

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.322 OF 2019
(Subject:- Medical Leave)**

DISTRICT: - AURANGABAD

Pushkar Bhikanrao Randhumal,)
Age : 34 years, Occu: Service as)
Armed Police Constable,)
Bharat Rakhiv Batallion- SRPO,)
Gr.No.14, Satara, Aurangabad.)
R/o Room No.1, 'Ashvini Building,)
SRPF (BRB) Campus,)
Satara (Khandoba), Aurangabad.)..**APPLICANT**

V E R S U S

- 1. The Commandant,**)
Indian Reserve Police Force-1,)
Gr.No.14, Aurangabad.)
- 2. The Additional Director General of**)
Police, State Reserve Police Force,)
Police Head Quarters, M.S. Mumbai,)
Shaheed Bhagatsingh Road, ,)
Colaba, Mumbai-400 001.)
- 3. The Additional Chief Secretary,**)
Home Department,)
Mantralaya, Mumbai 400 032.)..**RESPONDENTS**

APPEARANCE : Shri Ajay S. Deshpande, learned
Advocate for the applicant.

: Shri N.U. Yadav, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **28.04.2022**

ORDER

Aggrieved by non sanction of appropriate leaves as per law, non granting of Special Travelling Allowance as well as exemption from payment of Professional Tax, the applicant has filed this Original Application by invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for following reliefs:-

- (b) The respondent No.1 may kindly be directed to treat the period of absence of the applicant from 15.12.2017 till 5.8.2018 as admissible Hospital Leave, in terms of Rule 77 of MCS (Leave) Rules, 1981 and from 6.8.2018 to 22.10.2018 as Compulsory waiting Period and thus Duty Period, to subserve the ends of justice, by quashing and setting aside the impugned communication at Annexure 'A-4' dated 23.10.2018.
- (c) The respondent No.1 may kindly be directed to sanction travelling allowance to the applicant @Rs.2000/- per month in terms of G.Rs. dated 3.6.2014, 5.4.2010 and 2.8.2004 issued by the Govt. in its Finance Department and the respondent No.1 be further directed to grant the applicant exemption from making payment of Professional Tax, having suffered a

permanent disability of more than 40% and oblige by quashing communication dated 4.12.2018 at Annexure 'A-9'.

2. The facts in brief giving rise to this application can be summarized as follows:-

- (i) The applicant joined service as Armed Police Constable in S.R.P.F under the respondent No.1 i.e. the Commandant, Indian Reserve Police Force-1, Gr.No.14, Aurangabad as on 09.11.2007 and since then he is working as such. While he was deployed in Bihar State during the period of November –December 2010, the applicant suffered from acute chest pain. After returning from Bihar, he underwent Medical Examination. After medical check-up it was revealed that there was hole in his heart valve. “Open Heart Surgery” was done on him in Ruby Hall Clinic, Pune on 21.01.2012. Upon recovery, he resumed the duty on 01.04.2012.
- (ii) It is further submitted that to his misfortune, the applicant suffered severe road accident on 14.12.2017 upon falling down from Auto Rickshaw and running truck crushed his right hand. There were multiple fractures. He took medical treatment in United

CIIGMA Hospital, Aurangabad where he was operated and two steel rods were fitted in his right hand. As a result of road accident occurred on 14.12.2017, he suffered permanent disability. He is resident of District Jalgaon. In view of same, as per requirement he appeared before the competent Medical Board, Jalgaon and he was issued disability certificate (Annex. 'A-1') certifying 45 percent permanent disability.

- (iii) He obtained fitness certificate dated 04.08.2018 (Annex. 'A-2') from United CIIGMA Hospital, Aurangabad wherein it was recorded that the applicant was advised rest of 6.5 months and was fit to resume duties. The applicant by producing the said certificate joined the duties from 06.08.2018. However, the respondent No.1 vide communication dated 07.08.2018 (Annex. 'A-3') addressed to the Dean, Government Medical College and Hospital, Aurangabad referred the applicant for conducting tests for medical fitness, as his period of ailment exceeded six months. He was not allowed to resume duty on 06.08.2018. He appeared before the Medical Board as required from 13.08.2018 to 27.09.2018. The Medical

Board authorities informed him that requisite fitness certificate will be directly sent to the respondent No.1.

