

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.225 OF 2019**

Shri Brijpalsingh M. Thakur )  
Working as Senior Geologist, Ground Water )  
Survey and Development Agency. )  
O/at. New Administrative Building, 2<sup>nd</sup> floor, )  
Nagar Parishad Building, A/p Alibaug, Raigad ) **.. Applicant**

**Versus**

1) The State of Maharashtra, through )  
Principal Secretary, Water and Sanitation )  
Department, O/at G.T. Hospital Campus )  
Building, 7<sup>th</sup> floor, L.T. Marg, )  
Manatralaya, Mumbai 400 001. )  
2) The Director, )  
Ground Water Survey and Development )  
Agency, (M.S.), Pune, having office at )  
Shivaji Nagar, Bhujal Bhavan, Pune 5 )  
Wakdewadi Road, Pune. ) **..Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Archana B. K. , learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 18.11.2021.

**JUDGMENT**

1. The Applicant has challenged the order dated 30.09.2016 issued by the Government thereby treating his absence period from 17.12.2014 to 15.04.2015 and 16.04.2015 to 08.06.2015 total 174 days as extra ordinary leave without pay and allowances.

2. Shortly stated facts giving rise to the O.A. are as under :-

The Applicant was serving as Sr. Geologist (Class-I Gazetted post) at Pune and by order dated 16.12.2014 he was transferred to Raigad. Accordingly, he was relieved from Pune on 16.12.2014 . However, he did not join at Raigad. It is for the first time on 11.06.2015 he made an application to Respondent No.2 – Director, Ground Water Survey and Development Agency (M.S.), Pune for grant of commuted leave on medical ground for the period from 16.04.2015 to 08.06.2015 for 54 days and also sought earned leave from 17.12.2014 to 15.04.2015 for 119 days. Then again, he made another application dated 11.06.2015 to the same authority along with medical certificate issued by private hospital namely Chatrapati Shahu Accident & General Hospital, Latur on 13.04.2015, wherein it was certified that the Applicant was under treatment as OPD patient from 17.12.2014 to 15.04.2015. The Deputy Director recommended for leave stating that there is leave at his credit. However, the Government by impugned order dated 30.09.2016 treated leave as extraordinary leave without pay and allowance on the ground that the Medical Board did not recommend for grant of medical leave.

3. Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant sought to challenge the legality of order dated 30.09.2016 *inter-alia* contending that when the medical leave and earned leave was sufficient in balance at credit of the Applicant, it ought to have granted leave asked for and the Medical Board's jurisdiction is limited on the point of fitness of a Government servant. He further submits that as per Rule 63 of Maharashtra Civil Services (Leave) Rules, 1981 nature of Rule cannot be changed unless asked for by a Government servant.

4. Per contra, Smt. Archana B.K. learned Presenting Officer submits that the Applicant was absent without making any leave application along with medical certificate for 174 days. She, further submits that as per medical certificate issued by the Medical Board on 19.11.2015, the Board did not recommend leave on medical ground. She, therefore, submits that impugned order needs no interference.

5. In view of the submission advanced at a bar, small issue posed for consideration is whether impugned order treating absence of 174 days of the Applicant as a extra ordinary leave as granted in terms of Section 63(6) read with Section 70 of Clause 4 of Maharashtra Civil Services (Leave) Rules 1981 (hereinafter referred to as 'Leave Rules 1981') needs interference and answer is in emphatic negative.

6. Admittedly, the Applicant is Gazetted Class-I officer and the Government is competent authority for sanction of such long leave. Merely because the Deputy Director has recommended grant of leave and there was leave at the credit of Applicant that *ipso-facto* will not entitle the Applicant for grant of commuted leave or earned leave. One needs to see the length of the leave, circumstances in which it was sought in the light of Rules 1981 vis-à-vis conduct of the Applicant.

