

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.226 OF 2016

DISTRICT : PUNE

Shri Gangadhar S. Musmade.)
Resi. At Flat No.3, Building No.3,)
Chandralok Housing Society, Gokhale)
Nagar Road, Shivaji Nagr, Pune 411 016.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development & Fisheries Dept,)
Mantralaya, Mumbai - 400 032.)
2. The State of Maharashtra.)
Through Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)
3. The State of Maharashtra.)
Through Commissioner of Agriculture)
M.S, Pune 411 001.)...**Respondents**

Mr. S.S. Dere, Advocate for Applicant.

**Ms. S. Suryawanshi holding for Mr. A.J. Chougule,
Presenting Officers for Respondents.**



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

DATE : 02.03.2017

JUDGMENT

1. This Original Application (OA) is brought in order to get regularised what has been described as waiting period from the date of relief from the earlier posting to resumption of charge of the new posting for the period from 17.6.2011 to 7.6.2012.

2. I have perused the record and proceedings and heard Mr. S.S. Dere, the learned Advocate for the Applicant and Ms. S. Suryawanshi holding for Mr. A.J. Chougule, the learned Presenting Officers for the Respondents.

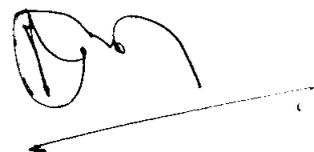
3. The 1st Respondent is the State of Maharashtra in Agriculture, Animal Husbandry, Dairy Development and Fisheries Department. The 2nd Respondent is the State of Maharashtra in General Administration Department (GAD) while the 3rd Respondent is the Commissioner of Agriculture, M.S, Pune.

4. The Applicant is a physically challenged employee. He has pleaded in Para 6.2 that he suffers from physical disability to the extent of 73% while in an earlier



OA No.80/2012 (Shri Gangadhar S. Musmade Vs. Government of Maharashtra and 2 others, dated 11.5.2012, the disability was mentioned as 56%. Be that as it may, but he is an employee who is seriously physically challenged although the simple fact apparently going by the record was somehow or the other lost on the Respondents who I must mention acted contrary to the letter and spirit of the fast changing outlook which favours a helpful attitude to such employees and which was the soul behind the enactment of the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Disabilities Act).

5. The Applicant came to be promoted from the post of Technical Officer Gazetted Group 'B' to Gazetted Group 'A' by the order dated 31st May, 2011. Under the relevant provisions of the various rules including the Divisional Cadre Allotment Rules, he was asked to give his preference. It appears that he gave his preference to Pune. He was, however, allotted to Nashik Division. The tenor of the OA is that, had he been given any posting at Nashik itself, he would perhaps not have made any grievance. However, instead of Nashik, he was posted at Dhule. He did not join there and a series of correspondence ensued. It is his case that as per the Government Notification

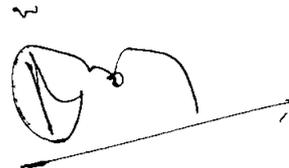


Rules, 2010, he being a physically handicapped employee should have been posted to his native district of Ahmednagar. According to him, his posting at Dhule would have been extremely inconvenient to him. He had made a few representations including those on 17.8.2011, 26.8.2011 and 5.9.2011 to take benefit of the G.R. dated 15.12.2004. He then had to bring OA 750/2011 before this Tribunal (Shri Gangadhar S. Musmade Vs. Government of Maharashtra & 2 others). The then learned Member (A) by his order of 12.9.2011 disposed of that OA with directions to decide the representations above referred to in the light of the G.R. of 15.12.2004 and communicate the decision thereof within six weeks from that day. By a communication of 20.11.2011, the said representations came to be rejected, a copy of which order is at Page 39-40 of the Paper Book (PB). The things dragged on and the Applicant then brought OA 80/2012 above discussed. The then Hon'ble Chairman by his order of 11.5.2012 directed the Respondents to take an appropriate decision of granting an appropriate posting to the Applicant having regard to his physical condition in the general transfer of April/May, 2012 and in any case before 31.5.2012. It is common ground that the Applicant then came to be posted in Pune Division in June, 2012. I may only mention here that in the various orders, etc. there is a reference to this



order of the Hon'ble Chairman of this Tribunal and the tone and tenor of the case of the Respondents as reflected thereby is that perhaps they were driven to take a sympathetic view of the case of the Applicant because of the order of this Tribunal and who knows all by themselves such a simple course of action might not have been adopted by them.

