

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.129 OF 2017

DISTRICT : NASHIK

Shri Anil Dharmaraj Jadhav. )  
Executive Engineer, Traffic Engineering )  
Unit, Office of Additional D.G. of Police )  
(Traffic), D.D. Building, 4<sup>th</sup> Floor, Old )  
Customs House, Fort, Mumbai and having )  
Residential address as 5/5, Siddha Gautam )  
CHS Ltd. Dwarka, District : Nashik. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Public Works Department, )  
Mantralaya, Mumbai - 400 032. )
2. Additional Director General of Police )  
(Traffic), M.S, Old Customs House, )  
Fort, Mumbai. )...**Respondents**

**Mr. M.D. Lonkar, Advocate for Applicant.**

**Ms. S.T. Suryawanshi, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

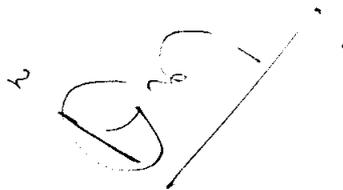
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**DATE : 11.04.2017**

**JUDGMENT**

1. This Original Application (OA) is brought by the Applicant who has retired just a few days ago as Executive Engineer and the dispute relates to treating of the period from 15.3.2016 to 9.6.2016. The Respondents have treated it as 'Leave Without Pay' which is disputed by the Applicant.

2. The Applicant was working as Deputy Engineer, Jawahar in District Thane till 30.1.2016. He came to be promoted as Executive Engineer and his posting was shown as Office of the Director General of Police (Traffic), M.S. It is a common ground that the said posting was wrongly mentioned for no post like that existed. The posting ought to have been at Traffic Engineering Unit, Office of the Additional Director General of Police, M.S. The Applicant came to be relieved from his earlier posting on 14.3.2016. On 10.6.2016, he reported for duty, but he was not allowed to do so in view of the fact that the said order mentioned a place which never existed and was in that sense, wrong one. Whatever this or that party might say, the Applicant cannot be blamed for the wrong mentioning of the place of posting and it was entirely the



lapse on the part of the 1<sup>st</sup> Respondent – Government of Maharashtra in Public Works Department. The 2<sup>nd</sup> Respondent is the Additional Director General of Police (Traffic). It seems that one personnel of the rank of Executive Engineer is posted in that Police Department. Having mentioned this much, this aspect of the matter may be left there itself.

3. To pick up the threads where I left earlier, ultimately, the Applicant brought to the notice of the Respondents the mistake or the lapse on 27.6.2016 and by an order dated 27.7.2016, by Corrigendum, that mistake was corrected. The Corrigendum was actually issued on 3.8.2016 and on that day itself, the Applicant assumed the charge of his new post. That Corrigendum is at Exh. 'D' (Page 16 of the Paper Book (PB)) and therein, the correct place of posting was mentioned.

4. On 27<sup>th</sup> September, 2016, the 1<sup>st</sup> Respondent addressed a communication to the 2<sup>nd</sup> Respondent wanting to know as to on which date, the Applicant appeared before them to take charge. On 15.12.2016 vide Exh. 'H' (Page 23 of the PB), the Applicant addressed a communication to the 1<sup>st</sup> Respondent mentioning therein *inter-alia* that he was made to wait for no fault of his to take up his new



assignment. On 22<sup>nd</sup> November, 2016, vide Exh. 'I' (Page 24 of the PB), the State issued a Memorandum to the Applicant mentioning therein *inter-alia* that having been relieved from his earlier posting on 14.3.2016, he ought to have reported for his new posting on 15.3.2016 which he did not do. It was only on 10.6.2016 that he went to take charge and in the meanwhile, he did not enter into any correspondence also, and therefore, he was called upon to show cause as to why a DE should not be initiated against him. The Applicant showed cause on 15.12.2016 vide Exh. 'J' (Page 25 of the PB). He mentioned therein that he had been promoted while just on the verge of retirement and in fact, he has retired on 31.3.2017. He was not well and was under treatment. He was advised to take three months rest. After recovering, he went to take the charge of the new post, but he was not allowed to do so and then a Corrigendum was issued, and thereafter, he assumed the charge of the new post.

5. On 31<sup>st</sup> January, 2017, the 1<sup>st</sup> Respondent issued an order mentioning all the facts which have been summarized hereinabove including the fact that after the Corrigendum was issued, the Applicant was allowed to join as Executive Engineer. It was further mentioned that for the period from 10.6.2016 to 2.8.2016, the Applicant was



without any posting order which was attributable to administration and it was not his personal fault, and therefore, that period comprising 54 days was treated as Compulsory Waiting under the provisions of Rule 9(14)(f) of Maharashtra Civil Services (General Conditions of Service) Rules, 1981. That period was held to be period spent on duty and for that, directions were issued to the concerned Department to clear his salary, etc.

6. However, the last four lines of that order in Marathi set out *inter-alia* that in so far as the earlier period from 15.3.2016 to 9.6.2016 was concerned, the Applicant was unauthorizedly absent from duty, and therefore, that period would be treated as Extra Ordinary Leave Without Pay. The said part of the order needs to be quoted verbatim (in Marathi).

