

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 712 OF 2018  
(Subject – Leave/ Deemed Date of Promotion)**

**DISTRICT : AHMEDNAGAR**

**Sandipan Anna Gavali,** )  
Age : 61 years, Occu. : Retired as Police Inspector,) )  
R/o : C/o A.M. Joshi, 'Durvankur', Plot No. 42,) )  
Meher Nagar, Aurangabad. ) )

.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Addl. Chief Secretary, )  
(Home Department), )  
Mantralaya, Mumbai-400 032. )
2. **The Addl. Chief Secretary,** )  
General Administration Department, )  
Mantralaya, Mumbai. )
3. **The Addl. Chief Secretary,** )  
Finance Department, Mantralaya, )  
Mumbai. )
4. **The Director General of Police,** )  
Shahid Bhagatsingh Marg, Culaba, )  
Maharashtra State, Mumbai-39. )
5. **The Police Commissioner of Police,** )  
Aurangabad (City), Aurangabad. )
6. **The Accountant General,** )  
(Account & Entitlement)-II, )  
Maharashtra, Nagpur. )

... **RESPONDENTS**

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**APPEARANCE** : Shri D.K. Rajput, Counsel for Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,  
Presenting Officer for respondent authorities.  
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**CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**RESERVED ON : 13.12.2023**

**PRONOUNCED ON : 17.01.2024**  
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**ORDER**

1. Heard Shri D.K. Rajput, learned counsel appearing for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer appearing for respondent authorities.

2. By this Original Application, the applicant is seeking directions against the respondents to modify and correct the order dated 03.03.2018 insofar as sanction of leave more particularly duty period (compulsory waiting period) as admissible under Rule 9 (14)(F)(I) (II) of the Maharashtra Civil Services (Pension) Rules, 1982 for all the purposes including the final settlement of pension and also declared that the applicant deemed to have been conferred, acquired and confirm on the post of Police Inspector and further to count his seniority w.e.f. 07.11.2002 i.e. the date on which he resumed his duties when he returned from leave.

3. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

(i) The applicant had joined the Police services in the department of Home of the State Government of Maharashtra on 01.03.1983 as a Sub Inspector of Police and he was promoted to the higher post as Assistant Police Inspector in the month of November 1992 and served at various Police Stations and braches in the State of Maharashtra.

(ii) The applicant was attached to the Police Station, Junner, Dist. Pune (Rural) in the year 1998 and 1999. At that time, the applicant suffered illness of pancreatitis, for which he was undergoing the medical treatment at Government Hospital, Junner, Dist. Pune. The Senior Superintendent of Police, Pune was intimated about the aforesaid facts through Police Station In-Charge Officer of the Police Station, Junner (Annexure A-1).

(iii) Thereafter, the applicant was transferred to the State Anti-Corruption Bureau vide order dated 28.10.1999 by respondent No. 4 and relieved from the same Police Station Junner on 03.11.1999. Copy of the said transfer order dated 28.10.1999 is marked as Annexure A-2. However,

due the aforesaid illness and medical advice the applicant could not join the new post immediately.

(iv) It is further case of the applicant that on 25.10.2000 the applicant was promoted to the higher post in the rank of Police Inspector, which order was modified on 01.01.2001 and the applicant was retained in Anti-Corruption Bureau at Mumbai. The said promotion order is marked as Annexure A-3 collectively.

(v) It is the case of the applicant that after recovery from the illness on 07.11.2002, the applicant resumed his new post in the Anti-Corruption Bureau, Mumbai and submitted written joining report along with medical certificates duly signed by the Superintendent of Sasson General Hospital, Pune. Copy of the said joining report is marked as Annexure A-4. In spite of the medical reports and fitness certificate as mentioned above, the Director Anti-Corruption Bureau compelled the applicant to undergo the medical examination from the standing medical board at Sir J.J. Group of Hospitals Byculla, Mumbai vide order dated 11.11.2002. Accordingly standing medical board had examined the applicant on 18.11.2002 and issued a

medical certificate with its findings on 27.11.2002 and declared that the applicant was fit to resume his duties. Though the applicant has visited regularly the office of the Director, Anti-Corruption Bureau and requested posting order, no immediate action was taken in this regard. Finally on 02.01.2003, the applicant submitted a written request, but no posting orders were issued and he was kept waiting from 28.12.2002. The said written request is marked as Annexure A-6.

