

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.328 OF 2021**

**DISTRICT : Kolhapur**

Shri Pratap Ambaji Bodekar, )  
Age 53 years, Occ. Sub Inspector (Excise) )  
R/o. Plot No.51, Sahyadri Housing Society, )  
Kadam Wadi, Kolhapur. ) ... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through Principal Secretary, )  
Home Department, Having Office at )  
5<sup>th</sup> floor, Dalan No.553, Madam Cama )  
Road, Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai-400 032. )
- 2) The Superintendent of State Excise, )  
S.No.61 & 62, Balvikas Bhavan, Godoli, )  
Dist. Satara. )
- 3) The Commissioner of State Excise, M.S. )  
Mumbai, 2<sup>nd</sup> floor, Old Custom House, )  
Shahid Bhagat Singh Road, Fort, Mumbai 1.)
- 4) The President, Standing Medical Board, )  
CPR, Hospital, Rajarshi Chatrapati )  
Shahu Maharaj Govt. Medical College, )  
Kolhapur. ) ..**Respondents**

Shri R.M. Kolge, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.12.2021.

**JUDGMENT**

The Applicant has challenged the order dated 31.08.2017 passed by the Respondent No.3 –Commissioner, State Excise and also challenged the order dated 20.10.2020 issued by the Government

invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985

2. Shortly stated facts giving rise to the Original Application are as under:-

The Applicant was working as Sub-Inspector, State Excise and was posted at Lonand, Dist. Satara. By order dated 28.05.2015 he was transferred from Lonand to Satara-II. However, he did not join at Satara-II. He unilaterally proceeded on medical leave from 31.05.2015 to 07.07.2016. It is only on 04.08.2016, he made an application to Respondent No.2-Superintendent of State Excise for grant of commuted leave of 152 days for the period from 31.05.2015 to 29.10.2015 on medical ground and also sought 252 days earned leave from the period from 30.10.2015 to 07.07.2016 along with an application. He tendered fitness certificate dated 26.09.2016 issued by the Medical Board whereby it is certified that he was fit for duty but it was clarified in the certificate that no opinion about past leave availed by him can be given. It is on this background, the Respondent No.3 -Commissioner of State Excise by order dated 31.08.2017 rejected leave sought by him stating that medical leave cannot be granted on the basis of such fitness certificate. Therefore, his leave from 31.05.2015 to 07.07.2016 (404 days) has been treated as extra ordinary leave. The Applicant did not challenge this order dated 31.08.2017 by filing O.A. within the period of limitation of one year instead he went on making representations to the Government. It is on response to his representation dated 06.12.2019, the Government informed to the Applicant that Respondent No.3 is the competent authority to decide the leave matter and his representation came to be rejected.

3. It is on the above background, the Applicant has challenged the order dated 31.08.2017 passed by the Respondent No.3 thereby rejecting medical leave and treating it as extra ordinary leave. The

Applicant has also challenged communication of Government dated 20.10.2020 whereby his representation against the order of Commissioner has been rejected.

4. Shri R. M. Kolge, learned Counsel for the Applicant sought to contend that the Applicant was unable to join duty due to back pain and after resuming duty, he was sent to medical board who certified the fitness of the Applicant. According to him, on the basis of this fitness certificate, the Respondent No.3 ought to have granted medical leave and earned leave as sought by the Applicant in his application dated 04.08.2016. He further urged that since the medical leave and earned leave were at the credit of the Applicant, refusal to grant leave is arbitrary and illegal. He has also further pointed out that unless a Government servant asked the nature of leave cannot be changed by the department as provided under Rule 63 of Maharashtra Civil Services (Leave) Rules, 1981 (herein after referred to as 'Leave Rules 1981' for brevity).

5. Per contra Smt Archana B. K., learned Presenting Officer submits that the Applicant remained absent from duty for the period from 31.05.2015 to 07.07.2016 since he was not willing to join at transferred place and for the first time, he made an application for grant of leave on 04.08.2016 i.e. after availing leave. She has further pointed out that the Applicant did not make any such application for grant of leave while proceeding on leave or thereafter within reasonable time which shows that the Applicant remained absent from duty unilaterally, and therefore, his absence was rightly treated as extra ordinary leave.

6. In view of the submission advanced at a bar, the question posed for consideration is whether the impugned orders suffer from any legal infirmity and answer is in emphatic negative.

