

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1260/2022 (S.B.)**

Pramod S/o Gajanan Deoghare,
Aged about 50 years, Occupation: Service,
R/o Deoghar Mohalla, Bajirao Galli,
Jagnath Budhwari, Nagpur - 440 002.
(Mob. 9325535464).

Applicant.

Versus

1. Assistant Commissioner of Fisheries,
Administrative Building - II, 5th Floor,
Civil Lines, Nagpur-440 001.
2. Commissioner of Fisheries,
Government of Maharashtra,
Taporwala Aquariam,
Netaji Subhash Chandra Bose Road,
Charni Road, Girgaon, Mumbai-400 002.
3. The State of Maharashtra,
Through Secretary Fisheries,
Near Chetana College, Vandre (E)
Mumbai.

Respondents

Shri R.M.Fating, Ld. Counsel for the applicant.
Shri S.A.Deo, Ld. C.P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 12th April, 2024.

JUDGMENT

Heard Shri R.M.Fating, learned counsel for the applicant and Shri S.A.Deo, learned C.P.O. for the respondents.

2. Case of the applicant in short is as under-

The applicant was appointed on the post of Recovery Officer by the respondents as per appointment order dated 10.07.1998 in the office of Fisheries Department, Ratnagiri. The applicant was transferred as Junior Clerk in the Office of Fisheries Department, Bhandara on 30.06.2000. The applicant was transferred at Wardha in the year 2006. Thereafter, applicant was again transferred to Kolhapur. Lastly, applicant was transferred from Kolhapur to Nagpur as per the order dated 30.05.2017. He is presently posted in the post of Assistant Commissioner of Fisheries Nagpur and is drawing a salary of Rs.50,000/- p.m.. The applicant performed his duties diligently at all the places wherever he was transferred. Thereafter, he was transferred.

3. The applicant is a very emotional person by heart and due to the suicide of his cousin sister, he got a set-back and was

mentally disturbed and due to which he suffered from major depressive disorder with "Anxiety disorder" and therefore he was taking medical assistance/treatment from Dr.Sudhir Bhawe, Nagpur from 01.02.2020 till 07.09.2021. The applicant was on leave on medical ground from 25.11.2019 till 07.09.2021.

4. The applicant was directed to remain present before the Medical Board for examination. The Medical Board declared him fit to join the duty. Thereafter, the applicant approached to the respondent no.1, but he was not allowed to join duty. He was directed to approach to respondent no.2. Hence, the applicant approached to this Tribunal for the following reliefs-

(i) By way of interim relief, direct the respondent nos. 1 and 2 to join the applicant on duty at the same office on the post of Assistant Commissioner of Fisheries, Nagpur and to forthwith release the salary of the applicant from 16.10.2021 along with all consequential benefits, during the pendency of present application, in the interest of justice.

(ii) Grant ad-interim relief in terms of prayer clause (1) above;

5. The O.A. is strongly opposed by the respondents 1 and 2 by filing reply. It is submitted by respondent no. 2 in para 8 (page 85) as under –

8. It is submitted that, the Applicant was posted as Junior Clerk on the establishment of Assistant Commissioner of Fisheries, Nagpur on 30.5.2017. It is further submitted that, since 26.11.2019 till 6.9.2021 the Applicant has proceeded on unauthorized leave without informing the Respondents. As such it can be seen that, the Applicant was absent for near about two years that too unauthorizedly.

6. In para 12, it is submitted that the applicant was continuously absent for a long period. Therefore, one Shri Kunghadkar was appointed on the post of Junior Clerk w.e.f. 01.10.2021 in place of the applicant. In para 17, it is submitted that respondents have issued chargesheet for the misconduct of the applicant. In para 18, it is submitted that applicant refused to accept the chargesheet and therefore it was pasted on the door of the residential premises of the applicant. Departmental enquiry was conducted. The applicant remained absent in the enquiry and final report of the enquiry i.e. the dismissal order was pasted on the door of the residential premises of the applicant.

7. The applicant has committed misconduct. Without informing to the respondents, the applicant remained absent for long period.

8. The learned counsel for the applicant has submitted that he was not served any charge sheet or dismissal order by the respondents. The learned counsel for the applicant has submitted that the Medical Board is not the authority to decide the leave of applicant. In support of his submission pointed out the decision in Writ Petition No.3479/1990 and submitted that direction be given to respondents to decide the leave of applicant. The learned counsel for the applicant pointed out the G.R. dated 02.06.2022.

9. The learned C.P.O. has submitted that applicant has not informed the respondents whenever he remained absent. As per G.R., the applicant has to inform about his absence.

10. It appears that applicant intentionally remained absent for about two years. The medical certificate of Medical Board shows that his leave shall not be regularised. It appears that the applicant is adamant person. He has not accepted the charge sheet. At last, the respondents have pasted the chargesheet on his last residential address. The applicant has not taken any part in the departmental enquiry. The dismissal order was also refused by the applicant. Lastly, it was pasted on the last address of the applicant. Therefore, the G.R. is not helpful to the applicant. The applicant without giving any information to the respondents, remained absent for a long period. The cited decision in Writ Petition No.3479 of 2019 is on different footing. It was the case of applicant that his salary was not paid and termination order was issued thereafter. It was held that the termination order was subsequent to that period and therefore the respondents should have paid the subsistence allowance for the period from 07.09.2018 to 07.10.2018. Therefore, cited decision is not applicable to the case in hand. The applicant is already dismissed by the respondents. The prayer is very much different. In the oral submission, it is submitted that respondents be directed to

decide the leave, whereas, in the prayer the letter/order dated 29.10.2021 and order/communication dated 24.11.2021 are challenged. The applicant approached to the respondent no.2 for his grievances. The applicant is already dismissed by the respondents. Therefore, he is not entitled for the relief as prayed in the O.A.. Hence, the following order-

ORDER

The O.A. is dismissed with no order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 12/04/2024.
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 12/04/2024.
Uploaded on :