(vi) It is further case of the applicant that on 02.08.2005, the Director General of Police, Maharashtra State, Mumbai, issued an order effecting his transfer and posting in the City of Brihan Mumbai. The Director General of Police Maharashtra State, Mumbai cancelled the promotion of the applicant and issued a transfer order in the rank of Assistant Police Inspector. The applicant contends that the said order of cancellation of promotion was without any authority and it was an illegal order.

(vii) According to the applicant on 17.08.2005 he had approached the Commissioner of Police, Mumbai City with the joining report, however he was again sent to the

standing medical board at Sir J.J. Group of Hospitals Byculla, Mumbai. The board has examined the applicant on 05.09.2005, though the applicant was not ill since 07.11.2002 and he was merely kept waiting from posting orders. On 26.09.2005, the stating medical board at Sir J.J. Group of Hospitals Byculla Mumbai has forwarded the medical report to the office of the Commissioner of Police, Mumbai. After perusal of the medial report, the Commissioner of Police, Mumbai issued a posting order of the applicant in the office of Deputy Commissioner of Police, Armed Police, Tardeo Mumbai. The applicant has resumed his duties on 27.09.2005.

(viii) As per the contention of the applicant on 07.10.2005 onwards, the applicant preferred leave application to the Director General of Police, Maharashtra State, Mumbai requesting therein that the period between 04.11.1999 and 06.11.2002 be treated as Earned Leave, Half Pay Leave, Commuted Leave, Special Leave etc. and to sanction and treat the period between 07.11.2002 and 26.09.2005 as duty period (compulsory waiting period).

(ix) It is the case of the applicant that the office of Director General of Office, Maharashtra State, Mumbai has

made discreet enquires and investigations about illness of the applicant and on satisfaction, decided to grant leave to the applicant and also forwarded the proposal to the State Government on 02.05.2008 for approval.

(x) According to the applicant, it was incorrect approach of the office of the Director General of Police, Maharashtra State, Mumbai, which constrained the applicant to approach this Tribunal by filing O.A. No. 266/2017 and by order dated 08.01.2018, this Tribunal has directed the respondents to decide the leave proposal within a span of two months from 08.01.2018. In response to the said directions, the respondents sanctioned and treated the absence of the applicant from duty as :-

- (1) 04.11.1999 to 01.05.2000- 180 days Earned Leave
- (2) 07.11.2002 to 16.01.2003- 71 days Duty Period
- (3) 17.08.2005 to 26.09.2005 - 41 days Duty Period
- (4) 02.05.2000 to 30.06.2000- 60 days Earned Leave
- (5) 01.07.2000 to 06.08.2000-100 days Commuted Leave
- (6) 09.10.2000 to 06.11.2002-759 days Extra Ordinary Leave
- (7) 17.01.2003 to 16.08.2005-947 days Extra Ordinary Leave.

(xi) It is the case of the applicant that leave granted particularly at Sr. Nos. 2, 3 and 7 cited above is wrongly decided. The applicant has resumed his duties on 07.11.2002 and the respondent authorities were at fault in

not issuing the posting orders to the applicant on return from leave and kept him waiting. This fact is also confirmed by the respondents by inflicting punishment upon one employee Shri Sandeep Kamlakar Sane by order dated 03.04.2017 for keeping the file pending of posting order of the applicant during the period from January 2003 to July, 2005. The applicant submits that it would be legal, and proper to treat the period between 07.11.2002 and 26.09.2005 as a duty period in terms of the provisions of under Rule 9 (14)(F)(I) (II) of the Maharashtra Civil Services (Pension) Rules, 1982. Hence, the present Original Application.

