

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

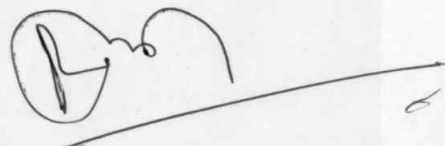
ORIGINAL APPLICATION NO.84 OF 2016

DISTRICT : THANE

Mrs. Surekha Dattatraya Muluk.)
Age : 53 Yrs. Occu.: Women Police Head)
Contable, R/at : NL-5/1/15, Sec. 3,)
Nerul (E), Navi Mumbai 400 706.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. The Commissioner of Police for)
Navi Mumbai, Commissioner of)
Police Office, CBD, Belapur.)
3. The Deputy Commissioner of Police,)
Zone I (Vashi), Above APMC Police)
Stationi, Vashi, Navi Mumbai.)
4. The Deputy Commissioner of Police.)
Head Quarter, Commissioner of)
Police Office, CBD, Belapur,)
Navi Mumbai.)
5. Director General of Police.)
Shahid Bhagat Singh Marg, Colaba,)
Mumbai 400 023.)...**Respondents**



Mr. K.R. Jagdale, Advocate for Applicant.

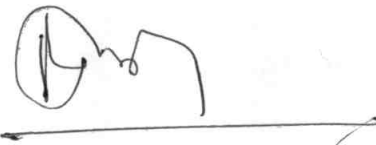
Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 31.01.2017

JUDGMENT

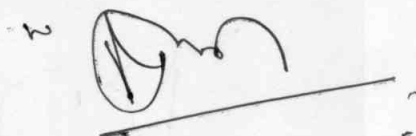
1. The Applicant, a Woman Head Constable suffering from the dreadful disease of an aggregated form of Tuberculosis (TB) medically called "MDRTB" is facing unnecessary obstructionist attitude of her higher-ups and in this Original Application (OA), she seeks directions to Respondents 2 to 4 to sanction the TB Leave of the Applicant for the period from April, 2011 to 2nd November, 2015. She further prays for directions to the Respondents to pay to her the salary/pay and allowances during the above referred period and revise her pay and emoluments with consequential benefits. She still further seeks directions to the Respondents to pay to her the regular salary and allowances since 3.11.2015 when after a bumpy eventful course that she was made to go through, she ultimately joined her services.



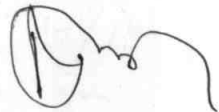
2. Be it noted right at the outset that in so far as the last mentioned relief of the payment of regular salary after she rejoined on 3.11.2015 has been complied with pending OA when as would become clear from the orders made from time to time, the Respondents started feeling the heat of their unnecessary intransigence. The 1st Respondent is the State of Maharashtra in Home Department, the 2nd Respondent is the Commissioner of Police for Navi Mumbai, the 3rd Respondent is the Deputy Commissioner of Police, Zone 1 (Vashi), the 4th Respondent is the Deputy Commissioner of Police, CBD, Belapur and the 5th Respondent is the Director General of Police, Maharashtra.

3. I have perused the record and proceedings including a Judgment of the 2nd Bench of this Tribunal which spoke through me in OA 214/2012 (Smt. Surekha D. Muluk Vs. State of Maharashtra and 3 others, dated 10.2.2015) (to be hereinafter identified with the OA number) and heard Mr. K.R. Jagdale, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer for the Respondents.

