

FARAD CONTINUATION SHEET
THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH AT AURANGABAD.

OFFICE NOTES

TRIBUNAL'S ORDERS

ORIGINAL APPLICATION NO. 128 OF 2021

(Pradeep Marotirao Thakkarwad Vs. State of Maharashtra & Ors.)

**CORAM : Justice Shri P.R. Bora, Vice Chairman
AND**

Shri Vinay Kargaonkar, Member (A)

DATE : 23.07.2024

ORAL ORDER :

Heard Shri Ganesh V. Mohekar, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities.

This is a motion for speaking to minutes.

2. Learned counsel appearing for the applicant pointed out that in the order passed in O.A. No. 128/2021 certain dates are incorrectly mentioned. Learned counsel submitted that though the order is passed on 15.07.2024 inadvertently date is mentioned as 16.07.2024, so also in paragraph No. 2 the date of appointment of the applicant is mentioned as 23.08.2004 and it should be 30.04.2004. Learned counsel further submitted that in 4th line of paragraph No. 5 date has been mentioned as 22.08.2006 and it should be 08.05.2006. Learned counsel further submitted that in last line of paragraph No. 10 the date has been mentioned as 22.02.2007 and it shall be 08.11.2006.

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OFFICE NOTES

TRIBUNAL'S ORDERS

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O.A. NO. 128/2021

In paragraph No. 11 also the same date i.e. 22.02.2007 needs to be corrected as 08.11.2006.

3. We have gone through the record. It appears to us that the inadvertent mistakes have occurred in mentioning the dates. Therefore, the said dates shall be accordingly corrected and corrected copy of the order be supplied to all concerned.

4. The motion for *speaking to minutes stands disposed of. No order as to costs.

MEMBER (A)

VICE CHAIRMAN

ORAL ORDER 23.07.2024-HDD

1.

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 128 OF 2021

DISTRICT:- NANDED

Pradeep S/o Marotirao Thakkarwad,
Age-44 years, Occu. Service as
Medical Officer,
R/o. Sub-District Hospital, Degloor,
Tq. Degloor, Dist. Nanded.

.. APPLICANT

V E R S U S

- 1. The State of Maharashtra,**
Through its Secretary,
Public Health Department, Mantralaya,
G.T. Hospital Complex Building,
10th Floor, Mumbai-32.
- 2. The Director of Health Services,**
"Aarogya Bhavan", St. Georges Hospital
Premises, P. Demelo Road,
Mumbai-400 001.
- 3. The Deputy Director of Health Services,**
Nashik Circle, Nashik
Divisional Reference Services Hospital
Campus, Indira Gandhi Chowk,
Shalimar, Nashik, Dist. Nashik.
- 4. The District Civil Surgeon,**
Civil Hospital, Jalgaon,
Dist. Jalgaon.
- 5. The Medical Superintendent,**
Class-I, Rural Hospital,
Mehunbare, Tq. Chalisgaon,
Dist. Jalgaon.
- 6. The Medical Superintendent,**
Rural Hospital, Biloli, Tq. Biloli,
District Nanded.

.. RESPONDENTS.

APPEARANCE : Shri Ganesh V. Mohekar, learned counsel for the applicant.

: Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND**

: SHRI VINAY KARGAONKAR, MEMBER (A)

DATE : 15^{*}16.07.2024

ORAL ORDER

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri Ganesh V. Mohekar, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities.

*** 30.04.**

2. The applicant was appointed on **23.08** 2004 as Medical Officer, Group-A on probation of 02 years. However, his probation period was not terminated after completion of the said period of 02 years and it came to be terminated in the year 2018 vide order dated 09.08.2019 w.e.f. 14.03.2018. Aggrieved by the said order the applicant has approached this Tribunal by filing the present Original Application.

3. The pleadings in the Original Application reveal that while the applicant was discharging the duties as Drawing and

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Correction is made
in view of order
passed by Hon'ble
Tribunal on-23.07.2024.

Amended
30/07/2024
H.C.R.

Disbursing Officer in the year 2004 and 2005 at Rural Hospital, Mehunbare, Tq. Chalisgaon, Dist. Jalgaon the Cashier working in the said hospital namely Shri N.D. Nikam did not deposit the amount which was deducted from the salary amounts of the employees towards the contribution of one day's salary for the 'Tsunami' affected people, in the Government Treasury. Said Nikam committed some more financial irregularities and was noticed to have misappropriated certain amounts. Being D.D.O. it was alleged against the applicant that he failed to notice the illegal activities of said Nikam and has thus failed in discharging his duties. In the circumstances, the enquiry was proposed against the applicant and the same was concluded on 12.03.2018 and the punishment of censure was imposed upon him and thereafter the order dated 09.08.2019 came to be passed terminating the probation period of the applicant.

4. It is the contention that, without any culpable mistake committed by the applicant, punishment of censure has been imposed on him and he was kept under probation for the period of more than 12 years and has been thus deprived from legitimate benefits after completion of the probation period. It is also the contention of the applicant that on trifle ground the applicant was subjected to wait for long period of 12 years

for formal order of completion of the probation period. It is also the contention of the applicant that in fact the applicant had taken all necessary steps promptly and had immediately issued notice to said Nikam and was also instrumental in registration of FIR against the said Nikam. As such, according to the applicant, no blame can be attributed on his part and in no case it can be said that the applicant was not diligent or negligent in performing his duties.