- (iv) It seems that the respondent No.1 received the fitness certificate of the applicant on 12.10.2018. Thereafter, under impugned communication dated 23.10.2018 (Annex. 'A-4'), the respondent No.1 allowed the applicant to resume the duty and by the said communication itself sanctioned 30 days commuted leave for the period of 15.12.2017 to 13.01.2018, 225 days earned leave for the period of 14.01.2018 to 26.08.2018 and 57 days extra-ordinary leave for the remaining period of 27.08.2018 to 22.10.2018.
- (v) It is further stated that the applicant infact resumed duty on 06.08.2018 along with the medical fitness certification dated 04.08.2018 (Annex. 'A-2') issued by the United CIIGMA Hospital, Aurangabad. However, the applicant was referred to Medical Board, which took the period from 06.08.2018 onwards till 22.10.2018 to issue fitness certificate, which cannot be attributed to the applicant and the same is required to be treated as compulsory waiting period and thus duty period.
- (vi) It is further stated that impugned communication dated 23.10.2018 (Annex. 'A-4') issued by the

respondent No.1 granting commuted leave of 30 days, earned leave of 225 days and extra-ordinary leave of 57 days is unjust and unfair. Infact the applicant has suffered permanent disability and he has taken treatment for that and therefore, he is entitled to hospital leave for the period of his ailment from 15.12.2017 till 05.08.2018 and further he is entitled for duty period from 06.08.2018 till 22.10.2018.

- (vii) It is further stated that in view of the permanent disability of the applicant, the applicant is entitled for Special Travelling Allowance in accordance with G.R. dated 02.08.2004 (Annex. 'A-7') and subsequent G.R. dated 05.04.2010 (Annex. 'A-6') and G.R. dated 03.06.2014 (Annex. 'A-5') respectively. In view of his said permanent disability, he is also entitled for exemption from making payment of Professional Tax. He made various representations dated 13.10.2018, 01.11.2018 and 12.12.2018 (Annex. 'A-8' collectively) to the respondent No.1 in those regards. However, the respondent No.1 under distinct communications dated 04.12.2018 and 20.12.2018 (Annex. 'A-9' collectively) rejected Special Travelling Allowance admissible to the persons with disability and also declined to exempt from payment of Professional Tax. The applicant,

therefore, seeks to quash and set aside the communication dated 04.12.2018 (Annex. 'A-9'). Hence this application.

3. The application is resisted by filing affidavit-in-reply on behalf of the respondent Nos.1 and 2 by one Govind Shankarrao Nijlewar, working as Assistant Commandant in the office of the respondent No.1. He thereby denied the adverse contentions raised in the application.

- (i) It is, however, not disputed that the applicant was on sick leave for the period from 15.12.2017 to 06.08.2018. The applicant came to join his duties on 06.08.2019 by producing medical certificate of private hospital. However, his sick period was more than six months. Therefore, the applicant was referred to Medical Board. The applicant is also heart patient. After receipt of requisite certificate from Medical Board, the applicant was allowed to join the duty. Accordingly by impugned communication dated 23.10.2018, the applicant was allowed to resume duty and leave was granted for the absence period of the applicant as narrated in the Original Application which is just and proper. Thereby no injustice is caused to the applicant.

(ii) So far as the Special Travelling Allowance is concerned, it is stated that as per prevailing G.R., the incumbents residing within the campus of their office or resides within 1 Km. of the office, no transportation allowance will be payable to such employees. The applicant falls under said category. Hence, the applicant is not entitled for special travelling allowance on the ground of disability. So far as exemption of provisional tax is concerned, the respondent No.1 has sought guidance from the Income Tax Department by writing letters dated 04.12.2018 and 25.06.2019 (page Nos.40 & 41 of P.B.). After receiving reply thereof, the appropriate action will be taken in that regard. In view of above, the application is liable to be dismissed.

4. I have heard at length the arguments advanced by Shri Ajay S. Deshpande, learned Advocate for the applicant on one hand and Shri N.U. Yadav, learned Presenting Officer for the respondents on other hand.

5. Perusal of the facts and circumstances of the case as pleaded by the applicant if taken into consideration, it is seen that by impugned communication dated 23.10.2018 (Annex. 'A-4'), the respondent No.1 treated the absence of the applicant from 15.12.2017 to 13.01.2018 of 30 days as commuted leave, from

14.01.2018 to 26.08.2018 of 225 days as earned leave and from 27.08.2018 to 22.10.2018 of 57 days as extra ordinary leave. Admittedly, the applicant was absent from the duties from 15.12.2017 to 05.08.2018 in the background of the fact that he met with road accident occurred on 14.12.2017. Thereby he suffered 45 percent permanent disability in respect of which the Medical Board at Jalgaon issued disability certificate (Annex. 'A-1').

