

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.489 OF 2018

(Subject : Service Benefits)

Smt. Ujwala Mohan Gurkhe)
Aged 63 years, Retired as Deputy Collector/)
Special Land Acquisition Officer,)
Konkan Railway-1, Ratnagiri,)
R/o.701, Raigad I.I.T.,)
Mumbai Staff C.H.S. Society,)
Hiranandani Complex, Powai,)
Mumbai 76.)... Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Revenue Department,)
Having office at Mantralaya,)
Mumbai 400 032.)
2 The Divisional Commissioner,)
Konkan Division,)
Having office at Konkan Bhawan, 1st floor,)
Navi Mumbai 400 614.)... Respondents

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

Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMEBR(A)

DATE : 09.05.2019

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J U D G M E N T

1. In the present Original Application, the Applicant has challenged the impugned order dated 31.05.2016, whereby her absence period from 13.12.2009 to 16.04.2010 for 135 days was treated as Earned Leave and further period from 27.04.2010 to 29.04.2010 for 3 days was treated as Commuted Leave.

2. Briefly stated facts giving rise to this Original Application are as follows :-

The Applicant joined Government service on the post of Clerk-cum-typist in 1977, and thereafter, she was promoted to the post of Tahsildar. In May 2009, she was working as Tahsildar (Chitnis, Collector office, Mumbai). By order dated 29.05.2009, she along with other 14 officials was promoted to the post of Deputy Collector. The Applicant was allotted Konkan Division. In pursuance of her promotion, she was relieved from the post of Tahsildar on 08.06.2009. The Applicant contends that thereafter she did not receive any communication or order of her posting in view of promotion order dated 29.05.2009. On 28.07.2009, she made representation to the Collector/ District Election Officer, Bandra, Mumbai, requesting him to temporarily post her at Mumbai for Election work, but in vain. Thereafter, she made representation to the Divisional Commissioner, Konkan Division on 01.12.2009 stating that she did not receive any posting order on promotion. In the same representation, she further put-forth her family difficulties and requested for posting in Mumbai. However, it was also not responded. Thereafter, suddenly she received communication dated 28.04.2010 on 30.04.2010 issued by the Divisional Commissioner, Konkan Division, informing her that by order dated 16.06.2009, she has been already posted on the post of Special Land

Acquisition Officer, Konkan Railway, Collector office, Ratnagiri. The Applicant contends that till that date, she had no knowledge that she was posted at Ratnagiri. As such, according to her, she had no knowledge of the posting order dated 16.06.2009. On 28.04.2010, she received telephonic message from the office of Divisional Commissioner, Konkan Division that she has been posted at Ratnagiri and in pursuance of it, she went to Ratnagiri and joined on 30.04.2010. Thereafter, she made a representation dated 01.07.2010 to treat the absence period as compulsory waiting period with Pay and Allowances. However, by order dated 13.04.2011, only period from 08.06.2009 to 15.06.2009 was treated as compulsory waiting period and it was accordingly regularized as per Rule 9(14)(f) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 [hereinafter referred to as 'Rules 1981']. Thereafter, she made representation on 10.08.2011 to treat her absence from 08.06.2009 to 29.04.2010 as the duty period. However, Respondent No.1 by order dated 13.05.2016 granted 180 days Earned Leave for the period from 16.06.2009 to 12.12.2009. In so far as remaining period is concerned, the Respondent No.1 by order dated 31.05.2016 treated absence period from 13.12.2009 to 26.04.2010 for 135 days as Earned Leave and further absence from 27.04.2010 to 29.04.2010 for 3 days treated as Commuted Leave.

3. It is on this background, the Applicant has challenged the order dated 31.05.2016 treating her absence period as the leave period, instead of treating it as compulsory waiting period. She contends that she had no knowledge of the posting order dated 16.06.2009, whereby she was posted at Ratnagiri, as there was no service of the said order upon her at any point of time.

