

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.608 OF 2019

DISTRICT : PUNE

Dr. Mukund Vishwanath Pande.)
Age : 74 Yrs., Occu.: Retired as Medical)
Officer Group 'A' (Class-I) and residing at)
B-904, High Life, Anand Nagar, Pune – 51.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Health Services Department,)
Mantralaya, Mumbai – 400 032.)
2. The Director of Health Services.)
Arogya Bhavan, 1st Floor,)
St. Georges Hospital Compound,)
Near CST Station, Mumbai.)
3. The Senior Accounts Officer.)
Indian Audit & Accounts Dept.,)
Pratistha Bhavan (Old CGO Bldg.),)
101, Maharashi Karve Marg,)
2nd Floor, Mumbai – 400 020.)...**Respondents**

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

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

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

DATE : 18.10.2021

JUDGMENT

1. The Applicant has challenged the communication dated 30th September, 2015 and 11th December, 2018 whereby his absence from 10.06.1985 to 12.08.1997 was treated as break in service invoking Rule 47(1) of Maharashtra Civil Services (Pension) rules, 1982 (hereinafter referred to as 'Pension Rules of 1982 for brevity) and held not entitled to pension and other retiral benefits.

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

The Applicant was appointed as Medical Officer by order dated 26.10.1971 and later he was made permanent in service in the month of June, 1976 and held eligible to be treated as permanent Government servant for all purposes in terms of G.R. dated 19.01.1976. During the course of service, he was transferred to various places. In 1985, he was Medical Officer at Leprosy Home, Khedgaon, Tal. Karmala, District Solapur and by order dated 15.05.1985 transferred to Primary Health Centre, Kasa, Taluka Dahanu, District Palghar. However, he did not join there and proceeded on leave. In December, 1985, he made an application to District Health Officer, Thane stating that because of illness i.e. Anxiety-Neurosis, he could not join at Kasa and requested to grant Medical Leave from 10.06.1985 to 31.01.1986 and sent Medical Certificate issued by private practitioner certifying that he is suffering from Anxiety-Neurosis and required treatment and rest up to January, 1986. Thereafter, he sent various applications for Medical Leave and for permission to join, which will be dealt with a little later in detail. Ultimately, after much persuasion, the Government posted him at Zilla Parishad Gadchiroli by order dated 03.05.1997. In pursuance of it, the Applicant joined there on 12.08.1997. As such, he was absent from duty for the period from 10.06.1985 to 11.08.1997. After joining at Gadchiroli, he made various representations to treat absence period as a leave period, as may be permissible, but nothing was materialized.

Ultimately, he stands retired w.e.f.31.12.2003 on attaining the age of superannuation.

3. Since, there was no response by the Respondents about the regularization of his absence period and retiral benefits were withheld, he approached the Office of Lokayukta to redress his grievance for retiral benefits. In the meantime, the Government by belated communication dated 30.09.2015 informed the Applicant that his absence from 10.06.1985 to 12.08.1997 being unauthorized absence, it is treated as break in service. The office of Lokayukta recommended the Government to re-consider the decision of break in service. However, by communication dated 11.12.2018, the Government confirmed earlier order dated 30.09.1995 treating absence period as break in service rendering him ineligible for retiral benefits. After his joining in Gadchiroli District, the Applicant has rendered service of 6 years and 4 months. Whereas his service before proceeding on leave was near about 14 years. However, since absence from 10.06.1985 to 11.08.1997 has been treated as break in service attracting Rule 47(1) of 'Pension Rules of 1982' which speaks about forfeiture of past service, he lost the benefit of service rendered by him. After rejoining in Gadchiroli District, he had rendered only 6 years and 4 months' service which is less than minimum 10 years' tenure for qualifying service required for pension. He was granted gratuity of Rs.31,363/- only and was denied the benefit of full gratuity.

4. It is on the above background, the Applicant has challenged the communication dated 30th September, 2015 as well as 11th December, 2018 by filing the present O.A.

5. Shri K.R. Jagdale, learned Advocate for the Applicant submits that while proceeding on leave, the Applicant had sent leave application accompanied by Medical Certificate and thereafter made various correspondence with the Respondents. He has further pointed out once

the Applicant appeared before Medical Board as directed by the Respondents, but thereafter also, he was not given posting and thereby Applicant was kept in waiting for no fault on his part. He further submits that the period of absence from 10.06.1985 to 11.08.1997 ought to have been treated as 'Extra-Ordinary Leave' and Applicant should have been granted retiral benefits since he has rendered 14 years of service before leave period and again rendered service of 6 years and 4 months after rejoining. He, therefore, urged that the effective service rendered by the Applicant in these two phases is more than 20 years, and therefore, it would be highly unjust to deny the retiral benefits particularly when, the Applicant has made various efforts exhibiting his willingness to join. According to him, due to sheer non-communication and lack of coordinate between the Respondents, the Applicant was kept in waiting for a longer period, and therefore, denial of retiral benefits would be totally unjust rather oppressive to a Government servant.

