

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.293 OF 2010**

**DISTRICT : THANE**

Shri Sudhir Sakharam Galinde )  
Retired as Chief Administrative Officer, )  
Public Health Department, )  
R/o. II/5, Mary's Adobe (C.H.S.) )  
Kolbad Road, Thane (W), Pin 400 601. ) **.. Applicant**

**Versus**

1) The State of Maharashtra, )  
Through Addl. Chief Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai 400 032. )  
2) The Principal Secretary, )  
Finance Department, Mantralaya, )  
Mumbai 400 032. )  
3) The Director of Health Services, )  
Public Health Department, )  
Government of Maharashtra, )  
St. Georges Hospital Compound, )  
Arogya Bhavan, Mumbai. ) **..Respondents**

Mr. M.D. Lonkar, the learned Advocate for the Applicant.

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

CORAM : Justice Mridula Bhatkar, Chairperson  
Ms. Medha Gadgil, Member (A)

RESERVED ON : 02.09.2021.

PRONOUNCED ON : 03.09.2021.

PER : Justice Mridula Bhatkar, Chairperson

### J U D G M E N T

1. The Applicant, a retired Chief Administrative Officer in Public Health Department seeks directions to the Respondents to take into account the service rendered by him under the High Explosives factory, Indian Ordinance Factories under the Ministry of Defence, Khadki, Pune for the purpose of counting the period of his qualifying service for the grant of pensionary benefits, especially for the purpose of counting the period of his qualifying service of 20 years for the fixation of applicant's monthly pension. The Applicant claims that he is entitled to 50% of last 10 months average salary last pay drawn and also consequential pensionary benefits, arrears, interest and other dues.

2. The facts of the case in brief are as follows :-

The Applicant joined the service as Supervisor in High Explosives factory, Indian Ordinance Factories under the Ministry of Defence, Khadki, Pune. He worked from 15.07.1977 to 28.01.1981. Thereafter, with due permission of the authorities and making application through proper channel the applicant was appointed as Senior Personnel and Welfare Officer in the Richardson and Crudas Ltd. which is a

Government of India undertaking at Byculla, Mumbai. He worked there from 11.02.1981 to 07.04.1992. Thereafter, he was selected by the Maharashtra Public Service Commission (M.P.S.C.) and was appointed as Chief Administrative Officer in the Directorate of Health Services, Public Health Department, Government of Maharashtra. He worked there from 08.04.1992 to 31.05.2008. He retired on 31.05.2008 and has been granted pension on the basis that he has rendered qualifying service for the period of 16 years, 1 month and 23 days.

3. The Applicant has approached this Tribunal with the grievance that his period of service in High Explosives factory, Indian Ordnance Factories under the Ministry of Defence, Khadki, Pune is not counted while fixing pension. He made many representations to the State Government on the ground that he had worked with the Union of India and that service is required to be counted for the fixation of his pension. However, his representation dated 25.06.2008 was rejected. The affidavit-in-reply dated 22.06.2010 is filed by Respondent No.3, through Mr. Deepak M. Jagtap, Chief Administrative Officer, office of Directorate of Health Services thereby denying all the contentions raised by the Applicant.

4. The learned Advocate for the Applicant has submitted that the applicant has not only worked under the Union of India but has rendered military service, hence his service of 3 years, 9 months and 13 days in the High Explosives factory, Indian Ordnance Factories under the Ministry of Defence, Khadki, Pune is to be taken onto account while

counting the total period of his service. The learned Advocate further submitted that this military service is required to be counted as service for pension under Rule 41 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred as 'MCS (Pension) Rules of 1982' for brevity). The learned Advocate has argued that the applicant is not pressing for counting his service from 11.02.1981 to 07.04.1992 in Richardson and Crudas Ltd, undertaking of Government of India, but is pressing for his earlier service with the High Explosives factory, Indian Ordnance Factories. The learned Advocate has submitted that though there is a gap of 11 years between the duty of leaving the service at High Explosives factory, Indian Ordnance Factories and joining the service with the Respondent, the said delay of 11 years also can be condoned. He relied on Rule 48 of MCS (Pension) Rules of 1982 which states about the condonation of interruption in service.

5. The learned Advocate has fairly submitted that the service of the applicant of 16 years, 1 month and 23 days with the Respondent even if the service of 3 years, 9 months and 13 days at High Explosives factory, Indian Ordnance Factories is included it does not figure as 20 years, but it comes to 19 years and 11 months approx. However, whatever the last few days they can be considered as round figure and the total service is to be counted as 20 years for the pensionary benefits. The learned Advocate for the Applicant has submitted that on 02.12.2014 the Applicant made representation a Rule 4 of the MCS (Pension) Rules of 1982 about relaxation.

6. The learned P.O. for the Respondents has submitted that the arguments of learned Advocate Mr. Lonkar are not sustainable as there is a gap of 11 years in joining the two services. Basically, the service in High Explosives factory, Indian Ordinance Factories cannot be treated as military service and secondly, due to long break of 11 years between the two services, they cannot be joined. She relied on the letter dated 16.09.2010 send by one Mr. V.R. Vedepathak, Deputy Secretary, Public Health Department, State of Maharashtra refusing the prayer of the applicant to join his two services.