6. It is a fact that the applicant sought to resume his duties on 06.08.2018 by producing fitness certificate dated 04.08.2018 (Annex. 'A-2') issued by the United CIIGMA Hospital, Aurangabad, where he had taken the medical treatment. However, on the basis of the said private medical certificate, the applicant was not allowed to resume duty and as he was absent from duty for more than 6 months i.e. for the period of 6.5 months, the respondent No.1 by letter dated 07.08.2018 (Annex. 'A-3') addressed to the Dean, Government Medical College and Hospital, Aurangabad referred him to Medical Board for seeking fitness certificate.

7. After having conducted various tests, the said Medical Board said to have issued fitness certificate only on 12.10.2018. In view of same, the applicant has stated that the delay in issuing the said fitness certificate by the authority of the Dean, Government Medical College and Hospital, Aurangabad cannot be attributed to the applicant and as such the said period should be treated as

compulsory waiting period and thus duty period. In view of same, I have to make two parts of the said absence period namely (i) from 15.12.2017 to 05.08.2018 and (ii) from 06.08.2018 to 22.10.2018.

8. The applicant has prayed for treating the period of absence of the applicant from 15.12.2017 to 05.08.2018 as admissible Hospital Leave in terms of Rule 77 of MCS (Leave) Rules, 1981. This period of 15.12.2017 to 05.08.2018 is of total 234 days. Further the applicant claimed remaining 78 days period i.e from 06.08.2018 to 22.10.2018 as compulsory waiting period and thus duty period.

9. In order to appreciate the contentions of the applicant it would be just and proper to reproduced Rule 77 of MCS (Leave) Rules, 198. It is as follows:-

“77. Hospital leave.- (1) The authority competent to grant leave may grant hospital leave to –

(a) Class IV Government servants; and

(b) Such Class III Government servants whose duties involve the handling of dangerous machinery, explosive materials, poiso-nous drugs and the like, or the performance of hazardous tasks;

while under medical treatment in a hospital or otherwise, for illness or injury, if such illness or injury is directly due to risks incurred in the course of their official duties.

Exception.- The hospital leave may also be granted on account of ill health to Government servants specified below whose duties expose them to special risk of accident or illness even though the illness or injury may not be directly due to risk incurred in the course of their official duties:-

- (i) Police officers, including trainees of a rank not higher than that of Head Constable;
- (ii) Government servants of the Prohibition and Excise Department other than clerical establishments;
- (iii) Forest Subordinates, other than clerks in receipt of pay not exceeding Rs.225.

(2) Hospital leave shall be granted on the production of medical certificate from an Authorised Medical Attendant.

(3) Hospital leave may be granted on leave salary equal to that admissible during earned leave or half pay leave and for such period as the authority granting it may consider necessary.

(4) Hospital leave shall not be debited against the leave account and may be combined with any other kind of leave which may be admissible provided the total period of leave, after such combination does not exceed 28 months.

(5) (a) In the case of person to whom the Workmen's Compensation Act, 1923 (8 of 1923) applies, the amount of leave salary payable under this rule shall be reduced by the amount of compensation payable under clause (d) of sub-section (1) of Section 4 of the said Act.

(b) In the case of a person to whom the Employees' State Insurance Act, 1948 (34 of 1948) applied, the amount of leave salary payable under this rule shall be reduced by the amount of benefit payable under the said Act for the corresponding period."

10. The portion under caption 'Exception' mentioned in Sub Section (i) of this Rule would be relevant. In terms of the said exception, it appears that the applicant satisfies the test that he is working as Armed Police Constable with the respondent No.1 which is rank not higher rank than that of Head Constable. He suffered severe injury in the road accident. It is true that the said road accident happened not in the course of his duties. However,

his duties are such which exposes him to special risk of accident. In the circumstances absence from the duty of the applicant from 15.12.2017 till 05.08.2018 will fall under the category of hospital leave. Hospital leave has outer limit of 28 months combining with other kinds of leave. Nothing has been shown on behalf of the respondents that the case of the applicant for this period is not covered under Rule 77 of MCS (Leave) Rules, 1981 for any reason or that Rule 77 cannot be interpreted to extend benefit of it to the applicant. In the circumstances I hold that the applicant would be entitled for hospital leave to the extent of admissible limit for the period of 15.12.2017 to 05.08.2018 in terms of Rule 77 of MCS (Leave) Rules, 1981.