W. S. S.

4 Respondents resisted the Original Application by filing the affidavit-in-reply (Page Nos. 52 to 63 of the Paper Book) *inter alia* denying that the Applicant was not aware about her posting order dated 16.06.2009 at Ratnagiri. In this behalf, Respondents contend that order dated 15.06.2009 was given to the Applicant and she was to join the post of Special Land Acquisition Officer, Konkan Railwad, Ratnagiri. But she was not interested in joining at Ratnagiri, and therefore, purposely prolonged the joining on one or other pretext. Admittedly, the Applicant joined at Ratnagiri on 24.04.2010. As regard absence of knowledge to the Applicant about posting at Ratnagiri, the Respondents contend that she was well aware about her posting at Ratnagiri and had put forth family difficulties requesting the Government for posting at Mumbai. She stands retired on 30.06.2013. Thereafter as per her own application dated 02.08.2014, absence period of 316 days was regularized by granting Earned Leave as well as Commuted Leave. With these pleadings, the Respondents prayed to dismiss the Original Application.

5. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

6. Question posed for determination in the present matter is whether the Applicant is entitled to treat the absence period from 13.12.2009 to 29.04.2010 as compulsory waiting period, which has been treated as leave period by impugned order dated 31.05.2016. Undisputedly, at the time of promotion, the Applicant was working as Additional Chitnis in the cadre of Tahsildar in the Office of Collector, Mumbai. By order dated 29.05.2009, she along with 14 officials was promoted to the post of Deputy Collector and she was allotted Konkan Division (copy of

promotion order is at Page 25 of the P.B.). It is also equally true that, in view of her promotion, she was relieved from the post of Additional Chitnis on 05.06.2009. Applicant has also produced a copy of letter dated 28.07.2009 addressed to the Collector / District Collector, Office wherein she had requested for posting in Mumbai. She has also placed on record, the representation dated 01.12.2009 addressed to the Deputy Commissioner, wherein she stated that she did not receive posting order and at the same time, put forth some difficulties such as illness of her husband and education of children, who were learning in 12th standard and on this ground, she requested for posting in Mumbai.

7. Applicant's foremost contention is that she had no knowledge of posting order dated 16.06.2009 issued by the Divisional Commissioner, Konkan Division, whereby she was posted as Special Land Acquisition Officer, Konkan Railway, Ratnagiri. No doubt as per information collected under Right to Information Act, the Respondents have no record to show the service of posting order dated 16.06.2009 on the Applicant. The Applicant has produced letter dated 07.03.2015 (Page 40 of P.B.) which she got under Right to Information Act, wherein she was informed that the Office of Divisional Commissioner have no record of service of posting order dated 16.06.2009 upon the Applicant.

8. Shri A.V. Bandiwadekar, learned Advocate for the Applicant was much harping upon the absence of record of service of order dated 16.06.2009 upon the Applicant and adverting to his aspect, he urged that as there is no service of the order dated 16.06.2009, the Applicant cannot be blamed for non-joining of the promotional post at Ratnagiri.

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9. Par contra, Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents sought to contend that the Applicant being responsible Government servant ought to have submitted joining report in the Office of Divisional Commissioner, Konkan Division immediately after she was relieved from the post of Additional Chitnis on 08.06.2009 and she was aware of her posting order.

10. She further urged that in the facts and circumstances of the case, the Applicant cannot be said ignorant about her posting at Ratnagiri. She has pointed out that her representations dated 28.06.2009 and 01.12.2009 show that she was not willing to join at Ratnagiri and was insisting for posting in Mumbai citing family difficulties. She has further pointed out that it is on the application of the Applicant dated 02.08.2014, her total absence of 316 days was regularized by treating it partly as Earned Leave and Commuted Leave.

11. True, Respondents could not produce the documents to show service of posting order dated 16.06.2009 on the Applicant. However, it should not be forgotten that the Applicant was promoted to the post of Deputy Collector, having relieved from the post of Tahsildar on 08.06.2009, as the responsible Government servant, she was required to submit joining report to the office of the Divisional Commissioner, Konkan Division, Navi Mumbai immediately. However, she preferred to remain silent for a long period. Initially, she made representation to Collector / District Election Officer, Bandra, Mumbai on 17.07.2009 requesting to accommodate her by giving posting on any post related to Election in Mumbai. Thereafter, she made representation on 01.12.2009 to the Divisional Commissioner citing difficulties

viz. relating to husband's health and education of children and requested to consider her difficulties sympathetically for posting in Mumbai.