4. Learned counsel for the applicant submits that absence from duty period is decided in two parts viz. leave on medical ground, as it was credit to the applicant's service record since 04.11.1999 to 06.11.2002 and second part is the duty period since 07.11.2002 to 26.09.2005, as the applicant was kept waiting for the posting orders after he return from leave. Learned counsel further submits that out of the second part, period from 07.11.2002 to 16.01.2003=71 days and the period from dated 17.08.2005 to 26.09.2005=41 days is treated as duty period and the remaining period as mentioned at Sr. No. 04 of



the order dated 03.03.2018 is required to be quashed and set aside with the direction to the respondents to treat this period as duty period.

5. Learned counsel for the applicant submits that after availing medical leave, the applicant has reported for duties on 07.11.2002. It is also admitted by the respondent No. 4 in his affidavit in reply. The applicant has requested for posting order on 07.11.2002 and by the application dated 02.01.2003. Even ACB pursued the matter with the respondent No. 4 by issuing various letters dated 16.01.2003, 19.12.2003, 10.05.2004 and Demi official letters dated 14.09.2004, 16.12.2004 and 27.04.2005 respectively, but no posting orders were issued to the applicant.

6. Learned counsel submits that it is an admitted fact on record by the respondent No. 4 that the delay in posting order in respect of the applicant was due to the negligence on the part of office of respondent No. 4, wherein one officer from the office of respondent No. 4, Mr. Sane was held responsible for keeping the file of the applicant in abeyance since January, 2003 to July, 2005 without action and he was punished for the said default. In view of the same, the period between 07.11.2002 to

26.09.2005 ought to have been treated as duty period being a compulsory waiting period considering the fact that the applicant was pursuing the matter with the respondent No. 4 since 07.10.2005.

7. Learned counsel for the applicant submits that the order of the applicant came to be issued on 02.08.2005 and it was communicated to the applicant on 16.08.2005. Accordingly the applicant has reported for duties on the very next day to the Commissioner of Police, Mumbai City on 17.08.2005 and after completing the administrative formalities, the applicant was allowed to join his duties on 27.09.2005.

8. Learned counsel for the applicant submits that the applicant was promoted to the higher post in the rank of Police Inspector from the rank of Assistant Police Inspector by order dated 25.10.2000 and the applicant was posted at Pune (Rural), however, he was relieved from Pune (Rural) to join ACB Mumbai. Therefore, change was carried out by way of corrigendum dated 01.01.2001 at ACB Mumbai. The said promotion order dated 25.10.2000 was in existence as on 07.11.2002 and the same is not disputed by respondent No. 4. The applicant has reported his duties on 07.11.2002 on the promotional post of Police

Inspector, however, there was no reason to cancel the promotion once the departmental promotion committee recommended and accorded promotion to the applicant. The respondent No. 4 has no authority to cancel the promotion without following due process of law. Therefore, the order dated 02.08.2005 was objected by written letter dated 18.08.2005 and further various applications were made by the applicant. On 17.02.2010, the respondent No. 4 was pleased to cancel the said order dated 02.08.2005 and confirmed the order of promotion dated 25.10.2000. In consequence of which, the applicant has worked as Police Inspector till his superannuation on 31.05.2014.

9. Learned counsel for the applicant submits that the present Original Application deserves to be allowed and it would be just and proper to issue direction to the respondent No. 4 to declare that the applicant has been conferred, acquired and hold the post of Police Inspector since 07.11.2002 till his superannuation on 31.05.2014. Learned counsels submits that the respondent No. 4 may be directed to revise the pay fixation of the applicant and submit a revised pension proposal to the Accountant General, Nagpur within a stipulated period.