7. Needless to mention that leave is not a right of employee. Section 10 of 'Leave Rules 1981' specifically provides that leave is permission granted by the Competent Authority at its discretion to remain absent from duty and it cannot be claimed as of right. Material to note that the Applicant was transferred by order dated 16.12.2014 from Pune to Raigad and was relieved on 16.12.2014 as seen from his own application dated 11.06.2015 which was at Page No.17 of Paper Book. Here, material to note that the Applicant did not join at Raigad and unilaterally proceeded on leave without making any application. It is for the first time on 11.06.2015 that is after enjoying absence of 174 days, he applied for grant of commuted leave on medical ground for 54 days as well as earned leave of 119 days. That time also he did not annexed any medical certificate along with his application. The medical certificate was later on annexed along with his 2<sup>nd</sup> application dated 11.06.2015. It was medical certificate issued by private hospital namely Chatrapati Shahu Accident and General Hospital, Latur dated 13.04.2015. In this certificate all that certified that Applicant was under treatment for cervical lumber spondylosis and sciatica as OPD patient. Except that bare certificate no other medical certificate or prescription of medicine is forthcoming.

8. When the Applicant joined, he was sent to Medical Board. He was examined by Medical Board on 13.10.2015 and certificate in following terms was issued :-

*“On the basis of clinical examination and investigation done, we are of the opinion that Shri Thakur Brijpalsingh Mohansingh has no medical problem at present. Prior leave not recommended on medical grounds. He is fit for the join duty.”*

It is on the above background, the Government in impugned order dated 30.09.2016 declined to grant medical leave and earned leave and treated absence as extraordinary leave without pay and allowances.

9. It is thus explicit that the Applicant did not produce any medical certificate when he proceeded on leave unilaterally. If the Applicant was really suffering from any such ailment, he ought to have tendered an application for medical leave along with requisite medical certificate in terms of ‘Leave Rules 1981’ but instead of doing so, he chooses to remain absent at the place where he was transferred and it is only after lapses of 174 days, he joined and then asked for leave. This conduct of Applicant is totally unbecoming of a Government servant.

10. The grant of leave is governed by Maharashtra Civil Services (Leave) Rules 1981. As per Rule 40(1) of Rule where leave is for less than two months, it should be accompanied with certificate of authorized medical attendance of medical office of equivalent status in form No.3 provided in Appendix V. Where as in the present case, no such medical certificate was tendered while proceeding on leave. Secondly, as per Rule 40(2) where leave is for more than two months, a Government servant is required to appear before the Medical Board and it is only on the certificate of Medical Board that leave is necessary for recovery then only further leave can be granted. However, in the present case, no such procedure is followed. The Applicant resumed the work after 174 days and then applied for leave on medical ground. He has not produced any such medical certificates, prescriptions or any other record before the Medical Board regarding his previous ailment of 174 days. Therefore, the Medical Board rightly did not make any recommendation for previous ailment and restricted the certificate only to the extent of fitness on the date of examination.

11. Even in O.A. also the Applicant has not produced any such medical record to substantiate that he was really suffering from any ailment or was unable to resume duty for 174 days. This clearly shows that there was no such ailment of 174 days and Applicant on his own chooses not to join the place where he was transferred. Probably the place he was transferred was not as per his choice and that could be the reason for not joining immediately. Be that as it may, the fact remains that there is no medical evidence establishing ailment for 174 days. Therefore, considering on this factor, the Government has passed impugned order treating absence as extra ordinary leave without pay and allowances in terms of Rule 63 (6) of 'Leave Rules 1981' which *inter-alia* empowers that the authority competent to grant leave may commute retrospectively period of absence without leave into extra ordinary leave. The Applicant was absent for 174 days that too without giving any intimation or application, and therefore, it was rightly commuted retrospectively into extra ordinary leave.

12. True, in terms of Rule 63 (1) of Rules 1981, the extraordinary leave may be granted to a Government servant in special circumstances when no other leave is admissible and when other leave is admissible but the Government servant applies in writing for the grant of extraordinary leave. This clause would apply where a Government servant applied for leave well in advance or at least immediately after proceeding on leave within reasonable time. Whereas, here is a case where the Applicant chooses to remain absent for 174 days and then applied for grant of commuted leave and earned leave. Therefore, it cannot be said that the competent authority cannot grant extra ordinary leave and ought to have granted leave asked for. As stated earlier the leave cannot be claimed as of the right and it is only by way of concession and at the discretion of authority. Here considering the Applicant's conduct and absence of any medical evidence, the Government had no other option but to treat the absent as extra ordinary leave without pay and allowances.

13. The totality of the aforesaid discussion leads me to conclude that there is no legal infirmity in the impugned order and challenge to the same is devoid of merit. Hence the following order :-

**ORDER**

Original Application stands dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Place : Mumbai  
Date : 18.11.2021  
Dictation taken by : VSM  
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