

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO. 171 OF 2013

DISTRICT : PUNE

Shri Bhausahab Bansi Patole,)
Occ. Nil, Ex. Cook with attached to SRPF)
Group V, Daund, Dist. Pune-1)...**Applicant**

VERSUS

1. The Commandant,)
SRPF Group V, Daund,)
Dist. Pune-1.)

2. The Special Inspector General of Police)
SRPF, Pune.)**Respondents**

Shri A.V. Bandiwadekar, the learned Advocate for the Applicant.

Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik (Member) (J)

DATE : 13.07.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

24

J U D G E M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicant challenging the order dated 24.11.2011 removing the Applicant from service and the order dated 29.02.2012 passed by the Respondent No.2 confirming the order dated 24.11.2011 in appeal.

3. Learned Counsel for the Applicant argued that the Applicant was working in the year 2010 as a 'Cook' in 'B' company of State Reserve Police Force (SRPF), Group V, Daund, Pune. The platoon of SRPF, where the Applicant was working, was sent to Kolhapur when the Applicant developed some skin problems and he, therefore, applied for casual leave for two days from 12.09.2010 to 14.02.2010. The Applicant had developed further medical problems due to which he could not join duties and he informed the Respondent No.1 accordingly by Registered post, enclosing Medical Certificates. The Respondent No.1 issued notices to the Applicant on 30.09.2010, 10.10.2010 and 21.10.2010 asking the Applicant to resume duties. The Applicant was suffering from diabetes and facial paralysis. He, therefore applied for financial help of Rs. 20,000/- from the Police Welfare Fund on 24.10.2010. A D.E. was started against the Applicant on 25.05.2011. An Enquiry Officer was appointed,

who submitted his report on 06.09.2011 holding that charges against the Applicant were proved. A Show Cause Notice was issued to the Applicant on 27.09.2011 asking him to Show Cause why he should not be removed from service. The Applicant filed detailed reply to the Show Cause Notice on 23.10.2011. However the Respondent No.1 removed him from service by impugned order dated 24.11.2011. The Appeal against the said order was dismissed by the Respondent No.2 by order dated. 29.02.2012.

4. Learned Counsel for the Applicant argued that the Applicant was seriously ill and he had informed the Respondent No.1 by R.P.A.D. enclosing Medical Certificate^s. *h* The Applicant was not in a position to resume duties. In the Departmental Enquiry, not a single witness was examined. The contents of documents relied upon in the D.E. were not proved. The Applicant admitted having received the documents, but that could not have been interpreted to mean that he had admitted the contents. The E.O. recorded statement of the Applicant and held charges against him were proved. Learned Counsel for the Applicant argued that the procedure for holding a D.E. under the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was not followed and the findings of E.O. are perverse as there was no evidence at all.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant gave an application for two

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days casual leave on 12.09.2010 and then did not join duties despite various notices issued to him on 30.09.2010, 11.10.2010 and 14.10.2010. The Applicant was repeatedly asked to resume duties but he failed to do so. A memorandum dated 25.05.2011 was issued to him and a Department Enquiry (D.E.) under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was started. Shri S.B.Panse (Retired Principal District & Sessions Judge) was appointed as Enquiry Officer, who submitted his report on 06.09.2011 holding the charges against the Applicant were proved. A Show Cause Notice was given on 27.09.2011 to the Applicant after considering his reply dated 23.10.2011, the order removing him from service was passed. Learned P.O. argued that the procedure for holding D.E. under the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was scrupulously followed. There is no scope of judicial interference in the present case. The Appellate Authority has also given opportunity of personal hearing to the Applicant.

6. The Report of the E.O. dated 06.09.2011 in para 4 states:

“४. पाटोळे यांना दि. ३०.०८.२०११ रोजी दोषारोप वाचून दाखविला जाणनातीट कापदपत्रे मिळालेकाय? हे विचारले त्यांना दोषारोप समजावून सांगितले. त्यांनी दोषारोप मान्य असल्याचे सांगितले (नि.क्र.६).