10. The respondent Nos. 5 & 6 have filed their separate affidavit in reply. Learned Presenting Officer on the basis of

affidavit in reply filed on behalf of respondent No. 5 i.e. Commissioner of Police, Aurangabad City, Aurangabad submits that the applicant has joined as PSI on 01.03.1983 and came to be promoted to the posts of API and P.I. and finally retired on superannuation on 31.05.2014. Learned P.O. submits that when the applicant was working as API, he was transferred from Pune Rural to ACB by order dated 03.11.1999. He was relieved on transfer by the S.P. Pune Rural to enable him to report in ACB on 3.11.1999. However, the applicant has reported sick on 08.11.1999 instated of joining in the ACB. Further during the intervening period, his case came to be considered for promotion to the post of P.I. as per his seniority in the cadre of API and since he found fit, he came to be promoted to the post of P.I. vide office order dated 14.10.2000 and shown his posting from Pune Rural to Pune Rural. His posting after promotion to the post of P.I. was however modified by the order dated 01.01.2001 from Pune Rural to ACB. It is however revealed that the applicant was already relieved on transfer as API by the S.P. Pune Rural on 03.11.1999. Hence, the applicant was required to report ACB immediately after 01.01.2001. Learned P.O. submits that the applicant reported the duties on promotional post of P.I. at ACB. on 07.11.2002. Consequently, the Director General of Police,

ACB, M.S. Mumbai referred the applicant to Sir J.J. Group of Hospitals, Mumbai for obtaining a fitness certificate on 28.12.2002. It is not clear as to why the applicant did not immediately go Sir J.J. Group of Hospitals, Mumbai for the medical examination.

11. Learned P.O. submits that in this mean time, the respondent authorities took a decision to cancel the promotion order issued in respect of the applicant to the post of P.I. vide office order dated 02.08.2005 and was posted as API in Mumbai City. The applicant went to resume duties to Mumbai City on 17.08.2005 and the Commissioner of Police, Mumbai after getting him examined medically fit from Sir J.J. Group of Hospitals, Mumbai, got him resumed in Mumbai City on 27.09.2005. He was given promotion to the post of P.I. and posted on promotion to Aurangabad City on 31.05.2010. The applicant came to be retired on superannuation from Aurangabad city on 31.05.2014.

12. Learned P.O. submits that the period of absence of the applicant w.e.f. 7.11.2002 to 16.08.2005 is concerned, the office of respondent No. 5 after getting information about the said period from various offices has taken a decision vide order office

dated 03.03.2018 treated his absence period from 7.11.2002 to 16.08.2005 as follows :-

07.11.2002 to 16.01.2003= 71 days 17.08.2005 to 26.09.2005= 41 days, i.e. 112 days	It was treated as "Duty Period" for all purpose as per the provisions of Rule 9(15) (F) of the M.C.S. (Pension), Rules, 1982
02.05.2000 to 30.06.2000= 60 days as Earned Leave on <b>medical</b> certificate.	As per M.C.S. (Leave) Rules,1981
01.07.2000 to 06.08.2000=100 days Commuted Leave on medical grounds.	As per Rule 61(1)(A) of the M.C.S. (Leave) Rules,1981
09.10.2000 to 06.11.2002=759 days Extra Ordinary Leave	As per Rule 63(6) of the M.C.S. (Leave) Rules,1981
17.01.2003 to 16.08.2005=947 days Extra Ordinary Leave.	

13. Learned P.O. submits that the Standing Medical Board of Sir J.J. Group of Hospitals, Mumbai after examining the applicant has issued certificate dated 27.12.2002 that he is now fit to resume duties and diagnosis-N.A.D. and also mentioned that the previous leave cannot recommend on medical ground. The said certificate is marked as Exhibit-R-1. In view of the same, the applicant was not entitled for any leave on medical grounds for the period of 04.11.1999 to 16.08.2005.

14. Learned Presenting Officer submits that as per the certificate issued by the Standing Medical Board of Sir J.J.

Group of Hospitals, Mumbai dated 26.09.2005 certifying therein that the applicant is now fit to resume duties, diagnosis-N.A.D. and further stated in the certificate that the previous leave cannot be recommended on medical grounds, in view of the same, the applicant was not entitled for any leave on medical ground prior to 26.09.2005.

15. Learned P.O. submits that the respondent authorities after due verification of the case of the applicant has regularized the period of absence of the applicant as has been clarified in the tabular form in the order. Learned P.O. submits that respondents have denied that the orders suffer mala-fide, vindictiveness and also in violation of any rules. Learned P.O. submits the absence period of the applicant has been appropriately regularized as per the law.

