

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.312 OF 2020**

**DISTRICT : MUMBAI**

Shri Shambhuling K. Nara. )  
Age : 67 Yrs, Occu.: Retired as Medical )  
Officer from Sub-District Hospital, )  
Indapur, District : Pune and residing at )  
C/o. 'Shivam Classic', Flat No.202/A, )  
Sector-23, Nerul (E), Navi Mumbai – 706. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai – 400 032. )  
2. The Director of Health Services, )  
Government of Maharashtra, )  
Saint Georges Hospital Compound, )  
Mumbai – 1. )  
3. The Deputy Director of Health )  
Services, Pune Circle, New )  
Administrative Building, )  
Pune – 411 001. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 02.12.2021**

## **JUDGMENT**

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for challenging the order dated 20.05.2019 passed by the Government thereby treating unauthorized absence of the Applicant from 05.06.1997 to 30.06.2011 as break in service entailing forfeiture of his past service in terms of Rule 47(1) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity).

2. Briefly stated facts giving rise to this O.A. are as under :-

The Applicant came to be appointed as Medical Officer (Class-II) w.e.f. 27.01.1984 initially on temporary basis for one year by order dated 20.02.1985. Thereafter, he was continued in service and worked at various places. In the year 1997, he was posted at Rural Hospital, Indapur, District Pune. He proceeded on leave w.e.f. 05.07.1997 and did not join duty thereafter till attaining the age of superannuation. He attained the age of 58 years on 30.06.2011 during the period of his absenteeism and technically he stands retired, though no such formal order of retirement was issued. While proceeding on leave, he sent an application dated 04.07.1997 addressed to Medical Superintendent, Rural Hospital, Indapur stating that he is proceeding on leave on medical ground w.e.f. 05.07.1997 (Page No.149 of P.B.). In application, he prayed to sanction Earned Leave w.e.f. 05.06.1997 onward till he became fit to resume duty. Along with an application, he annexed Medical Certificate purportedly issued by private medical practitioner dated 05.07.1997 stating that Applicant is under treatment for IRBB (incomplete right bundle branch block and anxiety). As per Certificate, he was advised to take rest till he recovers. Later on 23.10.1997, he sent another application to Medical Superintendent, Rural Hospital, Indapur requesting him to sanction 30 days Earned Leave w.e.f. 05.07.1997. Thereafter, he made some correspondence for grant of pay and

allowances for the leave period. In the meantime, he was transferred from Indapur to Palasdev by order dated 26.08.1997. However, he did not join at Palasdev. He remained continuously absent without getting any kind of leave sanctioned for the period of 14 years and 25 days i.e. till attaining the age of superannuation on 30.06.2011. After retirement, he made some correspondence for grant of retiral benefits which was not responded by any communication to him. Therefore, ultimately, he filed O.A.No.257/2018 before this Tribunal raising grievance that his leave is not regularized and retiral benefits are withheld. The O.A. was disposed of by order dated 05.04.2019 with direction to the Government to take decision about the absence of the Applicant and to pass order in accordance to Rules within four weeks.

3. It is on the above background, the Government passed order on 20.05.2019 informing the Applicant that he was unauthorized absent from duty from 05.06.1997 to 30.06.2011 and the same has been treated as unauthorized absence as well as break in service in terms of Rule 47(1) of 'Pension Rules of 1982' entailing forfeiture of previous service meaning thereby not entitled to any kind of pension or retiral benefits, which is challenged in the present O.A.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned order *inter-alia* contending that admittedly, while proceeding on leave, the Applicant has sent leave application dated 04.07.1997 and thereafter also he made correspondence with the Respondents, but those were kept pending without any communication of sanction or otherwise to the Applicant. He further submits that Respondents ought to have granted leave considering his illness or at the most it would have been granted as Extra-ordinary Leave. He has further pointed out that the Applicant has admittedly rendered 13 years' service prior to leave period, and therefore, it would be iniquitous and harsh to treat the period of absence as unauthorized absent with break in service thereby forfeiting his previous service disentitling him for any

retiral benefits. He further states that during the said period, the Respondents did not issue any Memo to the Applicant nor initiated departmental proceedings against the Applicant which according to him lend support to the Applicant's contention that he was really ill. On this line of submission, he urged that the impugned order is bad in law and liable to be quashed.

5. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer submits that Applicant was unauthorized absent from duty for long period of 14 years without furnishing proper Medical Certificate so as to substantiate leave application, and therefore, the impugned order needs no interference. She has further pointed out that under Rule 47(1) of 'Pension Rules of 1982', the Government is empowered to treat absence period as break in service and present case squarely falls within the ambit of Rules.