4. The record has become somewhat bulky for no real reason because the controversy falls in a narrow

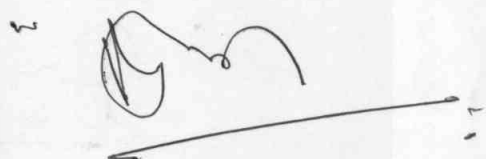


factual compass. As on 16.3.2009, the Applicant was working as Woman Head Constable (WHC) attached to Police Station Vashi in Navi Mumbai. On that day, she was diagnosed to be suffering from TB. There is a Medical Certificate of leave for extension of leave (verbatim) at Exh. 'B' (Page 18 of the Paper Book (PB)) which came to be issued by the members of the Tuberculosis Medical Board Vittal Sayanna General Hospital, Thane. It was certified that the Applicant, "is in bad stage of health and suffering from TB of Extra Pulmonary". According to the Judgment of the Board, leave of 60 days w.e.f. 16.3.2009 was recommended. On 20.3.2009, the Applicant addressed a communication, a copy of which is at Exh. 'C' (Page 19 of the PB) to the higher-ups including the Commissioner of Police, Navi Mumbai - Respondent No.2. She informed that she was suffering from TB and referring to the Certificate of the Board above referred to, she requested for the grant of the TB Leave. The issue of TB Leave is regulated by Rule 79 of the Maharashtra Civil Services (Leave) Rules, 1981 (Leave Rules) read with Appendix III which has got fasciculus of Rules regarding grant of concessions to Government servants suffering from TB/Cancer/Leprosy or Paralysis. Rule 2 lays down that the Government servants serving in Mumbai City and suspected of TB should be sent for examination and



opinion of the J.J. Group of Hospitals or G.T. Hospital, Mumbai. In respect of Government servants serving in mofussil, they should be referred to the nearest District Head Quarter Hospitals. Pertinently and quite significantly, it is specifically lays down, "No charge should be made for such examination. The Civil Surgeon, if he considers whether proper facilities including X-Ray are available for a thorough examination, no charge will be made for X-Ray, sky grams, examinations and laboratory investigations."

5. It is, therefore, very clear from the Rule 2, Appendix III of the Leave Rules framed under Rule 79 thereof that the primary responsibility to do everything necessary for diagnosis and treatment would not be on the patient employee but on the establishment as it were. I shall be to the extent necessary deal with the stand adopted by the Respondents herein whereby they in more ways than one seek to shift the burden on the Applicant for securing a particular certificate for a particular duration of time, but the record is conspicuously silent on the obligations that the Rules cast on the establishment as to whether the Respondents came true to the said test. It is very clear to me that they have not only not come true but have failed to discharge their duties towards a TB affected



employee and may be OA 214/2012 above detailed has in itself the seeds of the poisonous tree that has now come up.

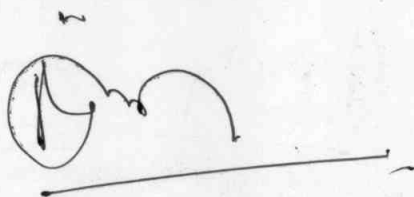
6. Returning to the Rules, Rule 3 *inter-alia* lays down the procedure to be followed in the matter of grant of leave. It provides the manner in which the leave aspect of the matter should be dealt with. Rule 3(3) lays down that if all leave due and admissible to the patient employee had been consumed, full pay needed to be granted and that would be called TB Leave with Full Pay and Leave Salary. Such leave should be regulated under normal Rules with a cap of one year and further, Half Pay Leave in such circumstances was also due. Rule 4 lays down that if the Medical Boards were not there at certain places, then the Civil Surgeon may with the prior sanction of Director of Health Services convene a Medical Board for the purpose of examination of such Government servant and composition, etc. of such a Board is prescribed. It categorically mentions that the charges of such medical examination of the patient Government servant by the Medical Board should be borne by the Government and only if the Medical Board was convened as per the request of the said patient employee at a place other than where it would normally be convened, then that extra expenditure would be borne by



the Government servant and nothing more. Rule 5 still further provides the grant of Extra-Ordinary Leave to the TB patients over and above the leave above referred to and for that Rule 63(2) of the Leave Rules would be relaxed. The period for which such a leave could be granted is 12 months. Rule 6 prescribes that such Extra-Ordinary Leave would be admissible to the employee taking a treatment at home, if there was no accommodation in the Institutes administering treatment to the TB patient employee. It lays down that the treatment should be under a duly qualified registered Medical Practitioner and he should submit a Certificate signed by that Medical Practitioner *inter-alia* certifying that the patient was under his treatment and that there were reasonable chances of recovery on expiry of the leave.

7. Rule 7 lays down that before the expiry of maximum limit of Extra-Ordinary Leave under the Rules, the Government servant should be examined by the Medical Board to see whether he was fit to resume duty or should be invalidated.