The statement of the Applicant recorded by the Enquiry Officer on 30.08.2011 is on Exhibit G. (page 37 of the Paper Book). He was asked three questions, viz. whether he had received memorandum dated 25.05.2011 and the documents

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mentioned therein. He replied in the affirmative that the documents were received in two installments. The second question was whether he had understood the charges against him. The reply was in the affirmative. The last question was whether the charges are admitted by him. The answer is that he admitted that he was absent (from duty). This has been treated admission by the E.O. in para 4 of his report. It is difficult to hold that the conclusion of Enquiry Officer that the statement by the Applicant that he was absent from duty amounts to admission of charge that he was absent from duty unauthorizedly by him. A government Servant may be absent from duty and that cannot be said to be in violation of discipline in every case. A Govt. Servant may remain absent when leave is sanctioned for the period of absence. Or he may remain absent due to illness or some other compelling reasons without leave being sanctioned. Depending on the circumstances, the competent authority may decide to regularize the period of absence or treat the absence as violative of disciplinary rules. However, the Applicant did not say that he admitted the charges against him. He merely stated that he admitted that he was absent. Whether his absence amounted to indiscipline was required to be proved in the D.E. The conclusion of the E.O. in para 4 of the report dated 06.09.2011 is clearly perverse, as the Applicant had not admitted the Charge against him. Same is the case with para no. 6 of the Enquiry Report. In para 7 of the E.O. report, it is mentioned that:

24

“ ७. उपचारी पाटोळे यांनी जरी दोषारोप मान्य केला असला तरी, कागदपत्राच्या आधारे तो शाबित झाला की नही हे बघितले गेले. पाटोळे यांनी परिशिष्ट क्र.४ यावरती त्यामोबत दाखल केलेली कागदपत्रे मान्य असल्याचे लिहून दिले. त्यामुळे त्या कागदपत्रांना नि.क्र. ७ ते २५ अश्या निशाणी देण्यात आल्या त्या कागदपत्रात नि.क्र.१८ ला हजेरीपत्रकाचा उतारा आहे. त्यावरून हे स्पष्ट होते की, पाटोळे हे दि. १३ व १४ नोव्हेंबर रोजी किरकोळ रजेवर होते. आणि त्यानंतर ते हजर झाले नाहीत. पुढाव्यानंतर पाटोळे यांचा जबाब घेण्यात आला. त्या जबाबात त्यांनी जोडपत्र क्र. ४ मधील कागदपत्रे १ ते १९ ही मान्य असल्याचे सांगितले. ते असेही मान्य करतात की, दि. १३ व १४.०९.२०१० ते किरकोळ रजेवर गेले होते. रजा उपभोगून शिरस्त्याप्रमाणे १४.०९.२०१० रोजी त्यांनी कामावर हजर राहण्यास हवे होते. ते त्या दिवशी कामावर हजर झाले नाहीत आणि आजपर्यंत कामावर हजर झाले नाहीत. याचाच अर्थ प्रशासनाने पाटोळे यांच्यावर ठेवलेला दोषारोप सिध्द होतो.

The Applicant in his statement dated 30.08.2011 (Exhibit 'G' on pg 37 of the Paper Book) has merely admitted that he had received documents.

There is another statement of the Applicant recorded by the Enquiry Officer on 30.08.2011 (Page 38 & 39 of the Paper Book). This has following questions & answer.

“ प्रश्न:- तुम्ही जोडपत्र क्र. ४ च्या मधील दस्तावेज १ ते १९ मान्य केले आहेत. या विषयी तुमास काय सांगायचे आहे.

उत्तर: मला ते मान्या आहेत.

This is a leading question stating that you had admitted the documents in schedule 4 from 1 to 19. If he had already admitted the contents of these documents, there was no reason to ask this question again. The Applicant had not

admitted contents of these documents but only receipt of these document in नि. क्र. ६.