6. In view of pleadings and submissions advanced at the Bar, the issue posed for consideration is whether the impugned order suffers from any legal infirmity and in my considered opinion, the answer is in emphatic negative.

7. Indisputably, the Applicant was appointed as Medical Officer (Group 'B') and in 1997 he was posted at Indapur, District Pune. Needless to mention that a Government servant is expected to conduct himself in a disciplined manner and the Applicant was required to perform his duties of rendering medical services in rural areas with responsibility and should have adhered to discipline not only for personal excellence but also for collective good of his Organization. He was posted as Medical Officer in rural areas so as to cater the need of medical assistance of people in rural areas. Admittedly, he was absent from duty for long period of 14 years i.e. from 05.06.1997 to 30.06.2011 (till date of retirement).

8. Now let us see what steps did he take while proceeding on leave. In this behalf material to note that while proceeding on leave, the Applicant had sent letter dated 04.07.1997 addressed to Medical Superintendent, Rural Hospital, Indapur stating that on account of illness, he is unable to attend duties and requested for Earned Leave w.e.f. 05.07.1997 onward till became fit to resume the duties. In letter, he further stated that the Certificate will be produced afterwards. Later, he submitted an application in the prescribed format for E.L. from 05.07.1997 along with Medical Certificate of private practitioner (Page Nos.150 and 151 of Paper Book). In Medical Certificate, he is shown suffering from IRBB and anxiety and advised to take rest till he recovers. Then he sent letter dated 23.10.1997 addressed to Medical Superintendent, Rural Hospital, Indapur for sanction of 30 days E.L. w.e.f. 05.07.1997 (Page No.152 of P.B.). The Applicant then sent application dated 14.01.1998 requesting Medical Superintendent, Rural Hospital, Indapur to release pay and allowances through Demand Draft since Office had already granted E.L. from 06.07.1997 to 04.08.1998. Thus, it appears that the E.L. only for 30 days from 06.07.2017 to 04.08.1997 was granted by the Office. Interestingly, in this letter dated 14.01.1998 which was sent for pay and allowance, the Applicant did not make any reference of his health condition nor requested for continuation or extension of leave for further period. Then it comes Applicant's letter dated 14.01.1998 (Page No.154 of P.B.) wherein he informed Medical Superintendent, Rural Hospital, Indapur that he got relieving order in view of his transfer from Indapur to Palasdev in the month of November, 1997 but despite of relieving him from Indapur, he did not join at Palasdev. Furthermore, in the letter dated 14.01.1998, he did not state anything about his health condition nor asked for extension of leave. Then it comes letter dated 13.05.1998 sent by the Applicant to Medical Superintendent, Indapur (Page No.156 of P.B.) in which he requested for Tax Deduction Certificate. Here again, he did not state anything about his health nor asked for extension of medical leave. Similar is the situation in respect of letter dated 15.06.1998 addressed to

Medical Superintendent (Page No.158 of P.B.) wherein he sought some clarification about deduction of tax by the Office. Interestingly, in this letter also, he did not make any reference of his health nor asked for extension of leave. Then it comes letter dated 11.06.1999 addressed to Deputy Director, Health Services, Pune wherein all that he requested to sanction leave and release leave salary. Then, he sent one more application dated 15.01.2000 addressed to Deputy Director, Health Services, Pune (Page No.160 of P.B.) requesting for implementation of 5<sup>th</sup> Pay Commission. Thus, he was insisting department for pay and allowances though not on duty. In absence of grant of leave, the question of pay and allowances did not arise. True, in application dated 11.06.1999 and 15.01.2000 (Page Nos.159 and 160 of P.B.) he stated that he is on Medical Leave and not in a position to resume duties. Thus, he at his own proceeded on leave presuming that he is on Medical Leave without taking requisite steps which were required to be taken for grant of Medical Leave of such a long period in terms of Maharashtra Civil Services (Leave) Rules, 1981 (hereinafter referred to as 'Leave Rules of 1981' for brevity). Then it comes letter dated 02.06.2014 (Page No.161 of P.B.) which is sent after retirement requesting Deputy Director, Health Services, Pune to look into the matter.