8. Be it noted quite clearly that after needless hassle and hardship that the Applicant was subjected to, in the ultimate analysis, the Certificate like this was issued

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and the Applicant ultimately joined duties on 3rd November, 2015.

9. Rules 8 and 9 deal with the procedural aspect regarding the certification *inter-alia* for the purposes of increment, etc. Quite pertinently, the note appended to Rule 8 lays down as under :

“Note :- Rule 3(2) and 3(3) be read together. These Rules are inconsistent with each other and as such, each Rule should not be read as an independent Rule and interpreted.”

10. I have already indicated above the gist of the Rules but at this stage, Rules 3(2) and 3(3) need to be reproduced.

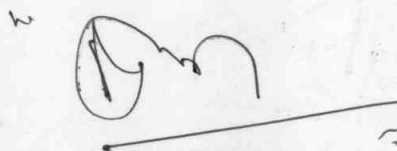
“**3(2)** : In the case of a Government servant, who has more than six months due to him, the examination by the Medical Board referred to above should be arranged six months after the commencement of the treatment, but before the expiry of the leave due. IN cases where the total leave due is less than six months, such extraordinary leave as is necessary to complete



that period may be given pending examination of the patient by the Medical Board.

3(3) : A Government servant irrespective of the pay drawn, after the expiry of all leave due and admissible to him on full pay be granted T.B. leave on full pay and the leave salary for such T.B. leave should be regulated under normal rules. The total T.B. leave should not exceed one year. After the expiry of this leave, leave on half pay, if due, should be granted in case it is found that a further period of leave is necessary for his recovery. After the expiry of leave on half pay, the Government servant should be placed before the Medical Board for his examination as to his physical fitness for further service and should be granted extraordinary leave recommended by the Medical Board subject to the condition that all leave granted under these rules does not exceed three years. The T.B. leave on full pay should not be debited to the leave account of Government servant."

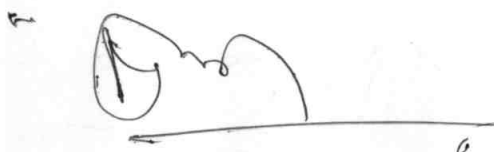
11. Rule 3-A was inserted by Notification of 6.12.2005 becoming effective from 1.1.2006. It lays down



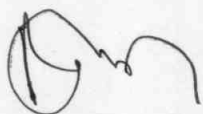
that in case a TB affected Government employee was given special leave on full pay, the leave salary for such leave would be under normal Rules and it prescribes as to who the said leave would work it out. The details are immaterial. Rule 4 lays down that the Regional Officer of the Department under whom the said Government servant was serving and if no such Regional Officer was there, the Head of the Department should be the authority to sanction these concessions.

12. The above are the Rules relevant herefor.

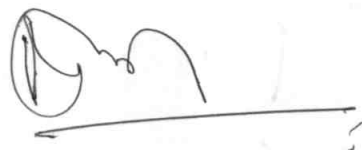
13. I have already indicated that the record has been made quite bulky while the crux of the matter falls in a very narrow factual compass. The record makes it indisputable that the Applicant was suffering from TB and that record is from an impeachable medical source. I am here much concerned with the issue of Medical Leave call it as "TB Leave" or whatever, but then factually, it is absolutely indisputable that the Applicant was suffering from the dreadful disease of TB for better part of the block year 2009/2015. Para 6.13 of the OA and Para 6.19 thereof set out the details of the leave for which the sanction, etc. came to be granted. That was for the period from 20.3.2009 and 13.10.2015. A very detailed date by

