

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.855 OF 2017

DISTRICT : Nashik

Shri Gulab Damodar Jadhav)
Age : 58 years, Retired Sub Div.Officer from the)
Office of Small Scale Irrigation (Water Conser.))
Division, Ahmednagar.)
R/at Vyankat Raman Row House No.2,)
Behind Akash Petrol Pump, Dindori Rd. Nashik.)...**Applicant**

Versus

1. The State of Maharashtra, through)
Principal Secretary (CADA), Water)
Resources Department, Mantralaya,)
Mumbai 400 032.)
2. The Executive Engineer, Van Project Div.)
Shegaon, Dist. Buldhana.)
3. The Executive Engineer, Minor)
Irrigation (E), Division, Zilla Parishad)
Nasik.)
4. The Superintending Engineer, Small)
Scale Irrigation (W.C.) Circle, Nasik.)...**Respondents**

Shr A. V. Bandiwadekar, Advocate for Applicant.

Ms S. P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 28.11.2019

JUDGMENT

1. The Applicant has challenged the impugned order dated 27.09.2017 whereby his application for medical leave for 314 days was decided granting 18 days commuted leave (and 305 days extra ordinary leave) instead of granting entire period as Medical Leave.

2. In the year 2009-2010, the Applicant was serving as Sub-Divisional Officer in the office of Executive Engineer, Van Project Division, Shegaon, Dist. Buldhana. He proceeded on leave from 30.11.2009 to 09.10.2010 for 314 days. On 11.10.2010 i.e. on the date of resuming duty, he made an application for grant of Medical Leave from 30.11.2009 to 09.10.2010. He was later transferred to Nashik. He stands retired on 30.06.2017. However, no order on his Medical Leave application dated 11.10.2011 was passed. Therefore, he has filed the present O.A.

3. However, during the pendency of O.A., the Respondent No.1 has passed order dated 27.09.2017 whereby invoking the Rule 61 and 63 of Maharashtra Civil Services (Leave Rules), 1981, 9 days (at his credit at the relevant time) was granted as commuted leave and there being no other leave at his credit 305 days leave was granted as extraordinary leave. The Applicant has, therefore, amended the O.A. and challenged the order dated 27.09.2017 contending that the Respondent No.1 should have granted it as Medical Leave in its entirety.

4. Respondents opposed the application on the ground that the Applicant was in habit to remain absent without any reason and during the period from 30.11.2009 to 09.10.2010, he was asked to appear before the Medical Board at Vasantrao Naik, Govt. Medical Collage, Yavatmal but he failed to appear before the Medical Board. As regard impugned order, Respondents contend that on 11.10.2010 except 18 commuted leave, no other leave was at his credit, and therefore, 9 days leave was granted as commuted leave by deducting 18 days half pay leave and remaining 305 days leave granted as extraordinary leave. The Respondents, therefore, contend that there is no illegality in the impugned order.

5. Shri A. V. Bandiwadekar, learned Counsel for the Applicant made following submissions:-

- (a) The act of Respondents to convert leave asked for is impermissible in view of the Rule 10(3) of MCS (Leave) Rules, 1981.
- (b) Respondent No.1 ought to have considered entire leave at the credit of Applicant, on the date of order passed on his application i.e. on 27.09.2017 in view of Rule 61(b) of MCS (Leave) Rules, 1981.

6. Per contra, Ms S. P. Manchekar, learned C.P.O. for the Respondents submits that the Applicant did not apply for leave while proceeding on leave and for the first time applied for leave on 11.10.2010 while resuming duty. She has further pointed out that notice dated 25.02.2010 was issued to the Applicant to appear before the Medical Board, Vasantao Naik Government Medical Collage, Yavatmal as required under rule, where leave asked for exceeds two months. She has pointed out that the Applicant did not appear before the Medical Board. As regard the impugned order, she submits that whatever leave at the credit of Applicant on 11.10.2010 were considered and there being no other leave except 18 half pay leave, impugned order was passed, treating 305 days as extraordinary leave.

7. Here the question is whether the procedure laid down in MCS (Leave) Rules, 1981 which provides the manner of grant of Medical Leave and its requirement is followed.