16. Learned P.O. submits that (i) The period of absence of the applicant w.e.f. 04.11.1999 to 01.05.2000 i.e. 180 days has been treated as Earned Leave by the respondents by order dated 02.05.2008. Further period from 02.05.2000 to 30.06.2000 i.e. 60 days has been treated as Earned Leave vide office order dated 03.03.2018. (ii) The period w.e.f. 01.07.2000 to 08.10.2000 i.e. 100 days has been treated as commuted leave on medical

grounds vide office order dated 03.03.2018. (iii) The period w.e.f. 09.10.2000 to 06.11.2002 i.e. 759 days has been treated as Extra Ordinary Leave vide office order dated 03.03.2018 (iv) The period w.e.f 07.11.2002 to 16.01.2003 i.e. 71 days has been treated as Duty period as per rule 9(14) (F) vide office order dated 03.03.2018. (v) The subsequent absence period has also been appropriately regulated after taking into consideration all documents and rules and such action is free from any mala-fide.

17. Learned P.O. submits that there is no illegality in referring to the applicant for medical examination at Sir J.J. Group of Hospitals, Mumbai for getting the exact information about the fitness and to enable to treat the previous period of absence of the applicant. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

18. On the basis of affidavit in reply filed on behalf of respondent Nos. 3 & 6 separately, learned P.O. submits that the reply is formal in nature and according to them, it is for the respondent Nos. 1 and 4 to take the appropriate decision about the prayer of the applicant seeking direction to the respondent No. 1 to treat the absence of the applicant from 07.11.2002 to



26.09.2005 as duty period (compulsory waiting period) as provided under Rule 9 (14)(F)(I) (II) of the Maharashtra Civil Services (Pension) Rules, 1982.

19. Similarly learned P.O. submits that the respondent No. 6 has also no role to play in the regard, unless and until its office receives the revised pension proposal from the Pension Sanctioning Authority, in case the above mentioned leave period of the applicant is regularized as duty period.

20. By this Original Application, the applicant is seeking direction to declare, sanction and treat that the applicant resumed his duties on return from leave on 07.11.2002 and further period of absence of the applicant between 07.11.2002 and 26.09.2005 may be treated as duty period as contemplated under Rule 9 (14)(F)(I) (II) of the Maharashtra Civil Services (Pension) Rules, 1982. In addition of the same, the applicant is also seeking quashing and setting aside clause-4 of the impugned order 03.03.2018 in which the period from 17.01.2003 to 16.08.2005 mentioned as leave period instead of duty period.

21. In view of the aforesaid specific prayer by referring Rule 9 (14)(F)(I) (II) of the Maharashtra Civil Services (Pension) Rules, 1982, it would be useful to reproduce Rule 9(14) to the

extent of clause f(i) and (ii) only, which are relevant for the present discussion :-

*“14-Duty-Duty includes*

*(f) the period for which a Government servant is required to wait compulsorily until receipt of his posting orders in the cases mentioned below:-*

*(i) whose orders of transfer are held in abeyance, cancelled or modified while in transit, or*

*(ii) who, on return from leave or deputation or on abolition of the post held by him, has to await receipt of posting orders, or*

*(iii) who, on arrival at the headquarters of the post to which he is posted is not in a position to take charge of the post from the Government servant to be relieved.*

*The period availed of to resume duties after the receipt of posting orders shall not exceed the joining time admissible under the rules and shall be treated as continuation of the period of compulsory waiting.”*

It is clear from the Clause-F of the aforesaid Rule, the period for which a Government servant is required to wait compulsorily until receipt of his posting orders can be considered in the cases mentioned in Clause (i), (ii) & (iii) and except this no other contingency has been considered. In the given set of facts of this Original Application, Clause (i) & (ii) of Clause-F of Rule 9(14) are only relevant and in terms of clause F(i), the said period of waiting compulsorily may be considered as duty period, if the orders pertaining to transfer of the employee are held in abeyance, cancelled or modified while in transit and in terms of

clause F(ii), if the employee on return from leave or deputation or on abolition of the post held by him, has to await receipt of posting orders.