6. Whereas Mrs. K.S. Gaikwad, learned Presenting Officer submits that the Applicant has not produced the Medical Certificate showing his illness for a long spell of 12 years so as to justify the absence or to treat the absence period as 'Extra-Ordinary Leave'. According to her, the Applicant was time and again referred to Medical board, but the Applicant himself avoided to present before the Medical Board. She has further pointed out that except one Medical Certificate dated 05.05.1987 (Page No.103 of Paper Book) showing illness from 29.04.1987 to 28.06.1987, the Applicant has not produced any other Medical Certificate, and therefore, in absence of any other Medical Certificate showing continuous illness or inability to resume duties on medical ground, the impugned order treating absence period as break in service is in consonance with Rule 47(1) of 'Pension Rules of 1982 and it cannot be faulted with.

7. In view of submissions advanced and pleadings, the issue posed for consideration is whether the impugned order treating absence period

as break in service entailing forfeiture of previous service is sustainable in law and facts and in my considered opinion, the answer is emphatic negative for the reasons to follow.

8. True, the period of absence from duty is quite large, but the question is whether in the said period, the Applicant deliberately remained absent without any reason or had intention to desert or abandoned the service. The Applicant has filed the copies of various representations and correspondence exchanged in between the Departments establishing his efforts for appearance before Medical Board as well as to show that he was ready to join but due to lack of coordination between the Respondents, he was kept away for no justifiable reason, and therefore, the impugned order forfeiting earlier period of service of 14 years is outcome of non-application of mind and arbitrary.

9. To appreciate this contention, let us see the steps taken by him from time to time which are tabulated in the following Chart.

Dates	Particulars	Page No.
December 1985	Applicant submitted application with Medical Certificate to District Health Officer, Thane stating that he is suffering from anxiety neurosis & sought leave from 10.06.1985 to 31.01.1986.	93-94
04.09.1986	Deputy Director sought information from the DHO Thane about what action has been taken on leave Application of the Applicant.	95
30.09.1986	Applicant submitted representation with Certificate to grant medical leave.	96-97
28.10.1986	Deputy Director informed DHO Thane to send Applicant for medical examination at J.J. Hospitals.	98
08.12.1986	Deputy Director informed the Applicant to get the medical examination done before the J.J. Hospitals.	100
20.02.1987	As per the directions of the Deputy Director, Applicant was present before J.J. Hospital on 19.01.1987 but no medical examination was held on that day and hence he was again called on 30.01.1987. This was informed by Applicant to Deputy Director on 20.02.1987.	102
05.05.1987	After the medical checkup with J.J. Medical Board, the Medical board issued a medical certificate to the Applicant stating that he is suffering from anxiety	103

Dates	Particulars	Page No.
	with depression from 29.04.1987 to 28.06.1987 and it was advised to appear before the board again after the said period.	
09.10.1987	Deputy Director has forwarded the certificate of medical board to the Director for necessary orders.	104
19.04.1988	Since the Respondents failed to inform the Applicant to again appear before the medical board, he submitted representation before the Respondent No.2 seeking permission to appear before medical board and submit medical certificate.	105
30.07.1988	Applicant informed the Deputy Director that when he approached the medical board for further medical examination, he was asked to bring letter from Deputy Director to conduct medical examination. He therefore requested to issue letter so that he can appear before Medical Board.	106
06.10.1988, 30.03.1989, 18.07.1990, 28.07.1990	Applicant submitted representations before the Deputy Director to arrange medical examination.	107- 110
28.12.1990	Applicant by letter dated 28.08.1990 was directed to appear before the J.J. Medical Board by the Deputy Director. Accordingly, he appeared before J.J. Medical Board on 12.11.1990 and submitted letters to the Deputy Director to that effect	24
20.06.1992, 02.07.1992 & 24.02.1993	Applicant submitted representations and reminders to the Respondent No.2/Deputy Director seeking report of medical board and give him posting.	25 to 27
25.02.1993	Deputy Director communicated to the Dean of J.J. Medical Board stating that till date the Applicant's report has not been received though he appeared for examination from time to time and further it was directed to carry out Applicant's medical examination and submit the report to the Respondents.	28
25.02.1993	Ultimately, a letter was served to the Applicant to appear before J.J. Hospital for medical examination.	29
01.04.1993	Applicant appeared before J.J. Medical Board and submitted the fitness certificate before the Respondent No.2 along with a representation seeking posting.	30-31
02.04.1993, 17.05.1993, 22.06.1993, 26.08.1993, 25.02.1994, 09.06.1994 & 15.11.1995	Since no action was taken by the Respondents, Applicant submitted representations seeking posting.	32-38