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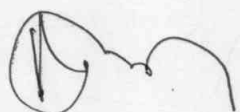
date account thereof is now not necessary because as I shall be presently pointing out the pith of the controversy would lead to its determination on the basis of the Affidavit filed quite late in the day by Dr. Rajendra S. Mane working as Deputy Commissioner of Police in the Office of Commissioner of Police, Navi Mumbai. The Affidavit-in-reply initially filed also did not raise much of a dispute about this significant aspect of the matter viz. the fact that the Applicant suffered from TB. At Exh.'E' collectively, there are Certificates issued by the Medical Board for extension of leave. At Exh."F" collectively, there are the details of the leave period regularized as it were. From the document at Page 30 of the PB which is a communication of 8.3.2011 from Senior Police Inspector, Police Station Vashi to the Applicant. There was information as to how the leave for the period from 4.2.2010 to 3.2.2011 and 4.2.2011 to 21.2.2011 came to be treated as TB Leave and Extra-Ordinary Leave respectively. She was asked to appear before the Police Station Vashi and accompanied by the Officer/employee deputed, she should proceed to J.J. Hospital. Now, it is not possible for me to comprehend as to why it was necessary for her to be referred to J.J. Hospital because as already indicated above, the relevant Rule provides that a patient in Mofussil would have to report to that Medical Board within whose jurisdiction the



said patient was serving. Here, she had already been examined by the Thane Board, the details of which have already been set out hereinabove. However, she was still compelled to go to J.J. Hospital. But even if, one goes by the document of J.J. Hospital at Exh. 'L' (Page 39 of the PB) alongside, a document at Exh. 'RJ-7' (Page 138 of the PB) which was addressed to the Deputy Police Commissioner, New Mumbai and there were as many as 7 references thereto., it *inter-alia* mentions that the Applicant was suffering from TB and in that connection, a document from Jyoti Diagnostic Centre, Mulund including Chest X-Ray was referred to and it was informed that the leave for the period from 16.3.2009 to 12.1.2010 had been granted by the TB Medical Board, Thane and its details were furnished. Thereafter, there was a reference to a medical document of 13.3.2010 and 14.3.2010 from Meditech Diagnosis Centre, Mulund where the sputum was tested and it was detected that TB Leave from 13.3.2010 to 23.12.2010 was sanctioned. Thereafter, for a period from 24.12.2010 to 21.11.2013, she did not appear before the Thane Medical Board, and therefore, no Certificate was issued. Now, at this state itself, it needs to be noted that this must have been the time when the Applicant was directed to report to J.J. Hospital somewhat unnecessarily and she must have had no alternative but to comply with



the directions. It was then mentioned in that communication that the TB Medical Board in its meeting convened on 22.11.2013 again took note of the fact that in the post sputum culture the Applicant was found suffering from TB and in that connection, there is a reference to the, “क्षयरोग जंतू”, and therefore, leave from 6.11.2013 to 2.11.2015 of two years was granted for MDRTB. I was informed that this is an aggravated form of TB. It was mentioned that for the period from 24.12.2010 to 21.11.2013, no Certificate was issued by the Thane Board. If, however, we were to read Exh. ‘L’ (Page 39 of the PB) and Exh. ‘RJ-7’ (Pages 138 and 139 of the PB), it would become quite clear that the entire period was ultimately covered by the grant of Certificates. So far as the Certificates issued by any private Institution is concerned, I have already mentioned above as to what is the state of affairs in that regard. The same may be referred to again. It is, therefore, quite clear that the entire period was adequately covered by the said Certificates. The document at Exh. ‘RJ-3’ (Page 134 of the PB dated 7.11.2015) which is a communication from District TB Hospital, Thane to Deputy Police Commissioner, Navi Mumbai, it was confirmed that the Fitness Certificate that was granted to the Applicant was true and issued by that very Hospital. She was fit to

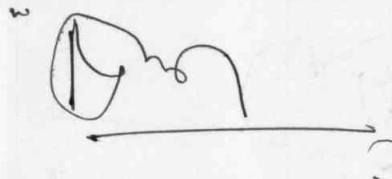


resume from 3.11.2015 as per the Certificate No.960, dated 30.10.2015.