7. Considered the submissions and legal provisions in MCS (Pension) Rules of 1982. Admittedly, there is a gap of 11 years services of the applicant between the Indian Ordinance Factories and the service with the Respondent. The service rendered with the Central can be counted and joined in certain circumstances, however there should be provision available in MCS (Pension) Rules of 1982. Though the service of Indian Ordinance Factories is covered under the Central, the pension Rules regarding counting the services of the Central Department as qualifying service is restricted only to Rule 40 and 41 of the MCS (Pension) Rules of 1982.

There are two legal points which are to be answered.

Firstly, the Rule 40 states about the qualifying service of the approved war service in respect of 2<sup>nd</sup> World War which is not applicable to the Applicant. The Rule 41 is about the other cases in which Military

service counts as service for pension. The Rule 41 of MCS (Pension)

Rules of 1982 reads as under :

*41. Other cases in which Military service counts as service for pension.*

*In any case not covered by rule 40, a competent authority may by general or special order direct the Military service performed by any Government service, after attaining age of 18 years, who before entering civil employ was in Military employ but did not earn a pension in Military employ, shall be treated as service qualifying for pension. In issuing such an order the competent authority shall specify the method by which the amount of service shall be calculated and may impose any condition which it may think fit : Provided -*

*(1) that the Military service must have been pensionable under military rules:*

*(2) that the Military service must have been paid from Consolidated Fund of India or of State or pensioner contribution for that service must have been received by Consolidated Fund of India or of State; and*

*(3) that, if the service is treated as service qualifying for civil pension, any bonus or gratuity received in lieu of pension on or since discharge from Military service must be refunded in not more than 36 monthly installments from such date as the competent authority may direct.*

Thus the above Rule does not cover all the services under the Defence Ministry wherein the Indian Ordnance Factories is one. The Rule restricts to only the military services, and military services means services in the three armed forces. The word 'military' in oxford dictionary defines,

*"relating to or characteristic of soldiers or armed forces, the armed forces of the country."*

Thus, in absence of requisite provisions of MCS (Pension) Rules of 1982 we cannot count the service of the applicant as military service and qualified service with the Respondents.

Secondly, there is a long interruption of 11 years in the two services. Assuming the services with the Indian Ordinance Factories even if considered as military service, yet there is legal hurdle under the Rule 48 of the MCS (Pension) Rules of 1982 wherein it reads as under :

48. *Condonation of interruption in services.*

(1) *The appointing authority may, by order, condone interruption in the service of a Government servant :*

*Provided that –*

- (a) *the interruptions have been caused by the reasons beyond the control of the Government servant;*
- (b) *the total service pensionary benefits in respect of which will be lost, is not less than five years duration, excluding one or two interruption, if any, and*
- (c) *the interruption including two or more interruptions if any, does not exceed one year;*

The case of the applicant does not fall in either of the clauses (a), (b) or (c) of sub Rule (1) of Rule 48. Thus, the prayer of the applicant that his services in Indian Ordinance Factories be counted as a qualifying service cannot legally stand and hence rejected.

8. The learned Advocate for the Applicant at this stage submitted that the power to relax the service as per Rule 4 of MCS (Pension) Rules of 1982 vests with the Government if undue hardship is caused to the Government servant because of the Rules then the Government has power to exempt that the Government service from any provision of these Rules and with modification it can be applied. The learned Advocate relied on the judgment of Hon'ble Supreme Court in case of **Civil Appeal No.9682 of 2019 (Arising out of SLP (C) No.25200 of 2015), dated 06.01.2020 Surinder Nath Kesar Versus Board of School Education & Ors.**

9. The Rule 4 of MCS (Pension) Rules of 1982 reads as under,

*"4. Power of relaxation.*

*Where Government is satisfied that the operation of any of these rules causes or is likely to cause undue hardship in the case of any Government servant or class of Government servants, it may, by an order in writing, exempt any such Government servant or class of Government servants from any provisions of these rules or may direct that such provision shall apply to such Government servants or class of Government servants with such modifications not affecting the substance thereof as may be specified in such order.*

We have also considered the judgment of **Surinder Nath Kesar** (*supra*). In the said case the Government has earlier refused to grant relaxation in the Rule.

10. Learned P.O. has produced the original file of the Applicant wherein various decisions of the Government regarding prayer for continuation of service considering the joining of two services and condoning the interruption of two services is considered and rejected. However, as per Rule 4, the power to relax vests with the Government and decision was not taken on point of relaxation. We think it is necessary to pass order accordingly.

11. The Applicant's service with Indian Ordinance Factories cannot be considered in any case as the military service and hence his services with the Respondent for pension is only 16 years, 1 months and 23 days and it is difficult to say that by relaxing any Rule or modification the Government can make a good of 20 years of service. We are of the view



that the applicant is not entitled for any relief in this Original Application. Hence, we pass the following order :-

**ORDER**

- (A) The Original Application is dismissed for want of merit.
- (B) The Government to take decision <sup>within two months</sup> in view of Rule 4 of the Maharashtra Civil Services (Pension) Rules of 1982 on the point of relaxation.

Sd/-

(Medha Gadgil)  
Member(A)

prk

Sd/-

(Mridula Bhatkar, J.)  
Chairperson