11. The next limb of the matter is the absence period from 06.08.2018 to 22.10.2018. It is the contention of the applicant that after receiving fitness certificate dated 04.08.2018 (Annex. 'A-2') issued by United CIIGMA Hospital, Aurangabad from where the applicant took treatment resumed the duty on 06.08.2018 and presented the said Medical Certificate. However, instead of considering the said Medical Certificate dated 06.08.2018 and allowing the applicant to resume the duty, the respondent No.1 referred the applicant by letter dated 07.08.2018 (Annex. 'A-3') to the Dean Medical College and Hospital, Aurangabad. The said authority issued fitness certificate only on 12.10.2018. On that basis the applicant resumed duty on 23.10.2018.

12. It is the contention of the applicant that the delay in issuing the said fitness certificate result into compulsory absence of the applicant from duty. The said delay is not attributable to the applicant. The applicant presented him before the competent authority of Medical Board as and when directed. There was no any negligence on his part in that regard. However no any specific provision is quoted on behalf of the applicant to seek the said benefit. The respondents have denied the claim of the applicant in that regard for not having any specific provision.

13. So far as the production of private Medical Fitness Certificate dated 04.08.2018 (Annex. 'A-2') issued by the United CIIGMA Hospital Aurangabad on 06.08.2018 is concerned, Rule 47 of MCS (Leave) Rules, 1981 would be relevant and more particularly Rule (3) of Rule 47 is most relevant and therefore it is reproduced as follows:-

“47. Return from leave.- (1)

(2)

(3) (a) A Government servant who has been granted leave on medical grounds may not return to duty until he has produced a medical certificate of fitness in Form 5 in Appendix V.

(b) If the Government servant is a Gazetted Officer, the certificate under clause (a) shall be obtained from a Medical Board except in the following cases:-

- (i) cases in which the leave is for not more than three months.
- (ii) cases in which leave is for more than three months or leave for three months or less is

extended beyond three months, and the Medical Board states, at the time of granting the original certificate or the certificate for extension that the Government servant need not appear before another Medical Board for obtaining the certificate of fitness.

(c) In cases falling under clause (b), the certificate may be obtained from the Authorized Medical Attendant or a Medical officer of equivalent status.

(d) In the case of a non-gazetted Government servant, the authority under whom the Government servant is employed on return from leave may, at his discretion, accept a certificate signed by a Registered Medical Practitioner.”

14. Perusal of the Rule 47 (3) would show that it was incumbent upon the applicant to produce fitness certificate in Form 5 in Appendix V. Admittedly fitness certificate dated 04.08.2018 (Annex. 'A-2') produced by the applicant is not in that Form. In view of that for want of the requisite certificate, the applicant was not entitled on 06.08.2018 for his resumption on duty. That apart the applicant was referred to Dean, Government Medical College and Hospital, Aurangabad for fitness certificate as absence period of the applicant was for more than six months. The said authority issued fitness certificate on 12.10.2018. Thereafter, the applicant was allowed to join duties on 23.10.2018. Though the applicant has stated that he presented before the said authority for various tests as and when directed, it is a fact that there is nothing on record to show that the applicant communicated to the respondent No.1 as regards delay being caused in getting such certificate.

15. In the facts and circumstances of the case, the same was necessary so that the respondents are made aware that the delay is not caused at the instant of the applicant. However, no such efforts were made by the applicant. It is a fact that till obtaining the said fitness certificate, the applicant was absent from his duty. No specific provision has been pointed out to show that the said absence period from 06.08.2018 to 22.10.2018 can be considered compulsory waiting period and thus duty period. In the circumstances, I hold that the absence for this period can be treated as Hospital leave if permissible or any other admissible leave such as commuted leave or earned leave in case of exceeding the permissible limit of hospital leave as contemplated in Rule 77 of MCS (Leave) Rules, 1981.

16. In this Original Application the applicant has also claimed the traveling allowance as permissible in terms vide G.R. dated 03.06.2014 (Annex. 'A-5'), dated 05.04.2010 (Annex. 'A-6') and dated 02.08.2004 (Annex. 'A-7') issued by the Government in its Finance Department on the basis of his permanent disability. The respondents have denied the claim of the applicant stating that the applicant is not entitled for such travelling allowance as he is residing within the distance of 1 Km from office. In order to deny the said claim, the respondents placed reliance on clause 3(i) of G.R. dated 05.04.2010 (Annex. 'A-6') which is as follows:-

“३. हया आदेशातील वाहतूक भत्त्याचे प्रदान खाली नमूद केलेल्या अटींच्या अधिन आणि त्यानुसार विनियमित करण्यात येईल.