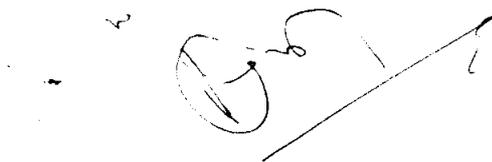
“तसेच परिच्छेद क्र.३ नुसार वस्तुस्थिती पहता, श्री. जाधव हे दि. १५.०३.२०१६ पासून दि. ०९.०६.२०१६ पर्यंत अनधिकृतरित्या गैरहजर असल्याने निदर्शनास येत असल्याने, त्यांची या कालावधीची गैरहजेरी असाधारण रजा (विनावेतन व भते) म्हणून मंजूर करण्यात येत आहे.”

It is this part of the said order dated 31.1.2017 which is being questioned in this OA under Section 19 of the Administrative Tribunals Act, 1985.



7. I have perused the record and proceedings and heard Mr. M.D. Lonkar, the learned Advocate for the Applicant and Ms. S. Suryawanshi, the learned Presenting Officer (PO) for the Respondents.

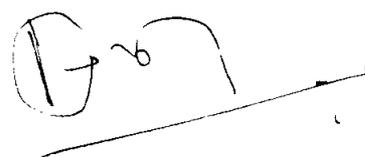
8. It must have become quite clear from the above discussion or so I think, it must have, that the fault lay entirely with the 1<sup>st</sup> Respondent. It is in my opinion, not a common place mistake that occurs in a matter of posting post promotion. To assign somebody post promotion to a non-existent post is a mistake that can hardly be glossed over and dismissed as a minor mistake so to say. It is no doubt true that there is material on record to show, which granting all latitude to all concerned, bears out the fact that the Applicant may not have been quite happy with the place of posting. He made representations for change of the place of posting. However, if the Corrigendum could be issued so late in the day, it could have been issued much earlier as well. I do not think, it lies in the mouth of the Respondents to first commit the mistake of such a magnitude and then turn around and try to find fault with the Applicant himself. I am very clearly of the opinion based on the circumstances emanating from the record that the Respondents by issuing even a show cause notice to the Applicant had made attempts to shield or screen

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someone from amongst them only and this is not something which could be commended.

9. The learned PO who in the circumstances did her very best, time and again referred to the so called fault of the Applicant, as if the Applicant had issued the wrong order and as if the Applicant had committed the mistake of such magnitude which holds the Respondents in a poor light.

10. As far as the other aspect of the matter is concerned, Mr. Lonkar, the learned Advocate for the Applicant relied upon a Judgment rendered by the Hon'ble Vice-Chairman of this Tribunal in **OA 1131/2016 (Shri Ashok D. Sawant Vs. The Commissioner of Police and 2 others, dated 27.2.2017)**. There, the Applicant of this Tribunal was granted Extra Ordinary Leave Without Pay for the duration therein mentioned. He was allowed to join on production of Fitness Certificate. It was noted that the Applicant there had proceeded on leave from time to time claiming to have fallen sick. A Departmental Enquiry (DE) was apparently initiated against him for the alleged unauthorized absence. One aspect of the matter was that, once a punishment was meted out there, then another kind of punishment in a disguised form could not have



been meted out to him. In dealing with Rule 63(2)(f) of Maharashtra Civil Services (Leave) Rules, 1981, it was held that, that Rule was inapplicable because it pertained to the topic of prosecuting studies and not for unauthorized absence. Rule 63(b) was then referred to, which lays down inter-alia that the competent authority could retrospectively commute the period of absence Without Leave into Extra Ordinary Leave. It was noted quite clearly that the Applicant there had Earned Leave and Half Pay Leave in his account which incidentally is the case here also and here, the Applicant in his communication at Exh. 'H' (Page 23 of the PB) dated 15.12.2016 has clearly stated that the said period may also be treated as Compulsory Waiting Period or his leave account in Half Pay Leave could be debited to that extent. Now, to that extent, the present Applicant is similarly placed as the Applicant in **Ashok Sawant's** case (supra). It was observed by the Tribunal that his period of absence had to be regularized by granting leave due and admissible and not to grant Extra Ordinary Leave Without Pay. It was held that, if sufficient leave due and admissible was available, then still to treat it as Leave Without Pay tantamount the punishment which cannot be imposed, without following due process of law.



11. In view of the foregoing, it is, therefore, clear that the impugned order to the extent it is challenged is unsustainable and it will have to be modified and the modification will be more or less in the line of **Ashok Sawant** (supra).

12. It is directed that the period of absence of the Applicant from 15.3.2016 to 9.6.2016 shall be adjusted against the Half Pay Leave available in the account of the Applicant at that time and actual payment of emoluments shall be made for that duration. The impugned order treating the said period as Leave Without Pay is accordingly quashed and set aside. Compliance within four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**11.04.2017**

Mumbai

Date : 11.04.2017

Dictation taken by :

S.K. Wamanse.

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