

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.785 OF 2021

DISTRICT : RATNAGIRI

Shri Janak Haridas Dhotrekar.)
Age : 49 Yrs, Sectional Engineer,)
P.W.D, Ratnagiri and residing at)
C-13/14, Roop Rajat Park Apartment,)
Shivaji Nagar, Ratnagiri - 415 612.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Public Works Department,)
Mantralaya, Mumbai – 400 032.)
2. Chief Engineer.)
Public Works Region, 4th Floor,)
Bandhkam Bhavan, 25-Marzban)
Road, Mumbai – 400 001.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 13.12.2021

JUDGMENT

1. The issue posed for consideration in the present Original Application is whether order dated 10.08.2021 issued by Respondent No.1 – Government treating leave period 13.08.2019 to 01.03.2020 (202

days) as Extra-ordinary leave without pay with rider that will not be considered for pension purposes is legal and valid.

2. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

3. The Applicant is serving in the cadre of Sectional Engineer and was posted at Ratnagiri. On 13.08.2019, he submitted an application addressed to Deputy Engineer, PWD, Ratnagiri stating that due to illness, he would be unable to remain present in the Office and attached Medical Certificate issued by Civil Surgeon wherein leave of one month was recommended (Page Nos.9 and 10 of P.B.). However, nothing was communicated to him. Thereafter, the Applicant has again sent one letter dated 23.03.2020 along with Medical Certificates requesting to grant Medical Leave from 13.08.2019 to 01.03.2020. The Executive Engineer forwarded the matter to Government with recommendation stating that there are 331 half pay leave and 300 + 15 Earned Leave are at his credit. Thereon Government raised certain queries as to why Applicant was not sent to Medical Board for examination. Thereafter, no further steps were taken by the Department to explain as to why Applicant was not sent to Medical Board. It is on this background, the Government by order dated 10.08.2021 passed an order treating 202 leave asked for as Extra-ordinary leave (without pay and allowances) with further rider that it will not be counted for pension purpose. In this behalf, reference was made to G.R. dated 02.06.2003 and particularly Annexure-1 attached to G.R.

4. The Applicant has tendered various Medical Certificates issued by Civil Surgeon to demonstrate that he was unwell and unable to join. In Medical Certificate dated 13.08.2019 attached with first application for leave, Civil Surgeon certified that he is suffering from Infective hepatitis C AB.B.C Anemia. Then it comes another Medical Certificate issued by Civil Surgeon, Ratnagiri wherein Civil Surgeon again advised extension of

bed rest for one month (Page No.11 of P.B.). Then, it comes one more Medical Certificate in which again one month bed rest was recommended (Page No.12 of P.B.). One more Medical Certificate is filed wherein Civil Surgeon certified that Applicant is suffering from Cervical Spondylitis C Radiculitis C lumbar Spondylosis and was advised bed rest from 12.11.2019 to 01.03.2020. The last Medical Certificate is at Page No.14 wherein Applicant is said fit to resume duty on 02.03.2020.

5. Furthermore, Superintending Engineer had recommended for grant of Medical Leave and Earned Leave, but Government passed the impugned order.

6. Interesting to note that the impugned order is passed by Government, but no separate reply is filed on behalf of Respondent No.1- Government to justify the impugned order on the background of Medical Certificates tendered by the Applicant as well as recommendations made by Superintending Engineer for grant of leave. It is Respondent No.2 - Chief Engineer PWD who has filed Affidavit and thereby attempting to justify the impugned order on the basis of G.R. dated 02.06.2003 and Annexure-1 attached to the G.R.

7. Suffice to say, this is not a case where a Government servant remained absent unauthorizedly without giving any application for leave. He had submitted application for grant of leave with Medical Certificates. True, if Medical Leave for more than 2 months is sought, a Government servant is required to be examined by Medical Board. Interestingly, in the present case, the Government has raised query to the Department as to why Applicant was not sent to Medical Board for examination. However, Department chose to remain silent on this query raised by the Government. In view of leave application tendered by the Applicant along with Medical Certificate of Civil Surgeon from time to time, it was incumbent on the part of Department to send the Applicant to Medical Board for examination. Be that as it may, as stated above, this is not a

case where a Government servant remained absent without giving intimation or remained absent unauthorizedly. There is nothing on record that Applicant had tendency to remain absent from duty. On the contrary, the fact that so much leaves were at credit goes to show that he had no such tendency to fritter away leaves. This being the position, it was incumbent on the part of Government to give reasons in the impugned order as to why Medical Certificates tendered by the Applicant and recommendation made by the Department was not considered. The Respondent No.1 – Government simply treated the said period as Extra-ordinary leave invoking Rule 63(6) of Maharashtra Civil Services (Leave) Rules, 1981. This Rule can be invoked when a Government servant willfully remained absent and in that situation, the absence period has to be treated as Extra-ordinary leave retrospectively. There is no such finding or observation in the impugned order that the Applicant was willfully remained absent or Medical Certificates tendered by him were false. In absence of any such discussion, the impugned order will have to be held unjust, unfair and arbitrary.

8. Insofar as G.R. dated 02.06.2003 and Annexure-1 is concerned, all that it is stated in Para No.4 relied by the Government is as under :-

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

9. It is on the basis of above note, the Applicant's leave period has been treated as Extra-ordinary leave that too, with harsh consequence of not counting the said period for pension purpose. Undoubtedly leave is not right and it is concession to remain absent. But discretion and power has to be exercised fairly and judiciously. When Medical Certificates of Civil Surgeon recommending leave were forthcoming and leave was recommended by the Department, the Government ought to have considered the leave period as Extra-ordinary leave or Medical Leave.

10. Admittedly, 331 half day leaves and more than 300 Earned Leaves were at his credit. I have, therefore, no hesitation to sum-up that the impugned order is totally unjust, harsh and unsustainable in law and liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 10.08.2021 is quashed and set aside.
- (C) The period from 13.08.2019 to 01.03.2020 shall be regularized by granting commuted leave and for balance, it be granted as Earned Leave, as proposed by Superintending Engineer in his letter dated 08.07.2020.
- (D) The Respondent No.1 is directed to pass appropriate order of leave as directed above within a month from today.
- (E) No order as to costs.

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

Mumbai
Date : 13.12.2021
Dictation taken by :
S.K. Wamanse.

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