7. Needless to mention that only because leaves are at the credit of a Government servant that *ipso-facto* does not entitle him to assume that he is entitled to leave as of a vested right. Indeed, 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.

8. Admittedly, the Applicant unilaterally proceeded on leave from 31.05.2015 to 07.07.2016. Furthermore, it is for the first time on 04.08.2016 he made an application addressed to Superintendent of State Excise, Satara for grant of 152 days half pay leave and 252 days earned leave on the basis of fitness certificate dated 26.09.2016 issued by the Medical Board. Importantly, the Medical Board stated that no opinion can be given for past leave and it is further stated in certificate that past leave taken by a Government servant need not be regularized on such medical certificate. As such, this was the medical certificate of fitness and it has nothing to do with previous illness, if any. This being the position, the Applicant was required to establish that factually he was really suffering from any such illness and was unable to attend the duty.

9. Here pertinent to note that during the period of absence from 31.05.2015 to 07.07.2016, the Applicant did not make any application for grant of leave along with medical certificate. Indeed, being a Government servant, he was required to intimate or apply along with medical certificate. However, he unilaterally proceeded on leave for 404 days and after availing leave applied on 04.08.2016 for medical leave. It is on this background, the Medical Board found him fit for resuming duty and has not given any opinion about previous illness. If this was the material before the Commissioner, his order of treating 404 days absence as extra ordinary leave can hardly be questioned. The Applicant ought to have applied for medical leave while proceeding on leave or thereafter within reasonable time along

with medical certificate but he did not do so and it is only after remaining absence for 404 days, he applied for grant of medical leave. Such conduct of a Government servant can hardly be countenanced with.

10. In this O.A. only, the Applicant has produced xerox copies of medical certificates which are at page nos.13 to 25 purporting that he was advised to rest for hyper tension and back pain which cannot be accepted to prove that he was really ill for such long period.

11. The grant of leave is governed by 'Leave Rules 1981'. As per Rule 40(1) of 'Leave Rules 1981' where leave is for less than two months, it should be accompanied with certificate of authorized medical officer. Where leave is for more than two months, Rule 40(2) provides that such a Government servant is required to appear before the Medical Board and where Medical Board certified that further leave is necessary for recovery in that event only further leave can be granted. Suffice to say, a Government servant cannot remain absent for such a long period of 404 days unilaterally. In present case, in first place, he did not apply for medical leave while proceeding on leave and even thereafter also did not apply for medical leave within reasonable time. He applied for medical leave for the first time on 04.08.2016 i.e. after availing 404 days absence. Thus it appears that the Applicant absented himself from duty without any just cause and did not bother to intimate the department.

12. Now turning to the Rule 63 of 'Leave Rules 1981' is as under :-  
"Rule 63 Extraordinary leave – (1) Extraordinary leave may be granted to a Government servant in special circumstances –  
(a) When no other leave is admissible :  
(b) When other leave is admissible but the Government servant applies in writing for the grant of extraordinary leave.

13. True as per Rule 63 of 'Leave Rules 1981', extra ordinary leave has to be granted in special circumstances when no other leave is admissible and when other leave is admissible, it cannot be extraordinary leave unless Government servant applies in writing for the same. This procedure is applicable in normal situation where a Government servant well in advance apply for leave. Whereas in present case, the Applicant remained absent for 404 days and after availing leave unilaterally, he appeared and applied for leave which is treated as extraordinary leave having found that, he has not produced any such medical evidences showing his illness for 404 days. Therefore, the submission advanced by learned Counsel for the Applicant that since there were medical leave and earned leave at the credit of Applicant, it could not have been treated as extraordinary leave holds no water. As stated above, leave cannot be claimed as of right and it is only by way of discretion of authority. In present case, the Applicant has not produced any such record of illness of 404 days before competent authority, and therefore, it had no other option except to reject the claim for leave and rightly treated it as extraordinary leave.

14. The totality of the aforesaid discussion leads me to sum up that challenge to the impugned order suffers from no legal infirmity and Original Application deserves to be dismissed. Hence the following order:-

**ORDER**

Original Application is dismissed with no order as to costs.

Sd/-

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

Place : Mumbai

Date : 20.12.2021

Dictation taken by : Vaishali Mane

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