8. Rule 40 for grant of leave on medical grounds to Gazetted Government servant, is as follows :-

“Rule 40 :

(1) where leave of any kind (together with extension of leave, if any) is asked for on medical grounds, the competent authority may, if he

considers it necessary to have a medical opinion, follow the following procedure:-

- (a) if the leave together with extension of leave (if any) asked for is of 2 months duration or less he may be asked to obtain a certificate in Form 3 in Appendix V from his Authorised Medical Attendant; or Medical Officer of equal status.
 - (b) if the leave together with extension of leave (if any) asked for is for more than two months, or if the certificate obtained under clause (a) above so recommends, he may be asked to appear before a Medical Board.
2. If according to (1) (b) above, appearance before a Medical Board is required, the authority competent to grant leave, shall request the Civil Surgeon of the district in which the Government servant is serving or in which he falls ill or to which he proceeds for treatment to set up a Medical Board. The Government servant shall present himself before the Medical Board with two copies of the statement of his case.
 3. The Medical Board may give the Government servant a certificate to the following effect, namely:-
 "We do hereby certify that, according to the best of our professional judgment and after careful personal examination of the case, we consider the health of Shri/Shrimati/Kumari.....to be such as to render leave of absence for a period of.....absolutely necessary for his/her recovery."

Note. Where the leave recommended is for more than three months or where the leave for three months or less is extended beyond three months, the Medical Board shall state, at the time of giving this certificate, whether the Government servant should or need not appear before another Medical Board for obtaining the certificate of fitness for return to duty.

- (4) Where the Medical Board entertain a doubt, it may, before giving the certificate under sub-rule(3), provide for the keeping of the applicant under professional observation for a period not exceeding fourteen days and give him a certificate to the following effect, namely:-
 "Shri/Shrimati/Kumari.....having applied to us for a medical certificate recommending the grant to him/her of leave, we consider it expedient, before granting or refusing such certificate, to keep Shri/Shrimati/Kumari.....under professional observation for.....days".
- (5) If the state of health of the applicant is certified by the Civil Surgeon or District Medical Officer to be such as to make it impracticable for the applicant, for a specified period, to present himself/herself at the place where a Board can be assembled, the authority competent to grant the leave may, in lieu of the certificate prescribed in sub-rule(3),

accept a certificate signed by any two Medical Officers, not below the rank of a Civil Surgeon.

- (6) Notwithstanding anything contained in sub-rule(5) the authority competent to grant leave may dispense with the procedure laid down in sub-rules(2) and (3)when the applicant is undergoing treatment in a hospital as an indoor patient and the leave is recommended by the Medical Officer-in-charge of the case in the hospital not below the rank of a Civil Surgeon for the period of hospitalization or convalescence.
- (7) A Medical Officer shall not recommend the grant of leave in any case in which there appears to be no reasonable prospect that the Government servant concerned will ever be fit to resume his duties and in such case, the opinion that the Government servant is permanently unfit for Government service shall be recorded in the medical certificate.
- (8) The grant of a medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave, the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.

Note :- In Greater Bombay, certificates from the Police Surgeon, Bombay, and the Superintendents/Dean of St.George's J.J. and G.T. Hospitals, and those signed by the Honorary Medical Staff of these institution and counter-signed by the Superintendents/Dean may be accepted for purposes of this rule. The Superintendents/Dean of the above Hospital are empowered to countersign medical certificates from other Registered Medical Practitioners in Greater Bombay or require the applicant to present himself before him for medical examination before countersignature.

Instructions-

In case the leave is for sixty days or less, the last sentence of the medical certificate in Form 3 should be modified by scoring out the irrelevant words. In case the leave is for more than sixty days, the last sentence of the medical certificate should be completely scored out.

Note 2- Certificates signed by the Medical Officer-in-charge, Cama and Alibless Hospitals, Bombay, may be accepted for purposes of this rule so far as female Government servants of Gazetted rank in Greater Bombay are concerned.

Note 3- Certificate signed by the Assistant to the Civil Surgeon, Pune, provided he is an officer of Class I of the Maharashtra Medical and Health Services, may be accepted for the purposes of this rule."

9. Whereas Rule 61 provides for commuted leave. In the present matter Rule 61(1)(b) is relevant which is as follows:-

- “Rule 61 : (a)
- (b) when commuted leave is granted twice the amount of such leave shall be debited against the half pay leave due;”

10. In so far as Rule 40(1) of MCS (Leave) Rules, 1981 is concerned, it is explicit that where leave is sought on medical ground for two months or less, the Government servant needs to obtain the medical certificate in Form No.3, Appendix 5 from authorized medical officer. Perusal of Form No.3 reveals that duty caste upon the medical officer to examine the concerned government servant personally and if satisfies then he needs to issue certificate about his health and requirement of leave. Whereas the Applicant never appeared before the authorized medical officer while proceeding on leave or even thereafter, no such medical certificate in Form No.3 is produced. On the contrary, the Applicant proceeded on leave without compliance of Rule 40 of MCS (Leave) Rules which itself created doubt about genuineness of his illness.