9. Needless to state that leave is not right of an employee/Government servant. As per Rule 10 of 'Leave Rules of 1981', leave is a permission granted by a competent authority at its discretion to remain absent from duty and leave cannot be claimed as of right. Whereas, in the present case, E.L. was granted only for 30 days for the period from 06.07.1997 to 04.08.1997 and there was no sanction of leave for the onward period. Importantly, the Applicant did not make further application for grant of Medical Leave for further period accompanied by Certificate of Medical Board as required in terms of 'Leave Rules of 1981'. The leave on medical ground is governed by Rule 40 of 'Leave Rules of 1981'. If leave asked for is of two months duration or less, a Government servant is required to submit Medical Certificate in Form No.3 Appendix

V from authorized Medical Attendance or Medical Officer. Whereas, when leave is sought for more than two months, a Government servant is required to appear before Medical Board and it is only on Certificate by Medical Board that further leave is absolutely necessary for recovery, in that event, the competent authority can grant further leave. It is also made clear under Rule 40(8) that grant of Medical Certificate by Medical Board does not in itself confer upon the Government servant concerned any right to leave and it is for the competent authority to consider the same. Whereas, in the present case, no such Certificate from Medical Board was tendered. Suffice to say, Applicant unilaterally remained absent from duty for long period of 14 years without establishment that he was really suffering from any illness and was unable to resume duty. He did not make any such effort to show his *bonafide*. At no point of time, he has shown his willingness to join the duty. Thus, his attitude is very casual and absented himself from duty for a huge period of 14 years. If he was suffering from any such serious illness and was not able to join duty for such a long period, he ought to have taken necessary steps seriously for grant of medical leave submitted with proper Medical Certificate, but it is not so. This clearly spells his total irresponsible behavior unbecoming to a Government servant.

10. Now, for the first time in O.A, the Applicant has tendered some Xerox copies of Medical Certificates dated 10.12.2003, 30.08.2011, 29.02.2012, 31.12.2013 and 20.03.2012 (Page Nos.22 to 26 of P.B.) issued by private practitioner. In Medical Certificate dated 10.12.2003, it is stated that the Applicant was suffering from Meniere's disease and was under the treatment from 15.07.1998 to 10.12.2003 (intermittently). Whereas, in Medical Certificate dated 30.08.2011, it is stated that the Applicant was under treatment for Meniere's disease from 15.08.2005 to 30.08.2011 (intermittently). In Medical Certificate dated 29.02.2012, it is stated that the Applicant is suffering from Paranoid Schizophrenia since 01.08.1997 till 29.02.2012 and was under treatment of Doctor. In Medical Certificate dated 31.12.2013, it is stated that the Applicant was

suffering from IRBBB with VPBS since 30.07.1997. In last Medical Certificate dated 20.03.2012, it is certified that Applicant was under treatment since 15.07.1987 for low backache and was advised medicine and rest. In so far as these Certificates are concerned, these are self-contradictory and hardly any reliance can be placed upon it in absence of any other medical evidence, prescriptions, diagnosis, etc. to show that Applicant was really suffering from any such ailment for 14 years continuously. Indeed, in terms of 'Leave Rules of 1981', he was required to appear before the Medical Board and it is only on the basis of Certificate from Medical Board, the competent authority could grant medical leave.

11. It is thus explicit from the record that Applicant absented himself from duty for a huge period of 14 years. True, the Respondents in this period did not take any steps against the Applicant for initiating the D.E. for unauthorized absence nor issued any notice directing him to join duty. However, that itself is hardly of any assistance to the Applicant, since primary burden is upon the Applicant to establish that he was suffering from such a serious ailment continuously for 14 years, and therefore, could not resume duty. However, no such cogent evidence of ailment of 14 years is forthcoming.

12. At the cost of repetition, it is necessary to point out that at no point of time, he made any such application showing his willingness to join nor made any such application with proper Medical Certificate to substantiate his illness. He unilaterally remained absent for 14 years. As such, he is very casual towards his duties and lack of devotion to duty is manifest. In such situation, any kind of leniency or indulgence would send wrong signal to other Government servants, which would be detrimental to the administration.

13. Rule 47 of 'Pension Rules of 1981' deals with the effect of interruption in service, which is as follows :-



**“47. Effect of interruption in service**

(1) An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases :-

(a) authorised leave of absence ;

(b) unauthorized absence in continuation of authorized leave of absence so long as the post held by the absentee is not filled substantively ;

(c) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of superannuation while under suspension ;

(d) transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest;

(2) Notwithstanding anything contained in sub-rule (1), the appointing authority may, by order, commute [retrospectively] the periods of absence without leave as extraordinary leave.”

14. Thus, Applicant’s case does not fall in sub-section (2) so as to commute his absence in Extra-ordinary leave having regard to his total irresponsible and indiscipline conduct. As such, there was interruption of service of 14 years, which entails in forfeiture of past service in terms of Rule 47(1) of ‘Pension Rules of 1981’. I, therefore, see no illegality in the impugned order. The Applicant himself is responsible for this situation and no indulgence is warranted.

15. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned order is devoid of any merit and O.A. deserves to be dismissed. Hence, the order.

**ORDER**

The Original Application stands dismissed with no order as to costs.

Sd/-

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

Mumbai

Date : 02.12.2021

Dictation taken by :

S.K. Wamanse.

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