6. The case of the Applicant is that, he then represented for treating the compulsory waiting period as duty period. However, by the order dated 5.5.2016, the 3rd Respondent in the first place in apparent exercise of powers under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 imposed a punishment of censure and that was mercifully because of the physical disability of the Applicant. As far as the period lost during the demitting of the earlier Office and assumption of the new Office, again mercifully by taking a sympathetic view, it was directed that in effect, the number of days from the available leave to the Applicant would be debited. The Applicant is aggrieved by this order and according to him, the said period should be treated as compulsory waiting period and should be treated as spent on duty.

A handwritten signature in black ink, consisting of a stylized 'M' and 'G' followed by a horizontal line with an arrowhead pointing to the right.

7. The Applicant relies upon several notings, etc. which indicate that the higher-ups were peeved at the manner in which the Applicant's case was handled and they made clear noting in that behalf. I can quote just one such noting for ready reference herein in Marathi.

“उपरोक्त 'क्ष' विचारात घेता, तसेच श्री. मुसमाडे, उपसंचालक यांना अपंगत्वाच्या कारणामुळे बदलून देण्यात आलेली पदस्थापना पहाता, या बाबीचा पूर्वीच विचार झाला असता तर त्यांचा प्रतीक्षाधीन कालावधी मंजूर करण्याचा आता प्रश्न उद्भवला नसता, यापरिस्थितीत सहानुभूतीपूर्वक विचार होऊन सक्तीचा प्रतीक्षाधीन कालावधी मंजूर करणे योग्य होईल, असे वाटते. तथापी, आदेशार्थ सादर.

GAD चा आभप्राय (७.१०.२०११)
पाहता श्री मुसमाडे यांची पसंती मान्य करण्यास हरकत नसावी.”

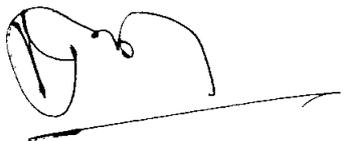
8. It appears quite clearly that despite such directions from the superiors, the impugned order came to be made and I am unable to fathom the reason why it should have been so. The case of the Respondents apparently is that the delay was not because of any administrative lethargy so to say. In my opinion, that is not the only aspect of the matter although I express no opinion thereabout on record of this order in this OA. I proceed on assumption that it was so. Still, the Respondents in my view were in duty bound to take into consideration the circumstances, preceding and surrounding the events that ultimately culminated into the delay. Instead of making an issue of prestige or tight



official dom, a more humane approach would have been a better course of action. While it may be true that the mere fact of an employee being physically challenged may not in all circumstances be sufficient to mould the official procedures, but then it is unacceptable to say that such an employee should not even be shown elementary and basic consideration to facilitate the effective discharge of his duties, and therefore, wherever it is possible, some legitimate, "bending of Rule or Procedure" should be in order and I must repeat that the concerned authorities will have to take note of the current trend of a socio legal, sociological approach in respect of physically challenged employees and that I am afraid was clearly lost on the 3rd Respondent in making the impugned order.

9. There are uncontroverted allegations of breach of the Cadre Allotment Rules and the other Rules which ought to have been taken into consideration. In my opinion, therefore, a case is made out for grant of the relief sought by the Applicant.

10. It is hereby directed that the period from 17.6.2011 to 07.6.2012 spent by the Applicant in the circumstances hereinabove mentioned be treated as period spent on duty. The stand reflected from the orders

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hereinabove mentioned including the one impugned herein is held untenable and is quashed and set aside. The consequential steps be also taken within four weeks from today and its outcome informed to the Applicant within one week thereafter. The Original Application is allowed in these terms with no order as to costs.

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Sd/-
(R.B. Malik)
Member-J
02.03.2017

02.03.17

Mumbai
Date : 02.03.2017
Dictation taken by :
S.K. Wamanse.