

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 882 OF 2017

DISTRICT : RAIGAD

Shri Devadatta Chandrakant Patil,)
Room No. 202, 2nd floor,)
Nandadeep C.H.S, Anand Nagar, Uran,)
Tal : Uran, Dist-Raigad.)...**Applicant**

Versus

1. The Home Minister,)
State of Maharashtra, Mantralaya,)
Madam Cama Road, Mumbai – 32.)
2. Secretary,)
Urban Development Department,)
Government of Maharashtra,)
Mantralaya, Mumbai 400 032.)
3. The Director/Commissioner,)
Directorate Municipal Administration)
3rd floor, Shaskiya Parivahan Seva)
Imarat, [Govt. R.T.O Bldg],)
Sir. Pochakhanawala Road, Worli,)
Mumbai 400 025.)
4. The Regional Director/Commissioner)
The Directorate Municipal Administration)
Konkan Division, Shasakiya Bldg,)
Konkan Bhavan, Navi Mumbai, Thane.)
5. The Collector,)
Raigad Collector Office, Alibaug,)
Tal-Alibaug, Dist-Raigad.)
6. The Chief Officer,)
Uran Municipal Council, Uran,)
Tal – Uran, Dist-Raigad 400 702.)
7. The Chief Officer,)
Tal – Nagarpanchayat, Tal-Tala,)
Dist-Raigad.)...**Respondents**

Shri D.C Patil, applicant in person.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

Shri I.A Shaikh, learned advocate for Respondent no. 6.

CORAM : Shri Justice A.H Joshi (Chairman)

RESERVED ON : 08.01.2018

PRONOUNCED ON : 15.01.2018

ORDER

1. Heard Shri D.C Patil, applicant in person, Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents 1 to 5, Shri I.A Shaikh, learned advocate for Respondent no. 6, and none for the Respondent No. 7.

2. This Tribunal has indicated to the applicant on earlier dates of hearing that many of the sentences contained in the Original Application are hard to follow, being grammatically incomplete as well as being unintelligible.

3. Communication to and from the applicant is also difficult because he is hard at hearing and unintelligible in communication. Ultimately, the applicant has chosen to submit written arguments, which are in Marathi as well as in English. Those are taken on record.

4. Perused the Original Application and written submissions. With some efforts, this Tribunal has grasped applicant's prayer and those are classified as follows:-

- (i) He wants permission for prosecuting various fellow employees or superiors.
- (ii) He wants damage/compensation from respondents.
- (iii) He wants benefits of career progression scheme.
- (iv) He wants his notice of voluntary retirement to be acted upon in an expressed manner or by deeming provision.

5. Applicant's demands noted in foregoing paragraph, are dealt with in following paras:-

6. Permission for prosecuting various fellow employees or superiors:-

- (a) The permission for prosecution of fellow employees for acts done in their official acts is to be sought from the superior competent authority.
- (b) It is not shown that applicant had requested to superiors for permission to lodge prosecution. The applications were complete in all respects and that those applications are rejected or are kept pending without any reason or cause.
- (c) The averments contained in the Original Application in relation to the grounds and reasons for permission for prosecuting are either vague or inchoate.
- (d) Hence present O.A for said relief is without cause of action. It is in this scenario present O.A for the prayer for prosecution based on inchoate pleadings cannot be entertained.
- (e) Moreover, permission to file prosecution is a matter of original criminal jurisdiction of Hon'ble High Court.
- (f) Hence, present O.A for relief of mandamus for grant of permission for prosecution not being a service matter, and rather being a matter of original of criminal jurisdiction, does not deserve any indulgence from this Tribunal.

7. Claim for damages / compensation:-

- (a) Claim for damages / compensation is always guided by the principles of “ubijus ibi remedium” and “damnum sine injuria, injuria sine damnum”.
- (b) A “civil” wrong resulting in to damage or injury is to be pleaded and then proved. Applicant’s present Original Application is short of essential ingredients of sustaining the claim of compensation based on any actionable wrong.
- (c) Hence claim for compensation is not capable of adjudication and is, therefore, beyond cognizance and adjudication. Hence, it cannot be entertained.
- (d) It is clarified that by this judgment and order applicant’s claim for damages is not adjudicated by this Tribunal for want of proper pleadings and vagueness and any claim based on due pleadings shall remain open for proper adjudication in appropriate proceedings if initiated after due and proper legal advice and within parameters as laid by law generally and in specific in relation to said claim.

8. Benefits of career progression scheme:-

- (a) Applicant’s claim for A.C.P is not pleaded in unambiguous terms. The eligibility criteria for getting ACP and their fulfilment by the applicant are not pleaded. It is also not pleaded that the applicant fulfills all criteria & eligibility and this fulfilment is brought to the notice of competent authority.
- (b) Applicant’s representation for grant of A.C.P and competent authority’s express act of rejection are not shown.
- (c) Applicant is praying the relief in the nature of writ of mandamus. An application for writ of mandamus lies only upon showing:-
 - (i) Legal right and corresponding legal duty/obligation;

- (ii) Deemed for performance of legal obligation;
 - (iii) Failure on the part of respondents to discharge or to perform their part of the Legal obligation or refusal thereto.
- (d) Applicant has failed to show compliance on his part as regards essentials as to eligibility and refusal, either expressly or impliedly.
- (e) Applicant's claim for A.C.P is thus kept open for adjudication initially before competent authority and in the event of rejection or inaction before this Tribunal.
9. Notice of voluntary retirement to be acted upon in an expressed manner or by deeming provision.
- (a) In so far as applicant's claim for direction in relation to voluntary retirement is concerned, case proceeds on brief admitted facts.
 - (b) Applicant's offer for voluntary retirement was conditional.
 - (c) A conditional offer for voluntary retirement does not fit into the rules prescribing the scheme for voluntary retirement, and hence it is not accepted by the Government.
 - (d) Provisions for deemed acceptance of notice of voluntary retirement will not apply to a proposal for voluntary retirement which is conditional or incomplete.
 - (e) Hence relief whatsoever cannot be granted to the applicant in relation to his claim for voluntary retirement.
 - (f) Applicant shall be free to serve fresh notice if he is so advised and it is hoped that it shall be dealt with in accordance with law.
10. Original Application is disposed as follows:-

- (a) Applicant's claim referred to in foregoing prara No. 4 and listed at item number (1) & (2) are left undecided and shall be open for fresh adjudication.
- (b) Applicant claim for grant of A.C.P is kept open.
- (c) Applicant's prayer as regards voluntary retirement is rejected.
- (d) Parties are directed to bear own costs.

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 15.01.2018
Dictation taken by : A.K. Nair.