22. In view of above, the following dates are relevant as per the averments raised in the Original Application :-

<b>Sr. No.</b>	<b>Date</b>	<b>Events</b>	<b>Annexures</b>
1	28.10.1999	The applicant was transferred to Anti-Corruption Bureau, Mumbai.	A-2
2	03.11.1999	The applicant relieved from the Police Station Junner District Pune (Rural), but not joined the place of transfer (ACB Mumbai) due to illness.	
3	25.10.2000	The applicant was promoted as Police Inspector in Pune (Rural) regional only under the orders of the Upper Director General of Police (Establishment), State of Maharashtra Mumbai.	A-3 collectively
4	01.01.2001	Posting order of the applicant is modified and the applicant retained at ACB Mumbai as P.I. and the order dated 25.10.2000 was modified accordingly	A-3 collectively
5	07.11.2002	The applicant recovered from illness and requested the Director, ACB, Maharashtra State, Mumbai to allow him to join on new post at ACB Mumbai.	A-4
6	11.11.2002	Communication from the Deputy Commissioner of Police/Superintendent of Police (Mumbai), Director General of Police, ACB. Mumbai to Sir J.J. Group of Hospitals, Mumbai for medical examination of the applicant through Standing Medical Board.	A-5
7	18.11.2002	Medical Examination of the applicant was done.	
8	27.12.2002	Medical certificate issued by the Standing Medial Board of Sir J.J. Group of Hospitals, Mumbai certifying therein against the column Diagnosis-NAD at present no evidence of pancreatitis and also with the endorsement that previous leave cannot be recommended on Medical grounds.	A-5 collectively

9	02.01.2003	The applicant has requested in writing to the Director General of Police, ACB, M.S. Mumbai to allow him to join, since the medical examination is over and medical certificate has been issued.	A-6
10	02.08.2005	Ordered by the Dy. Director General of Police (Establishment), Mumbai pertaining to cancelation of promotion of the applicant from the post of Police Inspector, ACB. Mumbai and posted as API Bruhanmumbai.	A-6
11	17.08.2005	The applicant has submitted joining report to the Commissioner of Police, Mumbai City, Mumbai.	A-8
12	18.08.2005	Request application submitted by the applicant through the Commissioner of Police, Mumbai to the Director General of Police, Mumbai allow him to join posting at Mumbai City.	A-8 collectively
13	03.08.2005	Communication from the Joint Commissioner of Police (Establishment), Director General of Police, ACB. Mumbai to Sir J.J. Group of Hospitals, Mumbai for medical examination of the applicant through Standing Medical Board.	A-9
14	05.09.2005	Medical examination of the applicant was done before the standing medical board Sir J.J. Group of Hospitals, Mumbai.	A-9 collectively
15	26.09.2005	Medial certificate issued by the standing medical board Sir J.J. Group of Hospitals, Mumbai.	
16	27.09.2005	The applicant has submitted an application for joining on the post of API, Bruhanmumbai.	
17	28.09.2005	Joining accepted and the applicant was joined on the post of API.	
18	07.10.2005	The applicant has filed leave application for the period between 04.11.1999 to 06.11.2002 and from 07.11.2002 to 26.09.2005 claiming duty period (compulsory waiting period for postings).	

22. It is not out of place to mention that after the medical examination of the applicant before the standing medical board of Sir J.J. Group of Hospitals, Mumbai twice it has been certified by the said board that the applicant is fit to join duty and no

evidence of pancreatitis and previous leave cannot be recommended on medical grounds and the secondly, the applicant for the first time on 07.10.2005 has submitted leave application for the absence between 04.11.1999 to 06.11.2002 and from 07.11.2002 to 26.09.2005. The applicant has claimed the said period as duty period under the head of compulsory waiting period for posting.

23. It is also the case of the applicant that one another employee Shri Sandeep Kamlakar Sane has kept the file of the applicant under his custody from January 2003 to July, 2005 pending without any action and as such, the applicant's case for posting order was not at all processed. In consequence thereof, the said Shri S.K. Sane subjected to Departmental Enquiry and by final order dated 03.04.2017 he was held guilty and punished with minor punishment of censure.

