

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 163/2018

Dr. Sanjay Parashram Puram,
Aged about 49 years, Occ –Service,
R/o P.H.C., Rampur, Tq. Ghatanji,
District. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Public Health Department,
Mantralaya, Mumbai-440 032.
- 2) The Zilla Parishad, Yavatmal.
Through its District Health Officer,
In front of Bhave Mangal Karyalaya,
Civil Lines, Yavatmal.

Respondents

Shri R.R. Dawda, Ld. counsel for the applicant.

Shri H.K. Pande, Ld. P.O. for respondent No.1.

Shri B.N. Jaipurkar, learned counsel for respondent No.2.

Coram:- Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 18th January 2022.

Heard Shri R.R. Dawda, learned counsel for the applicant, Shri H.K. Pande, Ld. P.O. for respondent No.1 and Shri B.N. Jaipurkar, learned counsel for respondent No.2.

2. In this O.A., the applicant has impugned order dated 3.8.2017 (Annexure A.13) whereby respondent No.2 treated his leave from 26.5.2017 to 23.7.2017 as without pay leave.

3. **Facts of the case-**

Applicant was attached to Primary Health Centre, Rampur, Tehsil Ghatanji, District Yavatmal as Medical Officer. On 25.4.2017, he submitted application (Annexure A.4) to respondent No.2 for grant of earned leave from 26.5.2017 to 24.6.2017. He did not receive any communication from respondent No.2 as to whether his leave application was sanctioned. Therefore, on 25.5.2017, he intimated respondent No.2 vide Annexure A.5 that he had not received any communication, but since it was essential for him to proceed on leave, he was proceeding on leave. Vide letter dated 26.5.2017 (Annexure A.6), respondent No.2 intimated Dr. Umakant Tatar about leave application of the applicant. By this letter, Dr. Tatar was further informed-

“उपरोक्त संन्दर्भीय विषयाचे अनुषंगाने, डॉ. संजय पुरम वै.अ. हे दिनांक २६.५.२०१७ ते २५.६.२०१७ पर्यंतची अर्जित रजेवर गेलेले असल्यामुळे त्यांचे रजा कालावधीत प्राथमिक आरोग्य केंद्राचे आरोग्य विषयक व इतर सर्व कामकाज मुख्यालयास राहून साम्भालावे.”

On the same day, i.e. 26.5.2017, respondent No.2 passed order (Annexure A.7) rejecting leave application of the

applicant. On 10.7.2017, the applicant vide application (Annexure A.8) applied for extension of earned leave till 17.7.2017. On 17.7.2017, he desired to join and prayed for resumption of duty by filing application (Annexure A.9). By letter dated 24.7.2017 (Annexure A.10), the applicant was intimated by respondent No.2 that he was allowed to resume his duty on 24.7.2017. Thereafter, respondent No.2 issued show cause notice (Annexure A.11) to the applicant as to why proposal to proceed departmentally against him be not forwarded to the superiors and further as to why period of his absence be not treated as leave without pay. On 13.9.2017, the application submitted application (Annexure A.12) to respondent No.2 with a prayer to pay salary for leave period to him. In this application, he mentioned that had he received communication about rejection of his leave application before proceeding on leave, he would not have proceeded on leave. Thereafter on 3.8.2017, the impugned order (Annexure A.13) was passed treating the period of absence of the applicant as leave without pay. Hence, this application.

4. The applicant has raised following grounds:-

(i) The applicant never received show cause notice which allegedly preceded passing of impugned order. Thus, there was breach of natural justice.

(ii) Had respondent No.2 intimated the applicant about rejection of his leave application in time, the applicant would not have proceeded on leave.

(iii) The applicant had submitted leave application one month in advance. Thus, there was ample time to let him know about whether or not his leave application was granted.

(iv) The applicant applied for leave and its extension for bonafide reasons, i.e. examination and admission of his children to professional course.

(v) When the impugned order was passed and there was adequate credit of earned leave to the account of the applicant, there was no reason to pass the impugned order.

5. On the basis of these grounds, the applicant has prayed that the impugned order be quashed and set aside, the relevant period be treated as earned leave and salary for this period be paid to him.

6. Reply of respondent No.2 is at pages 31 to 35. Respondent No.2 resisted the application on following grounds:-

(i) The applicant was intimated by order dated 26.5.2017 that his leave application was rejected.

(ii) Only to avoid inconvenience to the patients, Dr. Tatar was deputed to look after duty of the applicant in the absence of the latter.

(iii) Applicant cannot be allowed to contend that he had not received communication dated 26.5.2017 intimating him about rejection of his leave application, since copy of this communication is filed by the applicant alongwith this application.

(iv) In spite of rejection of his leave application, applicant chose to remain absent. He further compounded the matter by extending the period on which he desired to remain on leave.

(v) The impugned order was preceded by show cause notice. The applicant did not bother to give reply to the show cause notice. Therefore, the impugned order was passed.

(vi) The applicant has not furnished any reason to explain his absence during the relevant period.

(vii) The applicant was holding a post which carried with it a lot of responsibility. Therefore, he ought not to have remained absent without first ascertaining whether his leave application was granted.

7. For all these reasons, the impugned order deserves to be maintained.

8. **Reasons:-**

(i) Perusal of leave application dated 25.4.2017 (Annexure A.4) shows that it was submitted well in advance.

(ii) Admittedly, nothing was communicated to the applicant (before 26.5.2019) as to whether or not his leave application was sanctioned. Consequently, the applicant had to submit another application dated 25.5.2017 (Annexure A.5) and reiterate his need to proceed on leave.

(iii) In his leave application (Annexure A.4), the applicant has stated that for examination and admission process of his children, he was required to visit Hyderabad, Nagpur, Pune and Mumbai.

(iv) By communication (Annexure A.6), respondent No.2 informed Dr. Umakant Tatar that on 26.5.2017, the applicant had proceeded on leave, his leave period was up to 25.6.2017 and in his absence he, Dr. Umakant Tatar was to remain at headquarters and look after the work.

(v) Soon after issuing communication (Annexure A.6), on the same day i.e. 26.5.2017, by letter (Annexure A.7), respondent No.2 informed the applicant that his leave application was rejected. There is nothing on record to come to the conclusion that the applicant had received this communication.

(vi) On 10.7.2017, the applicant filed application (Annexure A.8) for extension of earned leave. In this letter, he mentioned that his wife was not well and he was required to go to Nagpur for admission of his daughter to medical course. Reason mentioned in this application cannot be said to be frivolous or implausible.

(vii) According to respondent No.2, a show cause notice dated 13.7.2017 was issued to the applicant. There is

nothing on record to establish that the applicant was served with this show cause notice (Annexure A-11).

(viii) Though in the show cause notice, as many as ten grounds are mentioned against the applicant, on behalf of respondent No.2 no material is placed before this Tribunal to substantiate any of these grounds.

(ix) In the impugned order (Annexure A-13), respondent No.2 referred to Rules 32 and 40. Neither of these rules applies to the facts of the case.

9. For all these reasons, the impugned order cannot be sustained. Hence, the following order—

ORDER

1. The O.A. is allowed.
2. The impugned order dated 31.7.2017 (Annexure A-13) is quashed and set aside.
3. Period from 26.5.2017 to 23.7.2017 shall be treated as period of earned leave admissible to the applicant.
4. No order as to costs.

(M.A.Lovekar)
Member (J)

