

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.579 OF 2019

DISTRICT: Solapur

Shri Manoj Vasantrao Mengarti)
Age 52 years, working as Senior Clerk,)
R/at Plot No.275, Shivaratna Nagar, Jule,)
Solapur 413004.) **....Applicant**

Versus

1. The State of Maharashtra,)
Through the Secretary, Revenue &)
Forest Dept., Mantralaya, Mumbai 32.)
2. The Collector, Zilla Parishad Compound,)
Solapur 413 001.) **...Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER (J)

DATE : 01.03.2021

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.
2. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 challenging the order dated 15.11.2018 passed by the Respondent No.2-Collector, Solapur whereby the Applicant's claim to condone the break in service and to treat the break period as service period for all purposes has been rejected.

Amrutesh

3. Shortly stated facts giving rise to O.A. are as under:-

The Applicant was appointed initially by order dated 21.12.1985 as a Clerk and he joined on 23.12.1985 on the establishment of Respondent No.2. However, his service was terminated by order dated 04.05.1987 since in the cadre of Clerk, he found junior (surplus). Thereafter he was again reappointed afresh and joined on 09.08.1990. Then again his services were terminated w.e.f. 30.11.1990 since again he was found junior and surplus. Then again he was reappointed on 27.08.1992 and since then he is in service on the establishment of Respondent No.2 – Collector, Solapur.

4. In 1992 the Applicant had apprehended the termination, and therefore, earlier he filed O.A. No.541/1992 which was disposed of by this Tribunal on 27.01.1999 with following order:-

“ ORDER

The notice was sent to the petitioner by Registered post. Petitioner has not turned over. The learned P.O. Shri Rajpurohit has produced noting prepared by the office of Collector, Solapur. Pertaining to this petitioner and the claim of petitioner Mr. M. V. Megarti. The said noting is taken on record. The learned P.O. after taking instructions from the said Shri T.A. Babar, who has produced the noting states that respondents will not terminate the services of the petitioner except by way of disciplinary action and that he has been continued in service from 29.07.92. the previous termination of his services were on account of want of post and that all his previous service will be counted for the purpose of pension as well as other benefits as per rule. In view of the said statement made by the learned P.O. now nothing survives in this petition. Petition stands disposed of with no order as to costs.”

5. It is on the above background, the Respondent No.2 – Collector, Solapur passed the order dated 15.11.2018 thereby treating his break in service for pension and gratuity purpose only. The Collector rejected the claim of the Applicant to condone the break and to treat his break as service period for leave, increment, seniority, promotion etc. which is under challenged in present O.A.

6. Learned Counsel for the Applicant sought to contend that in view of the order passed by the Tribunal in O.A.No.541/1992, the Respondent No.2 ought to have condoned the break in service and his break period must have been treated as service period for all purposes. According to her, by not doing so, the Respondent No.2 has

indeed committed contempt of the order of the Tribunal. She thus submits that the Applicant is entitled for condonation of break in service for all other consequential service benefits.

7. Per contra, learned P.O. has pointed out that there is no such specific direction of the Tribunal to treat the break in service as a service period and she has further pointed out that all that O.A. was disposed of on the statement made by learned P.O. Apart, the Tribunal has made it clear that "The previous termination of his services were on account of want of post and that all previous service will be counted for the purpose of pension as well as other benefits as per rule."

8. Thus, according to learned P.O. entitlement of the Applicant was to be considered in accordance to rules and there is no such decision of the Tribunal to grant all service benefits to the Applicant in respect of break period.

9. In view of submission advanced at a bar, there are two aspects of the matter. First, whether while deciding O.A.No.541/1992 the Tribunal has given any such specific direction to treat the break period as a service period for all purposes and second, whether the break period can be treated as a service period on the touchstone of Rule 48 of Maharashtra Civil Services (Pension) Rules 1982 (hereinafter referred to as 'Rules 1982').

10. The order passed by the Tribunal is reproduced above which clearly demonstrates that the matter was disposed of only on the basis of statement made by the learned P.O. that previous service period will be counted for the purpose of pension as well as other benefits as per rule. It is in view of the statement made by learned P.O., O.A. was disposed of. It is thus explicit that there is no decision of the Tribunal holding the Applicant entitled for all service benefits in respect of break period. On the contrary, what was stated that the Applicant's service will be counted for the purpose of pension as well as other benefits as per rule.

11. Suffice to say, there are no such specific finding much less decision of the Tribunal holding the Applicant entitled to treat his previous service for all consequential service benefits. This being so, the question of contempt of the order passed by the Tribunal did not arise.

Amrutesh

12. In so far as, second aspect of the entitlement of the Applicant in terms of Rule 48 of 'Rules 1982' is concerned, the Respondent No.2 –Collector in impugned order dated 15.11.2018 observed that the Applicant is not entitled for condonation of break in service in terms of Clause (b) and (c) of Rule 48 of 'Rules 1982'.

13. At this juncture, it would be apposite to reproduce Rule 48 of Maharashtra Civil Services (Pension) Rules 1982, which is as follows:-

"Rule 48 : Condonation of interruption in service – (1) The appointing authority may, by order, condone interruptions in the service of a Government provided that –

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

(Provided further that, such service of the Government servant shall be counted as qualified service for the purposes of Rule 33.)

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service.

(3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(4) Nothing in sub-rule (3) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(5) The period of interruption referred to in sub-rule (3) shall not count as qualifying service."

14. As such, for condonation of break in service, a Government servant will have to fulfil conditions (a), (b) and (c) of Rule 48 of 'Rules 1982' together. In the present case,

admittedly the Applicant was terminated since he found junior most. Thus, his service was terminated on account of non availability of post. It is common practice to terminate the service, if the post is not available on the principle, last come first go.

15. In so far as Clause (a) of Rule 48 of 'Rules 1982' is concerned, obviously interruptions have been caused not due to any fault on the part of Applicant but it was caused by the reasons beyond his control. However, in so far as Clause (b) and (c) are concerned, the Applicant does not fulfil prerequisite. As per Clause (b) total service pensionary benefits in respect of which will lost should not be less than five years duration. In the present case, the break in service was from 01.05.1987 to 08.08.1990. Second break was from 01.12.1990 to 28.07.1992. Thus, the break was less than five years. As such, Clause (b) is not fulfilled. As regard clause (c) interruption period should not exceed one year. Whereas in the present case, interruption exceeds the period of one year. Suffice to say, the Applicant's case does not come within the ambit of Clause (b) and Clause (c). This is precisely observed by the Collector, Solapur and he has considered the previous service for the purpose of pension and gratuity and rightly rejected his claim to treat the said service for pay and allowances, increments, leave and promotion.

16. Suffice to say, the Applicant's case does not fall within the pre-requisites of Rule 48 of 'Rule 1982'.

17. The totality of the aforesaid discussion leads me to sum up that there is no illegality in the impugned order and O.A. deserves to be dismissed. Hence the following order:-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member(J)