

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.396 OF 2021

DISTRICT : NASHIK

Shri Narayan G. Parmar.)
Age : 58 Yrs., Occu.: Retired Govt. Officer,)
R/o. At.Post.Tal.: Nandgaon Station Road,)
District Nashik – 423 106.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Skill Development Employment &)
Enterpranership Department,)
Mantralaya, Mumbai – 400 032.)
2. The Director.)
Directorate of Vocational Education)
& Training, M.S, 3, Mahapalika)
Marg, P.B.No.10036,)
Mumbai – 400 001.)
3. Joint Director.)
Vocational Education & Training,)
Region Amravati, Near Bus Stand,)
Amravti – 444 601.)
4. Joint Director.)
Vocational Education & Training,)
Region Nashik, Samangaon,)
Nashik Road, Nashik – 422 214.)
5. District Vocational Education &)
Training Officer, ITI Campus,)
Deopur, District : Dhule – 424 005.)
6. The Accountant General (A&E)-1,)
Maharashtra State, 101, Maharshi)
Karve Road, Mumbai – 400 020.)...**Respondents**

Mr. C.T. Chandratre, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 26.11.2021

JUDGMENT

1. The Applicant has challenged the order dated 15.03.2021 issued by Government thereby treating absence of 196 days as Extra-ordinary Leave invoking Rule 63(6) of Maharashtra Civil Services (Leave) Rules, 1981 (hereinafter referred to as 'Leave Rules of 1981' for brevity).

2. While Applicant was serving as Deputy District Vocational Education & Training Officer (Non-Technical), Thane, he was transferred by order dated 31.05.2013 to Amravati. Accordingly, he was relieved on 18.06.2013 from Thane. However, he did not join at Amravati. He sent letter dated 30.06.2013 to Amravati Office stating that he is unwell and unable to join at Amravati. That time, he appended one Medical Certificate showing Territable Bowel Syndrome and was purportedly advised rest from 27.06.2013 to 03.01.2014. Later, he retired on 30.04.2020 while he was posted at Dhule. His issue of leave/absence was pending at the level of Government. By order dated 15.03.2021, the Government rejected his claim for leave and treated 196 days as Extra-ordinary Leave without Pay and Allowances as well as without considering the same for pensionary purpose, which is impugned in the present O.A.

3. Shri C.T. Chandratre, learned Advocate for the Applicant sought to assail the impugned order *inter-alia* contending that because of ailment, the Applicant was on leave and it ought to have been sanctioned, since there were leaves at his credit. He further submits that the impugned order has caused serious prejudice to the Applicant, as he is deprived of

treating the said period for pension purpose and increments. According to him, before passing such order, notice ought to have been issued to him. On this line of submission, he prayed to allow the O.A.

4. Whereas, learned P.O. opposed the O.A. *inter-alia* contending that Applicant deliberately remained absent from duty and there was no such ailment much less serious to grant medical leave. He further submits that leave cannot be claimed as of right and it is in discretion of authority to grant the leave, if it is based on genuine grounds.

5. Needless to mention that only because leave was at credit of the Applicant that ipso-facto does not entitle him for leave asked for. As per Section 10 of 'Leave Rules of 1981', it is permission granted by the competent authority at its discretion to remain absent from duty and it cannot be claimed as of right. Here material to note that the Applicant was transferred from Thane to Amravati by order dated 30.05.2013, but he did not join at Amravati and simply sent letter dated 30.06.2013 (Page No.15 of Paper Book) informing Amravati Office that due to health issue, he is unable to join. This is the only application submitted by the Applicant while proceeding on leave. It appears that Amravati where he was transferred was not convenient to him, and therefore, chooses to remain absent. Be that as it may, now question comes whether impugned order treating absence period as Extra-ordinary Leave retrospectively without considering the same for pension purpose suffers from any legal infirmity and in my opinion, the answer is in emphatic negative.

6. The grant of leave is governed by 'Leave Rules of 1981'. As per Rule 40(1) of Rules, where leave is for less than two months, it should be accompanied with Certificate of authorized Medical Officer in Form No.3 provided in Appendix-5. Secondly, as per Rule 40(2) where leave is for more than two months, a Government servant is required to appear before Medical Board and it is only on the Certificate of Medical Board

that leave is essential for recovery, in that event only, further leave can be granted. However, in the present case, no such procedure is followed.

7. In absence of any such Certificate by Medical Board, it cannot be said that there was any such necessity of long leave on account of alleged illness. Indeed, the illness shown in Medical Certificate that Applicant was suffering from Territable Bowel Syndrome cannot be treated as such a serious ailment justifying the absence on duty for 196 days. There is tendency in Government servants to proceed on leave where their transfer took place which is not convenient to them. The Applicant being Group 'A' Officer, it was not befitting on his part to remain absent for such a long period on such a flimsy ground.

8. True, in terms of Rule 63(1) of 'Leave Rules of 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, the Government servant applied in writing for grant of Extraordinary leave. This provision is heavily relied by the learned Advocate for the Applicant to contend that Applicant did not apply for Extraordinary leave, and therefore, the impugned order is illegal. Needless to mention Rule 63(1) of 'Leave Rules of 1981' would apply where a Government servant had applied for leave well in advance and his application is in terms of Rules. Whereas, in the present case, the Applicant choses to remain absent for 196 days without there being any such serious ailment or Certificate from Medical Board. Therefore, considering the conduct of the Applicant to remain absent for long time without justifying reason, the Government invoked Rule 63(6) of 'Leave Rules of 1981' thereby treating absence retrospectively as Extra-ordinary leave without considering the same for pension purposes.

9. Indeed, the Government by G.R. dated 2nd June, 2003 issued instructions in the matter of grant of leave and orders to be passed by the authority. In Appendix-1 attached to G.R. dated 02.06.2003, in Clause No.4, it is stated as under :-

“रजेशिवाय उपस्थित राहिल्याचा कालावधी असाधारण रजेमध्ये परिवर्तित करण्याचा/अकार्यदिन म्हणून समजण्याचा निर्णय घेण्यात आल्यास तो कालावधी कोणत्याही सेवा प्रयोजनार्थ (निवृत्तीवेतनविषयक लाभांसह) ग्राह्य धरण्यात येऊ नये व तशी स्पष्ट नोंद सेवा पुस्तकात घेण्यात यावी.”

10. True, this Appendix cannot be equated as an amendment to Rules. It is by way of instructions to the Departments and leave application has to be considered in terms of Rules. In terms of Rule 63(6) of 'Leave Rules of 1981', the Government is competent to commute retrospective period of absence without leave into Extra-ordinary leave. The Applicant was absent from duty for 196 days without getting it sanctioned, and therefore, ultimately, it has been treated as Extra-ordinary leave taking into account Applicant's absence for long period without valid reason. I, therefore, see no illegality in the impugned order.

11. True, by treating the said period as Extra-ordinary leave without considering the same for pension purposes, the Applicant has lost increment for the said period affecting quantum of pension, but for this situation, the Applicant should thank himself only. He is bound to face the consequences ensued because of his long absence without justifying the ground.

12. The totality of aforesaid discussion leads me to sum-up 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 : 26.11.2021
Dictation taken by :
S.K. Wamanse.

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