its order dated 25.10.2018 rejected the appeal filed by the applicant.

(iii) The order dated 12.07.2018 and 25.10.2018 passed by respondent nos. 03 and 02 respectively are against the basic principles of natural justice, equity and good conscience. Both the impugned orders passed by respondent nos. 03 and 02 are illegal, arbitrary, highhanded, irrational and illogical.

(iv) The both the orders dated 12.07.2018 and 25.10.2018 passed by respondent no. 03 and 02 respectively are as a result of non-application of mind and hence are liable to be quashed and set aside. The memorandum of charge on the basis of which the D.E. proceeding was initiated against the applicant and which ultimately made basis for imposing major

punishment of removal from service was itself lacking any necessary and material details and hence the same could not have been made the basis for imposing the punishment of removal from service.

(v) The departmental enquiry proceedings against the applicant have been conducted by the Enquiry Officer in total violation and disregard of the procedure prescribed by the service rules, more particularly the Discipline & Appeal Rules applicable and the basic principles of natural justice. The findings recorded by the authorities were totally based on mere surmises and conjectures and the conclusions drawn by him on the basis of those findings were untenable in law and therefore that could not have been the basis for imposing major punishment of removal from service.

4. **Pleadings and arguments by the Respondents:**

(i) In the departmental enquiry Ex. Mess Servant was given every opportunity of hearing and the principles of natural justice are duly followed. During the D.E. the applicant never mentioned the difficulties that his mother was ill and he was facing financial crises. Hence the points raised by the applicant are clearly after thought and should not be considered. The applicant had tendency of remaining absent from duty frequently. The document showing the frequent

absence of the applicant from duty is also attached with the affidavit in reply at page 22, which reads thus:-

*“सदर प्रकरणी थोडक्यात विवरण*

1. नांव - भोजन सेवक/ भूषण दिलीप कांगणे
  2. सेवेचा कालावधी - 09 वर्ष 03 महिने
  3. भरती दिनांक - 24.09.2008
  4. सेवानिवृत्ती दिनांक - 31.10.2047
  5. शिक्षा - मोठी -निरंक, लहान-2 (1 वर्ष वेतन वाढ बंद व 2 वर्ष वेतनवाढ बंद)
  6. बक्षिस - 3
  7. सध्याचे बेतन - 5790+1300
  8. A- दिनांक 01.03.2015 ते 08.04.2015 = 39 दिवस गैरहजर
  - B- दिनांक 04.07.2015 ते 07.12.2015 = 157 दिवस गैरहजर 1 वर्ष वेतनवाढ बंद व कालावधी विनावेतन
  - C- दिनांक 08.12.2015 ते 09.02.2016 = 63 दिवस गैरहजर 2 वर्ष वेतनवाढ बंद व कालावधी विनावेतन,
  - D- दिनांक 06.04.2016 ते 06.09.2016 = 153 दिवस गैरहजर.
  - E- दिनांक 29.10.2016 ते 08.11.2016 = 11 दिवस गैरहजर
  - F- दिनांक 01.08.2017 ते 05.08.2017 = 04 दिवस गैरहजर.
  - G- दिनांक 20.12.2017 ते 09.05.2018 = 141 दिवस गैरहजर
  - H- दिनांक 10.05.2018 ते 21.05.2018 = 12 दिवस गैरहजर
  - I- दिनांक 05.06.2018 ते 22.06.2018 = 18 दिवस गैरहजर
- असे एकूण 9 वर्षांच्या सेवाकालावधी एकूण 598 दिवस गैरहजर राहिले आहेत. त्यांना वारंवार संधी देवून सुध्दा त्यांच्यामध्ये कुठल्याही प्रकारची सुधारणा झाल्याचे दिसून येत नाही.
9. दिनांक 3.1.2016, 9.1.2016, 16.01.2016 कर्तव्यावर हजर होण्यासाठी नोटीस देण्यात आल्या.
  10. कारणे दाखवा नोटीस दिनांक 5.2.2018 रोजी बजावण्यात आली, अपचारी यांनी त्याचे उत्तर दिले नाही.

11. *शिक्षा कायम करण्यापूर्वी दिनांक 22.05.2018 तसेच 03.07.2018 रोजी समक्ष बोलविण्यात आले. परंतु दोन्ही वेळी सदर कर्मचारी हजर राहिले नाहीत म्हणून सदर कर्मचारी यांना दिनांक 12.07.2018 रोजी प्रस्तावित सेवेतून कमी हो शिक्षा कायम करण्यात आली.”*

(ii) The basic rule of D.E. and the principles of natural justice have been adhered in toto while conducting the D.E. and pronouncing the order of removal from service. There is no merit and substance in the Original Application and it deserves to be dismissed with costs.