14. Turning now to the Affidavit of Dr. Mane above referred. There is an order on the Farad dated 12.9.2016 made by the Hon'ble Chairman. Three questions were specifically put for the Respondents to give answer to. They were as to whether the request of the Applicant for the grant of TB Leave was pending, the 2nd was that if it was pending the reasons and the stage thereof and the 3rd one was that if its pendency was on account of some other office, the name of the Officers concerned along with the reminders, communications, if any, in that behalf. I then made an order on 20.10.2016 recording the fact of the above referred order of the Hon'ble Chairman. I recorded further that Dr. R.S. Mane, Deputy Commissioner of Police, Head Quarter filed his Affidavit dated 18.10.2016. I also noted the fact that in the Affidavit, he admitted as correct, the fact that the request of the Applicant for grant of TB Leave from 16.3.2009 to 2.11.2015 was pending. I, however, found it not to be a correct statement because it was clear that from 16.3.2009 to 3.2.2010 that the leave of various natures was already granted. I directed Dr. Mane to personally remain present to answer these questions.

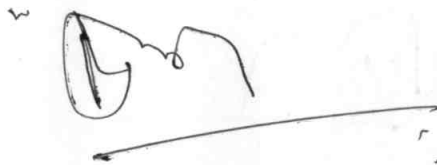


15. Dr. Mane's first Affidavit was filed on 18.10.2016 and the 2nd one on 10.11.2016. They are at Pages 149 and 176 respectively of the PB. As far as Para 3.1 of the 1st Affidavit was concerned, I have just observed as to how it was not correct and this position has been admitted in the 2nd Affidavit in Para 4 by saying that, that application was pending. As far as the reasons were concerned in the first Affidavit, he mentioned that the Applicant's request for grant of TB Leave was pending due to the final decision of the departmental proceedings pending against the Applicant. The departmental enquiry was initiated against the Applicant due to not reporting on duty from 16.3.2009 to 2.11.2015. In Para 5 of the 2nd Affidavit, Dr. Mane of course humbly submitted that the DE was pending against the Applicant for various charges, one of which was absence from duty without permission from 16.3.2009 to 2.11.2015. In Para 4.2 of the 1st Affidavit, it was mentioned that the DE was at final stage. The show cause notice for punishment for removal from service was issued to which the Applicant had filed reply and challenged it by way of OA 1015/2015 which was dismissed by the 1st Bench of this Tribunal on 4.12.2014 as premature. In the 2nd Affidavit, in Para 5, Dr. Mane mentioned that the leave for the period from 16.3.2009 to 21.2.2011 was sanctioned and the period from April, 2011 to 2.11.2015 was still



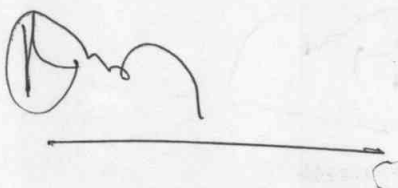
outstanding. The Applicant had never applied for grant of that leave for that period nor did she produce any Medical Certificate for 22.3.2011 to 5.11.2013. In Para 4.3 of the 1st Affidavit, the said Affidavit mentions that the Applicant on 11.12.2014 submitted the Certificates of Thane Medical Board but did not satisfactorily explain why she did not remain present before the J.J. Hospital Board. Here, at this stage itself, I need to mention that this aspect of the case is completely baseless and is most probably a ruse to cause harm and more harm to the Applicant. The above discussion needs to be only revisited. In Para 4.4 of the 1st Affidavit, Dr. Mane has mentioned that the truth of the documents produced was still pending with the District TB Officer.

16. The Applicant filed an Additional Affidavit (Page 180 of the PB) to deal with the two Affidavits of Dr. Mane just referred to. She has mentioned that except a charge-sheet dated 10.10.2013 and show cause notice of 16.10.2014, nothing had been served on the Applicant and the said issue was still pending with the Respondents. She further stated that J.J. Hospital had directed her to TB Hospital, Thane for medical examination, and therefore, there was no point of any issue being made of her absence before the J.J. Hospital authority.

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17. Now, I have read the two Affidavits of Dr. Mane somewhat closely. I am sorry to say, but it must be said that the ignorance that it tends to feign is deplorable. If he wants me to believe that nobody knew that the Applicant was suffering from TB and in that connection why she remained absent, then it is something that should not have come from a respected Senior Officer like him. In fact, even the Respondents could not and did not contest the position that the Applicant was suffering from the dreadful disease of the TB and that too, of an aggravated form. The other discussion hereinabove would make it quite clear that the entire conduct of the Respondents was more in the nature of pointless nit-picking rather than extending a helping hand to an ailing junior colleague. If the enquiry had been initiated on account of the cause set out in Dr. Mane's Affidavit, then I will not feel hide-bound by the constraints of the scope of this OA and would straightaway observe that the enquiry is baseless. In any case, as far as the present OA is concerned, one searches in vain for even an apology of a reason to justify the Respondents' attitude of keeping the issue of the TB Leave of the Applicant pending.