Dates	Particulars	Page No.
14.05.1997	After a very long period, the Respondents No.2 issued order of posting to the Applicant on the post of Medical Officer Class II at Nagpur Region and he joined on 12.08.1997.	39

10. It is thus explicit that while proceeding on leave, the Applicant gave intimation by application along with Medical Certificate for grant of leave stating that he is suffering from Anxiety-Neurosis and Doctor advised him rest upto 31st January, 1986 (Page Nos.93 and 94 of P.B.). Then again he submitted another application on 30.09.1986 along with Medical Certificates issued by private Doctor stating that he is still suffering from Anxiety-Neurosis and needs long term treatment. He was advised to take rest until cures from his prolong illness (Page Nos.96 & 97 of P.B.). On receipt of this letter, the Deputy Director by letter dated 28.10.1986 asked him to appear before Medical Board and his application for leave was kept pending (Page Nos.98 to 100 of P.B.). Material to note that thereafter Deputy Director by his letter dated 06.02.1987 asked the Applicant to appear before Medical Board on 19.01.1987 and pursuant to it, the Appeared before Medical Board, J.J. Hospital on 19.01.1987. The Medical Board examined the Applicant and issued Certificate dated 05.05.1987, which is at Page No.103 of P.B. The Medical Board certified that the Applicant is suffering from Anxiety-Neurosis and further stated that it is necessary for him to appear before Medical Board again after the expiry of recommended leave from 29.04.1987 to 28.06.1987. What is significant to note that Medical Board did not found him fit to resume duty. On the contrary, he was asked to appear again for Medical Board meaning thereby, that time, he was not fit to resume duty. If this is the state of affairs, by no stretch of imagination, it can be said that the Applicant abstained from duty deliberately.

11. The record further reveals that thereafter also, the Applicant made various representations addressed to Deputy Director, which are at Page

Nos.105 to 110 of P.B. requesting to inform next date for appearance before the Medical Board. However, the Respondents did not take any steps for sending him to Medical Board in that period of three years. Ultimately, it is only by letter dated 28.08.1990, the Applicant was directed to appear before Medical Board on 12.11.1990. Accordingly, the Applicant appeared before Medical Board on 12.11.1990 and informed the same to Deputy Director by his letter dated 28.12.1990, which is Page No.24 of P.B. Surprisingly, no Medical Certificate regarding Medical Examination of the Applicant by Board dated 12.11.1990 is forthcoming on record. Thus, lack of coordination between Department and Medical Board is obvious and sufferer was the Applicant.

12. After much persuasion by the Applicant, he was again asked to appear before the Medical Board afresh on 01.04.1993. That time, Medical Board for the first time certified him fit to resume duty, but no opinion was given regarding previous leave. The Applicant, therefore, requested for posting order, but in vain. He again made various correspondences and ultimately allowed to join on 12.08.1997 only. Thus, the record clearly exhibits readiness and willingness of the Applicant to resume duty in view of Medical Certificate dated 01.04.1993 but orders of joining were issued quite belatedly after four years due to laxity, apathy on the part of Respondents in not issuing appropriate posting orders immediately on receipt of Medical Certificate. In such situation, it cannot be said that Applicant himself kept him away from duty. *Ex-facie*, he was kept out of duty for these four years due to sheer negligence, inaction and lack of coordination between the Respondents.

13. The Applicant thereafter continued in service till attaining the age of superannuation upto 31.12.2003. Even after joining, he had made various correspondences with Director and Deputy Director for regularizing his absence period, as seen from Page Nos.72-A, 72-B, 72-C, 72-D, 72-E, 72-F and 72-G of P.B. in between 1998 to 2003. Apart, even after retirement, the Applicant submitted various representations