24. In my considered opinion, it is the applicant whose prolonged absence from 04.11.1999 to 06.11.2002 necessary orders could not be passed. It is pertinent to note here that though the applicant as per his initial order of transfer from Junner Police Station Pune Rural to ACB Mumbai did not join the said place of transfer allegedly due to is illness, was

promoted on the post of Police Inspector by order dated 25.10.2000 (Annexure A-3) by modification of the said promotion order, the applicant was retained as Police Inspector, ACB. Mumbai even though the applicant did not join at his place of transfer at ACB Mumbai and remained absent till 06.11.2002 without explaining his absence till that time. On 07.11.2002, when for the first time the applicant went to ACB Mumbai for the purpose of joining, he was rightly sent for medical examination by the standing medical board of Sir J.J. Group of Hospitals, Mumbai for the reason that for the first time the applicant in his joining report dated 07.11.2002 (Annexure A-4) has submitted medical certificate of his illness and his treatment at Cottage Hospital, Junner from 08.11.1999 to 06.11.2002 and also submitted along with it fitness certificate issued by the Sasoon General Hospital, Pune dated 06.11.2002. In view of the same, the applicant was rightly sent for medical examination by the Standing Medical Board. It is certified by the Sir J.J. Group of Hospitals, Mumbai that at present there is no evidence of pancreatitis and that previous leave cannot be recommended on medical grounds. In view of the same, at that time neither absence period of the applicant from 04.11.1999 to 06.11.2002 could have been treated as leave period nor could have been

treated as duty period. It appears from the pleadings of the O.A. that for the first time on 07.11.2005 the applicant had filed leave application for his absence during the period from 04.11.1999 to 06.11.2002.

25. In the backdrop of the aforesaid facts, by order dated 02.08.2005 (Annexure A-7), the applicant's promotion was cancelled and he was posted as API at Bruhanmumbai. It further appears that for the period of 17.01.2003 to 16.08.2005 there was no communication from the applicant placed on record to indicate that the applicant was waiting for his posting and he was on duty. Merely on the basis of the departmental action against one staff member viz. Shri Sane, it is difficult to infer that the applicant was waiting for his posting for such a long period without any grievance. It is thus clear that the applicant was not intending to join at ACB Mumbai for the reasons best known to him. The same is evident from the fact that as soon as the applicant was transferred as API to Bruhanmumbai by order dated 02.08.2005, on 07.08.2005 itself the applicant has approached the Commissioner of Police with his joining report and after his medical examination by the standing medical board at Sir J.J. Group of Hospitals Byculla, Mumbai, the applicant had joined the duties on 27.09.2005.

26. In terms of the impugned order dated 03.03.2018, the said huge absence period of the applicant from duty came to be diluted and without any vindictive approach, the department has considered and converted his absence in various leaves i.e. Earned Leave, Commuted Leave, Extraordinary Leave and further duty period. So far as the period of absence between 17.01.2003 and 16.08.2005 is concerned, the same has been considered as extraordinary leave. I do not find any fault in the impugned order passed by the respondent authorities. In my considered opinion, the applicant is seeking benefit of his own wrong.

27. The applicant is seeking declaration that the applicant resumed his duties on return from leave on 07.11.2002 (in fact till that date no leave was sanctioned nor the applicant has filed any application to treat the said period of his absence as period of leave for medical reasons) and further the applicant is seeking direction to treat the period between 07.11.2002 to 26.09.2005 as duty period in terms of Rule 9 (14)(F)(I) (II) of the Maharashtra Civil Services (Pension) Rules, 1982. As discussed in detail in foregoing para, clauses (i) & (ii) of Clause-F of Rule 9(14) of the Maharashtra Civil Services (Pension) Rules, 1982 are not attracted in the case of the applicant and as such, the said



period cannot be treated as duty period (waiting compulsorily until receipt of the posting orders).

28. In view of the above discussions, I find no substance in the present Original Application and the same is liable to be dismissed. In the circumstance, no order as to costs. Hence, the following order :-

**ORDER**

- (i) O.A. No. 712/2018 is hereby dismissed.
- (ii) In the circumstance, no order as to costs.

**PLACE : Aurangabad.**

**DATE : 17.01.2024**

**(Justice V.K. Jadhav)**

**Member (J)**

**KPB S.B. O.A. No. 712 of 20180 VKJ Leave or Deemed date of Promotion**