11. Thus, perusal of Rule 40 as provides above makes it quite clear that if leave is exceeding more than two months then certificate to that effect recommending leave is necessary by the Medical Board. In other words, where the Government servant is unable to report on duty on medical ground for the period more than two months then he needs to appear before the Medical Board which in turn on examination of the concerned public servant should recommend for particular period of leave as necessary.

12. Suffice to say, during the period of illness itself, there has to be certificate from the Medical Board, recommending leave. This recommendation obviously based on the medical record to be produced by the concerned Government servant.

13. Whereas in the present case, despite notice issued by the office on 25.02.2010, the Applicant failed to appear before the Medical Board. It is only after his transfer to Nashik, he seems to have appeared before the Medical Board, Dhule in terms of letter issued by the Additional Chief Executive Officer, Zilla Parishad, Nashik dated 28.06.2011. The copy of medical certificate issued by the Medical Board, Dhule dated 15.05.2012 is at page no.22 of O.A. All that Medical Board stated as follows:-

“Fit for duty. Leave recommended from 30.11.2009 to 09.10.2010”

14. However, on what basis Medical Board made this recommendation is not made clear from the certificate. This aspect assumes significance as it is only after availing leave, the Applicant appeared before the Medical Board. Board found him fit for duty. This opinion ‘fit for duty’ is obviously based on the then physical condition of the Applicant which seems to have been considered by the Board, and therefore, certified him ‘fit for duty’. However, in so far as leave period from 30.11.2009 to 09.10.2010 for 314 days is concerned, it is not supported by any other medical evidence that Applicant was really prevented from joining duty because of illness.

15. As stated above, where the medical leave asked for exceeds two months then during the period of illness itself, the Government servant is required to appear before the Medical Board and in that period itself, the Medical Board needs to satisfy about the physical condition of the Government servant. It is for this purpose, Rule 40 of MCS (Leave) Rules, 1981 specifically provides for examination by the Medical Board during the period of illness itself so that leave can be extended from time to time, that too on the basis of medical certificate. Whereas in the present case, the Applicant appeared before the Medical Board after availing leave, and therefore, this medical certificate which itself is verge and unsupported by any

medical evidence cannot be accepted to say that the Applicant was really ill during the period from 30.11.2009 to 09.10.2010. There is absolutely no compliance of Rule 40 for grant of Medical Leave of 314 days.

16. Apart, the Respondent No.1 has considered leave of the Applicant at his credit on 11.10.2010. It is nowhere the case of the Applicant that on 11.10.2010 there was sufficient commuted leave at his credit, so as to grant commuted leaves on medical ground.

17. Submission advanced by learned Counsel for the Applicant that Respondent No.1 was supposed to consider the leaves at the credit of Applicant on the date of passing of order i.e. 27.09.2017 is misconceived. There is nothing in the Rule to point out that subsequent leave, if any, at the credit of employee has to be considered while passing the order on leave application. Leave application has to be decided on the basis of leave at the credit of the employee on the date of his application and leave which could be credited at his credit in future cannot be considered. Rule 61(b) relied by the learned Counsel for the Applicant does not provide that leave credited subsequently, needs to be considered while passing order on application for leave. Rule 61(b) only provides manner of deduction of amount of leaves. Suffice to say, submission advanced by the learned Counsel is felicitous and totally unsustainable.

18. In so far as Rule 10(3) of MCS (Leave) Rules is concerned, it applies where there are other leaves at the credit of employee. Rule 10(3) is as follows:-

“10 (3) : When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant.”

19. Plain meaning of Rule 10(3) is that if there are other leave at the credit of employee then it is not open to the authority to alter the kind of leave due applied for except at the written request of the Government servant. In the present case, on 11.10.2010 there was no other leave at the credit of the Applicant, therefore, the question of altering the kind of leave does not survive and there is no breach of Rule10(3).

20. For the aforesaid reasons, I see no illegality in the impugned order. Challenge to the impugned order is devoid of merit and O.A. deserves to be dismissed.

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 28.11.2019.
Dictation taken by : VSM
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