5. **Reasoning and Conclusions:**

(i) The applicant was unauthorizedly absent on nine separate occasions, totaling 598 days, over the course of his nine years of service.

(ii) The records submitted indicate that the applicant received multiple notices instructing him to return to duty during his periods of unauthorized absence. Additionally, the applicant was summoned to attend the orderly room on 03/07/2018 to present his case. However, he failed to appear at the orderly room and did not submit any written response to the show cause notice regarding his removal from service.

(iii) The primary duty of any employee, especially in disciplined forces such as the police or military, is to maintain regular attendance and fulfill their responsibilities. The Applicant's repeated absences from duty represent a serious violation of this fundamental

obligation. Absenteeism, particularly when it becomes habitual, disrupts the smooth functioning of the organization and imposes undue strain on other members of the unit who must cover the absentee's duties. In this case, the Applicant's consistent failure to attend to his responsibilities, despite being previously warned and punished, demonstrates a disregard for his obligations and the discipline expected within the State Reserve Police Force.

(iv) The record shows that the Applicant was previously punished twice for remaining absent from duty. These prior disciplinary actions were intended to correct the Applicant's behavior and serve as a warning that further infractions would lead to more severe consequences. Despite these measures, the Applicant continued to remain absent without authorization. This persistent behavior indicates that the previous punishments were ineffective in reforming the Applicant's conduct and that a more stringent response was necessary.

(v) The Commandant's decision to remove the Applicant from service is in line with the relevant legal framework governing disciplinary actions within the service. The Applicant's frequent absenteeism, despite prior punishments, constitutes such conduct, justifying the Commandant's decision to impose the ultimate penalty of removal.

(vi) Maintaining discipline within any service, especially those with critical responsibilities such as the State Reserve Police Force, is paramount. Allowing an individual

to repeatedly violate attendance requirements without facing appropriate consequences could set a dangerous precedent, encouraging similar behavior among other personnel. The dismissal of the Applicant sends a clear message about the importance of adherence to duty and the consequences of failing to meet basic service obligations. It reinforces the standards expected within the unit and helps maintain overall discipline and morale.

(vii) When considering whether removal from service is a disproportionate response to recurring misconduct, particularly in cases of unauthorized absence, the Supreme Court of India has consistently upheld the principle that the penalty must be commensurate with the gravity of the offense, especially when previous disciplinary actions have failed to correct the behavior. Below are some relevant judgments that support the Commandant's decision to dismiss the Applicant:

**1. State of Uttar Pradesh v. Ashok Kumar Singh [(1996) 1 SCC 302]**

The Supreme Court in this judgment reiterated that in cases of habitual absenteeism, the dismissal from service is a justified and proportionate response. The Apex Court noted, "Discipline is the essence of the functioning of the police force, and unauthorized absence, particularly when repeated, strikes at the root of discipline," upholding the dismissal of an employee who was repeatedly absent without leave.



**2. Union of India and Others v. Ghulam Mohd. Bhat [(2005) 13 SCC 228]**

The Supreme Court held that the dismissal of an employee for repeated unauthorized absence from duty was appropriate, particularly when previous punishments had been ineffective in curbing the misconduct. The Court emphasized that the proportionality of punishment should be viewed in light of the employee's consistent disregard for duty, stating, "The punishment of dismissal cannot be said to be disproportionate to the gravity of misconduct in cases of habitual absenteeism."

6. These judgments collectively support the principle that removal from service is a proportionate response to recurring unauthorized absence, particularly when previous disciplinary actions have failed to correct the misconduct. The Supreme Court has consistently upheld such decisions as necessary to maintain the discipline and efficiency of the service, reinforcing the validity of the Commandant's decision in the present case.

7. In considering whether the punishment of removal was appropriate, it is important to assess the proportionality of the action in relation to the Applicant's conduct. The Applicant's repeated absenteeism, even after being punished twice, shows a pattern of behavior that is incompatible with the discipline

required in the State Reserve Police Force. Lesser punishments had already been tried and had failed to correct the behavior. Therefore, the Commandant's decision to remove the Applicant from service was not only justified but also necessary to uphold the integrity of the service.

8. The dismissal of the Applicant by the Commandant was a justified and lawful action, taken in response to his persistent absenteeism, which undermined the discipline and efficiency of the State Reserve Police Force. The decision was made following due process and in accordance with the relevant rules and regulations. The punishment was proportional to the misconduct, especially in light of the Applicant's previous infractions and the failure of lesser punishments to correct his behavior. We therefore uphold the Respondent's decision as being both fair and necessary to maintain discipline within the State Reserve Police Force.

9. Hence following order:-

### **ORDER**

The Original Application is dismissed, however, without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 14.08.2024**

ARJ O.A. NO. 811 OF 2019 DISMISSAL