5. In the circumstances, the applicant has prayed for quashment of the orders dated 09.08.2019 and 12.03.2018.

The applicant has further prayed that his probation period shall be deemed to have completed w.e.f. 08.05.22.08 2006 and he be granted all consequential benefits thereof.

6. Respondent nos. 01 to 06 have filed joint affidavit in reply to resist the contentions raised in the O.A. and the prayers made therein. It is contended in the said reply that for the alleged negligence on part of the applicant, the proposal to initiate departmental enquiry under rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (for short the Discipline & Appeal Rules) was forwarded to the Government, however, the Government directed to conduct the enquiry under rule 10 of the Discipline & Appeal Rules and accordingly

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enquiry was conducted against the applicant. The respondents have alleged that the applicant did not cooperate the enquiry committee. It is further contended that after enquiry proceedings were concluded the probation period of applicant has been terminated and as such no case is made out by the applicant for grant of the reliefs as claimed by him in the present O.A.

7. After having perused the documents placed on record, it is apparently revealed that unreasonable delay has occurred in terminating the probation period of the applicant for which no blame can be attributed on part of the applicant. The departmental enquiry against the applicant was proposed after the applicant has completed the period of 02 years of his probation. By that time, even show-cause notice was not served upon the applicant. The documents on record show that the positive proposal was also moved for terminating his probation period. Respondents have failed in giving any explanation or justification for inordinate delay in initiation of the action against the applicant. When initially departmental enquiry was proposed against the applicant under rule 8 of the Discipline & Appeal Rules, why no decision was taken on the said proposal for long 9 years i.e. up to 2015 is unexplained. Secondly, when

the decision was taken by the Government on 3.9.2015 not to hold enquiry under rule 8 of the Discipline & Appeal Rules against the applicant and to conduct it under rule 10 of the said rules, why the further period of 3 years was required to complete the said enquiry has also not been explained by the respondents.

8. In the affidavit in reply some averments are taken in such a manner which leads to an inference that the alleged enquiry was prolonged at the instance of the applicant, however, in the enquiry report submitted on 12.3.2018, the Enquiry Officer has nowhere contended that the applicant did not cooperate or the enquiry was prolonged at the instance of the applicant. Even otherwise except a bald allegation in the affidavit in reply no material is brought on record to demonstrate that enquiry was delayed at the instance of the applicant. We have noticed that the long period of 12 years consumed for passing the order of termination of the probation period of the applicant, is the result of sheer negligence and the irresponsible and insensitive attitude of the officers concerned. We have also noticed that the officer, who conducted the enquiry, has completely ignored the explanation given by the

applicant, as well as, the document evincing prompt action taken by the applicant against said Nikam.

9. From the facts which have come on record in no case it can be said that the applicant acted negligently. It is necessary to note that the respondents have failed in proving the guilt of the employee - S.D. Nikam and in circumstances the said employee has gone scot-free, whereas the applicant is subjected to suffer the punishment of censure and more importantly to wait for completion of his probation period for long 12 years. It has to be stated that the completion of probation period assumes vital importance for the Government employee. Unless he successfully completes the period of probation, no increments are released nor he can be considered for any higher post. The applicant was constantly pursuing his request for terminating his probation period. However, it took the period of about 12 years. For the Government servant the period of 12 years is too long. It also cannot be lost sight of that the Government employee whose probation period is prolonged remains under trauma which is more worst than losing the financial benefits.

10. After having considered the entire facts and circumstances involved in the present matter we have reached

to the conclusion that the punishment which could have been imposed immediately after the alleged misconduct or within the reasonable period was prolonged for long 12 years. We reiterate that in fact before initiation of the so-called departmental enquiry against the applicant he had completed the probation period. Though we see no justification in the action of the respondents even in imposing the punishment of censure against the applicant since the applicant himself may be under distress had accepted the said punishment may not cause any interference in the said punishment. We are however, convinced that the delay which has occurred in terminating the period of probation is only on part of the respondents. As per the Government Resolutions any departmental enquiry initiated against the applicant has to be ordinarily completed within the period of six months. In the present case, the enquiry was ultimately conducted under Rule 10 of the Discipline and Appeal Rules, which may not require the period of even six months for completing the same. The enquiry under Rule 10 of the Discipline & Appeal Rules must have been in all respect completed on or before 22.02.2007 * 08.11.2006.

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Correction is made
in view of order
passed by Tribunal
on- 23.07.2024.

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11. For the reasons recorded above the order dated 09.08.2019 stands quashed and set aside and the applicant is

* 08.11.2006

held to have completed the period of probation on 22.02.2007

* Corrections are made in view of order passed by Hon'ble Tribunal on - 23.07.2024

The applicant is also held entitled for all consequential benefits from the date of completing his probation i.e. 22.02.2007 The respondents shall release the monetary benefits to the applicant within 12 weeks from the date of this order.

* 08.11.2006

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12. The Original Application stands disposed of in the above terms however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

O.A.NO.128-2021(DB)-2024-HDD-MINOR PUNISHMENT

① NO ⑤