एक) कर्तव्य स्थानापासून एक किलोमिटर अंतराच्या आत किंवा कर्तव्यस्थान आणि निवासस्थान हयांच्या एकत्र परिसरात (Campus) शासकीय निवासस्थान पुरविण्यात आलेल्या कर्मचाऱ्यांना हा भत्ता अनुज्ञेय असणार नाही.”

17. In order to consider the claim of the applicant in this regard I have carefully perused relevant G.R.s dated 03.06.2014 (Annex. ‘A-5’), dated 05.04.2010 (Annex. ‘A-6’) and dated 02.08.2004 (Annex. ‘A-7’). The G.R. dated 02.08.2004 (Annex. ‘A-7’) more specifically deals with the aspect of grant of travelling allowance to the Government servants, who are having the permanent disability. The said G.R. specifically states as under:-

“मात्र, कर्तव्यस्थानापासून एक किलोमिटर अंतराच्या आत किंवा कर्तव्यस्थान व निवासस्थान यांचा एकच परिसर असेल अशा ठिकाणी राहणाऱ्या कर्तव्यस्थानांना हा भत्ता सर्वसाधारण कर्मचाऱ्यांसाठी लागू असणाऱ्या दरानेच मंजूर करण्यात आला आहे.”

This facility given to the Government servant having permanent disability is not struck down in subsequent G.R. dated 05.04.2010 and 03.06.2014. In view of same, in my considered opinion, the applicant would be entitled to get travelling allowance at the rate of Rs.2,000/- per month in terms of the last G.R. in that regard.

18. The applicant further has claimed exemption from payment of Professional Tax on account of his permanent disability. The respondents have not categorically denied this claim of the applicant, but have contended that the respondents sought guidance from the Income Tax Department by writing letter dated

04.12.2018 (Annex. 'A-9') and that after getting guidance necessary benefit will be extended to the applicant.

19. The applicant has claimed this exemption in view of Section 27A of the Maharashtra State Profession, Business Service Tax Rules, 1975. Section 27 A (c) dealing with some of the Maharashtra State Tax On Professions, Trades, Callings And Employments Act, 1975 is as follows:-

“27A

(c) Any person suffering from a permanent physical disability (including blindness), being a permanent physical disability specified in the rules made in this behalf by the State Government, which is certified by a physician a surgeon or an oculist, as the case may be, working in a Government Hospital and which was the effect of reducing considerably such individuals capacity for normal work or engaging in a gainful employment or occupations:

Provided that such individual or, as the case may be, employer produces the aforesaid certificate before the prescribed authority in respect of the first assessment year for which he claims deduction under this Sub-Section.

Provided further that the requirement of producing the certificate from a physician, a surgeon or an oculist, as the case may be, working in a Government Hospital shall not apply to an individual.”

20. Upon plain reading of the above said provision, it is evident that upon satisfying the requirement in the said provision, the applicant shall be entitled for exemption from Professional Tax. Accordingly the respondent No.1 can be directed to consider the claim of the applicant in accordance with law.

21. In view of above, in my considered opinion, there is no merit in the contentions raised by the respondents resisting the application of the applicant. The applicant shall be entitled for the requisite relief in terms of requisite provisions. I therefore proceed to pass the following order:-

ORDER

The Original Application is partly allowed in following terms:-

- (A) The respondent No.1 is directed to consider the claim of the applicant to treat the period of absence of the applicant from 15.12.2017 to 05.08.2018 as Hospital Leave as admissible in terms of Rule 77 of MCS (Leave) Rules, 1981 and further consider to treat the period of absence of the applicant from 06.08.2018 to 22.10.2018 as Hospital Leave as permissible or else to consider the same to grant other admissible leave of commuted leave or earned leave within the period of two months from the date of this order.
- (B) Impugned communication dated 04.12.2018 (Annex. 'A-9') issued by the respondent No.1 is quashed and set aside and the respondent No.1 is directed to sanction the travelling allowance to the applicant at the admissible rate of Rs.2,000/- per month in terms of G.R. dated 03.06.2014 (Annex. 'A-7'), 05.04.2010 (Annex. 'A-6') and 02.08.2004 (Annex. 'A-5')

respectively issued by the Government in it's Finance Department and pay him the dues of arrears within the period of two months from the date of this order.

- (C) The respondent No.1 is further directed to consider and grant the applicant exemption from making payment of Professional Tax having suffered from permanent disability of more than 40 % in accordance with law.
- (D) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :-28.04.2022
SAS O.A.322/201