

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 1064 OF 2014

DISTRICT : MUMBAI

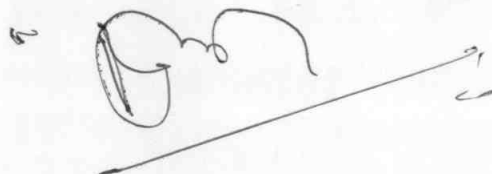
Shri Ravindra Gunderao Khadkikar,)
[Ex. Clerk-Typist], attached to Rural)
Development & Water Conservation)
Department, Mantralaya,)
Mumbai 400 032.)
Add for service of notice :)
Shri A.V Bandiwadekar,)
Advocate, having office at 9, "Ram Kripa")
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

The State of Maharashtra)
Through Principal Secretary,)
Rural Development & Water Conservation)
Department, having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

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

Shri K.B Bhise, learned Presenting Officer for the Respondents.



CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 21.12.2016

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

ORDER

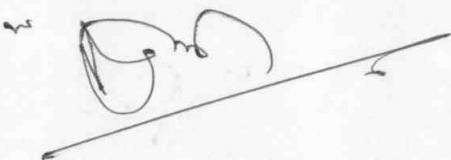
1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Shri K.B Bhise, learned Presenting Officer for the Respondents.
2. This Original Application is moved by a compulsorily retired Clerk Typist who came to be so compulsorily retired on account of actionable absence from duty.
3. We have perused the record and proceedings. The order herein impugned is dated 1st October, 2014, whereby as already mentioned above, for actionable absence from duty the Applicant came to be compulsorily retired. The Applicant has raised other grounds in assailing the said order, but as we shall be presently pointing out, it is not necessary for us to examine them in the facts and circumstances.
4. It is a common ground that the impugned order was appealable one and the Applicant has not availed of that appellate remedy. Nodoubt, he has given out the reasons therefor in para 7 of the Original Application. It is because

there is no statutory, effective, efficacious and complete remedy against the impugned order, as the order is made by the State Government by and in the name of Governor of Maharashtra. The Applicant is a Group 'C' employee and his appointing authority is the State Government and according to him the appeal in this case would lie to the Government only and not to the Governor. The appeal in this matter, according to the Applicant would lie before the authority immediately superior to the officer, who made the impugned order. In the present set of facts, no such immediate superior officer is there, because according to him the Governor of Maharashtra cannot be called superior officer.

5. Shri Bhise, learned Presenting Officer, however, countered all these submissions and maintained that the Original Application having been brought before availing of the appellate remedy is not a competent legal action.

6. It is clear from the impugned order that it is made by the Principal Secretary, Rural Development and Water Conservation Department and that being the state of affairs, without meandering into avoidable academics, the appeal would surely lie to the Minister concerned, who would be in the context decidedly superior to the officer who made the impugned order.

7. It is nodoubt true that the phrase, "ordinarily" which appears in section 20 of the Administrative Tribunals Act, makes it possible for the Tribunal to entertain the Original Applications even if the statutory remedies are not



exhausted. But that again is not an absolute rule of universal application. In fact, the basic principle of the administrative law is to insist on administrative remedies before quasi judicial remedies are resorted to. In the present set of facts when a larger number of medical documents will have to be examined, we are of the opinion that this is in the first place not a matter where the appellate authority could be said to be necessarily committed as it were and secondly the facts will have to be determined which by the very nature of things the judicial forum which has the jurisdiction of judicial review of administrative action may not be able to do it unhindered.

8. Taking all these facts into consideration, we are of the opinion that this Original Application will have to be disposed of with a direction to the Applicant to take recourse to the appellate remedy. Another aspect of the matter is that this Original Application has remained pending for about two years, and therefore, it is likely that the applicant may find the going tough before the Appellate Authority. We are so disposed as to find that in the peculiar set of facts when there was bonafide recourse to the remedy of Original Application, the Appellate Authority may admit the appeal provided it is preferred within the time we are going to prescribe and decide it on merits rather than only on the basis of limitation.

9. The Original Application is disposed of with a direction that if the Applicant prefers an administrative appeal within a period of one month from today, the concerned Appellate Authority shall admit the appeal and hear and decide it in accordance with law as expeditiously as



possible and communicate the decision to the Applicant within one week of the decision. No order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 21.12.2016

Dictation taken by : A.K. Nair.

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