18. I have on record, a Judgment in a disposed of OA 214/2012 (supra). I have mentioned it at the outset. I

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have mentioned the details thereof hereinabove. Although not much was said about that particular Judgment by either side, but in my opinion, that would give a clear inkling of the attitude of the Respondents towards the Applicant. The incident giving rise thereto took place around the time, the events giving rise to the present OA were taking place. It was pertaining to the incident of 5.3.2009 which ultimately snow balled into a departmental enquiry which was challenged by way of that OA by this very Applicant. It was mentioned in detail as to how the Applicant was being practically ill-treated by the Officers of Police Station Vashi and as to how the Applicant despite being a lady was made to supervise a male Police lock-up where the male intimates generally in their under-wears were detained. The name of a Police Inspector Mr. Salunkhe appeared in that behalf. The incident was set out in great detail which also included the fact that the said Police Inspector even belaboured the Applicant. The manner in which the Enquiry Officer (EO) conducted himself vis-a-vis the Applicant showed a clear slant against her and that was also set out in great details. The reading of Para 17 thereof would show that the Applicant was not given a proper opportunity to defend herself. She requisitioned certain documents which request was not allowed. She was reported initially to be suffering from

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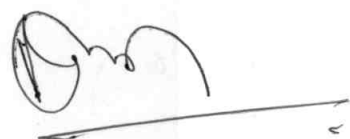
jaundice but then in Para 27 (Page 24 of the PB), it was observed by the 2nd Division Bench that the legitimate demand for documents was denied to the Applicant with caustic observations. 13 witnesses were examined behind her back. It was then observed that the perusal of Exhibits from Pages 80 to 83 would show that at about the time relevant thereto, the Applicant was being treated for TB and this was very significant. It was further observed that the matter of leave was pending and she had been asked to appear before the Medical Board and on 4.10.2012, her leave account was regularised. In those set of circumstances, finding the facts to be extra-ordinary, the OA was allowed and the show cause notice impugned therein was quashed and set aside and so also was quashed the enquiry report dated 15.12.2011. It was observed that an exercise of extra-ordinary power was clearly justified because it was merited to meet with extra-ordinary situation.

19. In my opinion, it is very clear that the entire conduct of the Respondents vis-a-vis the Applicant was so fashioned and so moulded as to cause hardship to her and this would be exemplified quite clearly by the Judgment in OA 214 of 2012 (supra). Therefore, in my opinion, it must be reiterated that may be the Respondents have tried to set



up a case of the Applicant being herself the author of her miseries by not doing this or that thing, but this is a clear ruse to keep alive the chances to use them against her in a departmental enquiry which it seems is still pending against her. I must repeat because it would be unjust not to do so that if the seeds of the enquiry were sown by the events giving rise hereto, then obviously, it does not behove the Respondents to do so. Let me be frank enough to mention that the Respondents have not conducted themselves with the kind of indulgence and consideration that a junior Police Personnel like the Applicant afflicted with an aggregated form of TB should have been treated.

20. The subject matter falling within the prayer clause 10(c) having already been consummated and the Applicant having already got that relief, it is recorded that she was eligible and entitled thereto. The absence of the Applicant and hence her claim for TB Leave from April, 2011 to 2.11.2015 is hereby allowed. It is recorded that the period of leave from 20.3.2009 till April, 2011 was already treated as such. The Respondents are directed to pay the necessary emoluments, etc. to the Applicant for the period from April, 2011 to 2.11.2015 and also to ensure that she got all the service benefits of every nature admissible to her, as if there was no hitch ever in grant of



the leave to her. The entire period be regularized and all payments due to her be made. Compliance within two months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
31.01.2017

Mumbai

Date : 31.01.2017

Dictation taken by :

S.K. Wamanse.

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