In any case, the Applicant repeatedly stated that he remained absent from duty due to illness. In the documents 'admitted' by the Applicant are Medical Certificates from Sr. No. 13 to 19. The fact that these documents are included as part of evidence against the Respondent No.1, is sufficient to raise a presumption that Respondent No.1 had no doubt about their authenticity. Medical Certificate dated 01.10.10 of Dr. Mario De Souza is at Sr. No. 13 of the Schedule 4 (जोड़पत्र ४) to the D.E. It shows that the Applicant was suffering from left side facial Paralysis. (Exhibit 'C' at p.18 of the Paper Book). Certificate from Dr. A.B. Jadhav (Sr. No. 14) dated 05.10.2010 is at p.19 of the Paper Book. This certificate confirms that the Applicant was suffering from Left sided Facial Paralysis. At Sr. No. 15 is the Medical Certificate dated 12.09.10 of Dr. V.K. Dongle (Pg. 20 of the Paper Book) It is stated that the Applicant was suffering from non-healing wound on Left Leg. The report of Royal Pathology Laboratory dated 17.09.2010 (Sr. No. 16) is at page 21 of the Paper Book. Similarly other Medical Reports at Sr. No. 17, 18 & 19 of Schedule 4 to the charge sheet are at pages 22 to 26 of the Paper Book, From these reports, it is clear that the Applicant was suffering from Left side facial paralysis and also had some non-healing wound, which could have been due to diabetes. The Respondent No. 1 had admitted these documents, so admission by the Applicant, confirmed his case that he was absence from duty as he was sick. It is seen



that the Applicant in his statement to E.O. on 30.08.2010 has reported that he may be permitted to engage a 'defence assistant'. There is no mention of this fact in the report of the Enquiry Officer. In para 9 of the report, the E.O. has accepted the claim of the Applicant that he was sick, but concluded that he did not ask for Medical Leave and so charge is proved. We find that the conclusion of the E.O. that the Applicant had admitted charge against himself is contrary to evidence. Similarly, his conclusion that charge against the Applicant was proved is not based on evidence on record. On the contrary, the Applicant repeated stated that he remained absent from duty due to illness, which was supported by numerous Medical Certificate. Considering the fact that the Applicant was a class IV employees, he could have been advised to apply for leave and asked to appear before the Medical Board. However that was not done by the Respondents and a D.E. was started against the Applicant. We agree with the contention of the Learned Counsel for the Applicant that the conclusion in the Enquiry report are perverse and on the basis of this report the decision of the Respondent No. 1 to remove the Applicant from service cannot be sustained.

7. On perusal of the order of the appellate authority, it is seen that in his appeal petition dated 07.11.2012 the Applicant has raised these issues discussed above. However, the Respondent No.2 in his order dated 29.02.2012, has not considered any of the issues raised by the present Applicant.

It is mentioned that in the order that he has tendency to remain absent from duty and he likes to work in NDA. This was (that he likes to work in NDA) was never mentioned in the Charge-Sheet against the Applicant. The Respondent No.2 has passed the order dated 29.02.2012 on the basis of facts which were not mentioned in the Charge-Sheet issued to the Applicant in the D.E. This order is also not sustainable.

8. In the light of above discussion, the order dated 24.11.2011 imposing punishment of removal from service on the Applicant is quashed and set aside. Order dated 29.02.2012 passed by the Respondent No.2 is appeal is also quashed and set aside. The Respondents will take the Applicant back in service within two weeks from the date of this order on his producing a fitness certificate. Period of absence from duty from date of order of removal from service the joining of the Applicant will be treated as duty period. However, period of earlier absence may be regularized by the Respondent as per law. This O.A. is allowed in the above terms with no order as to costs.

Sd/-
(R.B. MALIK)
MEMBER (J)
13.07.2016

Sd/-
(RAJIV AGARWAL)
(VICE-CHAIRMAN)
13.07.2016