

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 829 of 2017 (SB)

Dhanraj S/o Tularam Naik,
Aged about 58 years, Occ. Service,
R/o Jyoti Nagar Khandan Behind Daga Hospital,
Nagpur.

Applicant.

Versus

- 1) The General Manager,
Government Milk Scheme Jal Nagar,
Chandrapur.
- 2) Regional Dairy Development Officer,
Government Milk Scheme, Civil Lines,
Nagpur.
- 3) The Secretary,
Agriculture Animal Dairy Development & Fisheries
Department, Government of Maharashtra, Mantralaya,
Mumbai.

Respondents

S/Shri S.I. Khan, A.S. Jurel, Advocates for the applicant.

Shri Sainis, learned P.O. for respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 23rd day of July,2018)

Heard Shri S.I. Khan, learned counsel for the
applicant and Shri S.A. Sainis, learned P.O. for the
respondents.

2. The applicant is working as Dairy Attendant at Government Milk Scheme, Chandrapur. He was on sick leave on account of Tuberculosis (T.B.) during the period from 20/3/2015 to 5/8/2015. He requested the respondent authorities to grant him T.B. leave. On 8/9/2015 the respondent no.1 directed him to attend Indira Gandhi Medical College (IGMC), Nagpur for medical check-up and submitted a proposal to respondent no.2 to grant T.B. leave to the applicant for 107 days for the period ranging from 21/4/2015 to 5/8/2015 vide letter dated 26/10/2015. The respondent no.1 informed to the applicant on 20/11/2015 that he has not submitted recommendation of medical board and therefore T.B. leave cannot be sanctioned and the leave will be treated as extraordinary leave without payment. This was informed on 20/11/2015. On 20/09/2016 the applicant again submitted application for grant of T.B. leave for 107 days, but his request was rejected on 23/9/2016 on the ground that he has not submitted documents and that his leave will be treated as extraordinary leave. The applicant had also served a legal notice to the respondents on 26/10/2016 and a reminder on 7/11/2016 and finally filed this O.A. The only request of the applicant is that the respondents be directed to grant him T.B. leave from

20/3/2015 to 5/8/2015 for 107 days and the communication dated 23/9/2016 (Annex-A-6) treating the leave as extraordinary leave without pay be quashed and set aside.

3. From the reply-affidavit, it seems that the applicant applied for T.B. leave, but the certificates along with application were not indicating that the applicant was suffering from T.B. The respondent no.2 has referred two certificates along with the application filed by the applicant and the certificates are dated 20/3/2015 and 1/5/2015. It is further stated in these certificates the applicant was suffering from Gastro Esophageal Reflux Disease and hypertension and lower back pain and no symptoms of T.B. were mentioned.

4. Even for argument sake, it is accepted that the preliminary certificates does not state that the applicant was suffering from T.B., the application for medical leave was on the ground of T.B. According to respondent no.2 himself, the applicant appeared before the Medical Board at IGMC, Nagpur on 14/9/2015 and was diagnosed for T.B.,L.N. The fact therefore remains that the applicant was suffering from T.B. and therefore there was absolutely no reason to grant him extra ordinary leave. The learned counsel for the applicant has placed reliance on the Judgment delivered by this Tribunal at

its Principal Bench at Mumbai in the O.A. 84/2016 in the case **Mrs. Surekha Dattatraya Mulak Vs. State of Maharashtra & Ors.**, delivered 31/01/2017. In para nos. 5,10 to 11 and relevant para of 17 the Tribunal has considered the provisions under the Maharashtra Civil Services (Leave) Rules and particularly the rules regarding leave on account of T.B. The said observations are self speaking and reads as under : -

5. It is, therefore, very clear from the Rule 2, Appendix III of the Leave Rules framed under Rule 79 thereof that the primary responsibility to do everything necessary for diagnosis and treatment would not be on the patient employee but on the establishment as it were. I shall be to the extent necessary deal with the stand adopted by the Respondents herein whereby they in more ways than one seek to shift the burden on the Applicant for securing a particular certificate for a particular duration of time, but the record is conspicuously silent on the obligations that the Rules cast on the establishment as to whether the Respondents came true to the said test. It is very clear to me that they have not only not come true but have failed to discharge their duties towards a TB affected employee and may be OA 214/2012 above detailed has in itself the seeds of the poisonous tree that has now come up.

10. I have already indicated above the gist of the Rules but at this stage, Rules 3(2) and 3(3) need to be reproduced.

"3(2) : In the case of a Government servant, who has more than six months due to him, the examination by the Medical Board referred to above should be arranged six months after the

commencement of the treatment, but before the expiry of the leave due. IN cases where the total leave due is less than six months, such extraordinary leave as is necessary to complete that period may be given pending examination of the patient by the Medical Board.

3(3) : A Government servant irrespective of the pay drawn, after the expiry of all leave due and admissible to him on full pay be granted T.B. leave on full pay and the leave salary for such T.B. leave should be regulated under normal rules. The total T.B. leave should not exceed one year. After the expiry of this leave, leave on half pay, if due, should be granted in case it is found that a further period of leave is necessary for his recovery. After the expiry of leave on half pay, the Government servant should be placed before the Medical Board for his examination as to his physical fitness for further service and should be granted extraordinary leave recommended by the Medical Board subject to the condition that all leave granted under these rules does not exceed three years. The T.B. leave on full pay should not be debited to the leave account of Government servant."

11. Rule 3-A was inserted by Notification of 6.12.2005 becoming effective from 1.1.2006. It lays down that in case a TB affected Government employee was given special leave on full pay, the leave salary for such leave would be under normal Rules and it prescribes as to who the said leave would work it out. The details are immaterial. Rule 4 lays down that the Regional Officer of the Department under whom the said Government servant was serving and if no such Regional Officer was there, the Head of the Department should the authority to sanction these concessions.

17. In fact, even the Respondents could not and did not contest the position that the Applicant was suffering from the dreadful disease

of the TB and that too, of an aggravated form. The other discussion hereinabove would make it quite clear that the entire conduct of the Respondents was more in the nature of pointless nit-picking rather than extending a helping hand to an ailing junior colleague. If the enquiry had been initiated on account of the cause set out in Dr. Mane's Affidavit, then I will not feel hide-bound by the constraints of the scope of this OA and would straightaway observe that the enquiry is baseless. In any case, as far as the present OA is concerned, one searches in vain for even an apology of a reason to justify the Respondents' attitude of keeping the issue of the TB Leave of the Applicant pending.

5. From the facts on record, it will be thus crystal clear that there is no dispute that the applicant was suffering from T.B. and he has applied for T.B. leave only and the Medical Board has also certified that he was suffering from T.B. and therefore grant of leave as extra ordinary leave without pay for his absence period is absolutely uncalled for. The respondent no.2 should have considered the applicant's application for leave sympathetically instead of hampering on technicalities. In view of above discussion, I pass the following order :-

ORDER

The communication treating the applicant's leave of 107 days as extra ordinary leave without pay is quashed and set aside. The respondent no.2 is directed to grant medical

leave on the ground of T.B. for this period to the applicant. The entire absence period of 107 days be regularized as medical leave for T.B. and the applicant shall be granted all amount due to grant of such medical leave. Such amount shall be paid to the applicant within two months from the date of this order. No order as to costs.

Dated :- 23/07/2018.

dnk.

**(J.D. Kulkarni)
Vice-Chairman (J).**