for regularization of absence period by passing appropriate orders and to release pension, as seen from Page No.72-I, 72-J, 72-L, 72-O and 72-S. However, there was only exchange of correspondent between *inter-se* Respondents, but nothing was materialized. Indeed, the Deputy Director by his letter dated 27.10.2006 sent proposal to Director, Medical Services for regularizing absence of the Applicant from 10.06.1985 to 11.08.1997 as Extra-Ordinary Medical Leave considering that he is already retired on 31.12.2003 and refusal of leave would entail forfeiture of previous service which would cause severe loss to the Applicant. As such, inaction and laxity on the part of Respondents is obvious. Ultimately, the Applicant approached Office of Lokayukta to redress his grievance, since his retiral benefits were withheld for a long time. However, in the meantime, the Government by communication dated 30.09.2015 communicated to the Applicant that his absence from 10.06.1985 to 12.08.1997 will be treated as unauthorized absence as a break in service. The Office of Lokayukta again recommended to the Government to re-consider the decision, but Government by communication dated 11.12.2018 confirmed its earlier stand.

14. It is thus manifest that this is not a case where a Government servant abstains from duty or abandoned the service, so as to treat the absence period as a break in service. True, the absence period is too long i.e. from 10.06.1985 to 12.08.1997, but mere length of the period ipso-facto does not entail in forfeiture of previous service. One need to see what was the reason for such absence and the steps taken by a Government servant for resuming duty. While proceeding on leave, the Applicant has sent leave application along with Medical Certificate of private Doctor stating that he is suffering from Anxiety-Neurosis. The Medical Certificates produced on record also spells that he was suffering from illness and for want of Medical Fitness Certificate, he was not allowed to join.

15. It is nowhere the case of Respondents that the Applicant deliberately remained absent. Significantly, not a single Memo or Notice was issued to the Applicant calling his explanation for absence or directing him to resume duty. This indicates that the Department was very much aware about the illness of the Applicant and that is why, no such Notice or Memo was issued to the Applicant. Otherwise, in normal course, the Respondents would not have remained silent spectator and Applicant ought to have been served with Show Cause Notice for appropriate departmental proceedings.

16. In this view of the matter, it is totally unpalatable that Applicant himself remained absent from duty without any reason. On the contrary, he appears to have been suffering from Anxiety and depression for a long period and some delay was caused due to belated examination by Medical Board. However, unfortunately, the Government ignoring the steps taken by the Applicant as well as his readiness and willingness to resume the work mechanically and arbitrarily treated absence period as unauthorized absence and break in service entailing harsh consequences of forfeiture of previous service. In the peculiar facts and circumstances of the case, the absence ought to have been treated as Extra-Ordinary Leave under Rule 63 of Maharashtra Civil Services (Leave) Rules, 1981 so that Applicant should get retiral benefits. At the most, the absence ought to have been treated as Extra-Ordinary Leave without pay and allowances or for any other consequential benefits, but in any case, it should not have been treated as break in service entailing very harsh and unjust consequences of forfeiture of previous service. Needless to mention that the pension is not charity but a Government servant earns it after rendering long service and it is regarded as right to property which cannot be taken away in this manner, particularly when too much extent blame lies with Respondents. The right to receive pension has been held to be covered under "right to property" under Article 31(1) of Constitution in **[1971] 2 SCC 330 (Deokinandan Prasad Vs. State of Bihar)**. The Applicant has rendered 14 years' service in first phase and

6 years and 4 months service in second phase and thereby rendered total more than 20 years' service. Whereas, qualifying period of service for pension is minimum 10 years. The impugned order is totally arbitrary, unjust rather oppressive and totally unsustainable in law.

17. The totality of aforesaid discussion leads me to sum-up that the impugned order treating Applicant's absence as unauthorized absence and break in service is liable to be quashed. It ought to be treated as Extra-Ordinary Leave without pay and allowances of the said period with further rider that it will not be counted for any consequential service benefits like increments, gratuity or qualifying service for pension. It has to be excluded from consideration of pension and pension ought to be granted considering Applicant's remaining service which he rendered in two phases i.e. 26.10.1971 to 09.06.1985 and in second phase from 12.08.1997 to 31.12.2003. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned communications dated 30.09.2015 and 11.12.2018 are quashed and set aside.
- (C) The absence period from 10.06.1985 to 11.08.1997 shall be treated as Extra-Ordinary Leave without pay and allowances with further rider that the said period will not be counted for any service benefits like increment, pension and gratuity, etc.
- (D) Pension and other retiral benefits be granted considering Applicant's remaining qualifying service from 26.10.1971 to 09.06.1985 and from 12.08.1997 to 31.12.2003.

- (E) Respondents are, therefore, directed to grant pension and other retiral benefits as per his entitlement within two months from today.
- (F) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 18.10.2021

Dictation taken by :

S.K. Wamanse.

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