

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3446 OF 2015

Dr. Narsing Daulatrao Zade

-vs-

State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. N.D.Thombre, counsel for the petitioner.

CORAM : SMT. VASANTI A. NAIK &
PRASANNA B. VARALE, JJ.

DATE : 17.08.2015.

By this petition, the petitioner challenges the order of the Maharashtra Administrative Tribunal, dated 22/04/2015 so far as it rejects the claim of the petitioner for treating the suspension period from 01/04/1987 till 28/02/1990 as period on duty.

The petitioner was working as a Civil Surgeon in the Hospital at Gadchiroli. Several patients, who had participated in the eye camp had lost their eye sight due to the unhygienic condition at the camp. A charge-sheet was served on the petitioner on 22/02/1988 and the petitioner was suspended with effect from 01/04/1987. An enquiry was held and the charge in respect of negligence was proved against the petitioner. A punishment of stoppage of two increments was imposed upon the petitioner. The petitioner accepted the said punishment and the order of punishment attained finality. After the punishment order was passed on 26/02/1992, the petitioner filed an original application for a declaration that the period of suspension from 01/04/1987 till the passing of the order of punishment dated 26/02/1992 should be treated as period on duty. The original application of the petitioner was partly allowed. The period from 01/03/1990 was

directed by the Tribunal to be treated as period on duty, but the period from 01/04/1987 till 28/02/1990 was not treated as period on duty. The part of the order declining to treat the period from 01/04/1987 till 28/02/1990 as period on duty is challenged by the petitioner by the instant petition.

On hearing the learned counsel for the petitioner and on a perusal of the impugned order as also the provisions of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment During Suspension, Dismissal and Removal) Rules, 1981, it appears that there is no scope for interference with the impugned order, in exercise of the writ jurisdiction. By an order dated 27/11/2013, the State Government decided to treat the suspension period of the petitioner as suspension period and not as period on duty by resorting to the provisions of Rule 72 (5) of the Rules of 1981. It is observed by the State Government in the order, dated 27/11/2013 that the petitioner was held to be guilty of the serious charge which had resulted in loss of eye sight of several patients. According to the State Government, the charge was serious and since it was proved, the suspension period was not liable to be treated as period on duty. The Maharashtra Administrative Tribunal considered the circumstances of the case to hold that the period from 01/03/1990 should be treated as period on duty, as the enquiry report was submitted on 26/12/1989 and the Disciplinary Authority passed the order of punishment after nearly 26 months. It is, therefore, rightly held by the Tribunal that the period from 01/01/1990 to 26/02/1992 was required to be treated as period on duty. The Tribunal, however, held that the period from 01/04/1987 till 26/12/1989, the date on which the enquiry report was submitted, could not be treated as period on duty. The findings of the Tribunal are based on a proper appreciation of the material on record. Though the charge-sheet was served on the petitioner on 22/02/1988, the petitioner wasted more than three months in replying the charge-sheet. In such a background, the petitioner

cannot seek the benefit of the provisions of Note-II of Rule 73 of the Rules of 1981 which provide that an enquiry should be completed within a period of three months as far as possible. In the circumstances of the case, we do not find any illegality in the order of the Tribunal refusing to treat the suspension period before 01/01/1990 as period on duty.

Since the order of the Tribunal is just and proper, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

KHUNTE