12. True, in representation dated 01.12.2009, she stated that she has not received posting order. At the same time, it goes to show that she was not willing to go out of Mumbai and was insisting for any suitable post in Mumbai only. The Applicant being responsible Government service on promotion to the post of Deputy Collector was duty bound to report for joining in the office of Divisional Commissioner, Konkan Division for further orders of posting, once she was relieved on 08.06.2009. However, she preferred not to do so citing absence of service of posting order.

13. In my considered opinion, such stand taken by the Applicant cannot be accepted. As stated earlier by promotion order dated 29.05.2009, 15 Officials were promoted to the post of Deputy Collector and 7 out of them was given at Konkan Division. Respondents specifically contended that except the Applicant, all other officials have joined their promotional posts. The perusal of posting order dated 16.06.2009 reveals that the copies of posting orders were sent to various concerned Departments as well as concerned Officials. Thus, it was made public. It is totally unbelievable that the Applicant was unaware of her place of posting. It is nothing but pretext and nothing else. The conduct of the Applicant is against human conduct of a prudent man. The Applicant was also required to report to the Office of Divisional Commissioner, Konkan Division immediately after she was relieved to seek further directions or orders for posting to show her *bonafides*. But she failed to

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do so which again fortify the inference that she was not willing to go to out of Mumbai.

14. However, she made first representation addressed to the Collector, Mumbai, instead of making immediate representation to Divisional Commissioner, Konkan Division. This also rather shows that she was not willing to go out of Mumbai. Thereafter, she made representation dated 01.12.2009 addressed to Divisional Commissioner, Konkan Division, wherein also she has insisted for posting in Mumbai citing family difficulties. As such, for the period of six months, she did not make any application to the Divisional Commissioner, Konkan Division to know her place of posting. As such, having regard to the conduct of the Applicant as the whole, it is manifest that she was not at all willing to go out of Mumbai, and therefore, remained silent for six months and now, she is taking advantage of absence of formal service of posting order dated 16.06.2009. Furthermore, the Applicant herself by her application dated 02.08.2014 had requested the Divisional Commissioner to regularize her total absence period of 316 days treating it Medical Leave / Commuted Leave of 176 days and Earned Leave of 140 days. In pursuance of her own application the absence period was regularized as a leave period. Therefore, now she is estopped from challenging the impugned order dated 31.05.2016 whereby her absence period from 13.12.2009 to 16.04.2009 was treated as Earned Leave and further absence period from 27.04.2010 to 29.04.2010 has been treated as Commuted Leave.

15. Now, turning to 'Rules 1981', it would be apposite to refer to Rule 19(14)(f) of 'Rules 1981' which provides the situation where the period can be treated as compulsory waiting period, which is as follows :-

"9. Definition. – Unless the context otherwise requires, the terms defined in this Chapter are used in the various sets of the Maharashtra Civil Services Rules, in the sense here explained :-

(14) "Duty" duty includes -

(f) the period for which a Government servant is required to wait compulsorily until receipt of his posting order in the cases mentioned below :-

(i) whose orders of transfer are held in abeyance, cancelled or modified while in transit, or

(ii) who, on return from leave or deputation or on abolition of the post held by him, has to await receipt of posting orders, or

(iii) who, on arrival at the headquarters of the post of which he is posted is not in a position to take charge of the post from the Government servant to be relieved."

16. In the present case, none of the situation contemplated in the above Rules exists. On the contrary, in the facts and circumstances, it is obvious that the Applicant herself was not willing to go out of Mumbai, and therefore, she did not take any immediate steps to join the place of posting and now taking the benefit of absence of formal service and posting order. In such situation, I am not inclined to exercise discretion in favour of the Applicant to treat her absence period as compulsory waiting period.

17. The totality of above discussion leads me to sum-up that the Original Application is devoid of merit and deserves to be dismissed. Hence, the following order.

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ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

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(A.P. KURHEKAR)
MEMBER(J)

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