

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.896 OF 2019

DISTRICT : PUNE

Shalini Parshuram Bidarkar)
Age 44 years, Occu. Service)
R/at Settlement Commission Office,)
Pune, Dist. Pune.).... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through its Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)
- 2) Additional Chief Secretary,)
Ministry of Revenue and Forest,)
1st floor, Mantralaya, Hutatma)
Rajguru Chowk, Madam Kama)
Marg, Main Building, Mumbai.)
- 3) The Settlement Commissioner &)
Director of Land Records,)
Settlement Commissioner Office,)
Pune) **..Respondents**

Shri V. S. Undre, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 04.03.2022.

JUDGMENT

1. The Applicant has challenged impugned orders dated 14.06.2017 passed by the Respondent No.3 as well as also challenged order dated 25.06.2019 passed by the Respondent No.2 in revision thereby rejecting the Applicant's claim to grant medical leave for the period from 17.06.2016 to 10.01.2017.

2. While the Applicant was serving as Superintendent in the office of Deputy Director, Land Records, Aurangabad, she was transferred by order dated 31.05.2016 in the office of Director of Land Records, Training Institute, Aurangabad. She was relieved on 16.06.2016. However, she did not join the place where she was transferred. On 17.06.2016, she made an application to Respondent No.3 that due to lumber spondylosis, she is unable to attend the office w.e.f. 17.06.2016 along with an application she furnished medical certificate of private practitioner. As such, she did not join the place where she was transferred. Thereafter by application dated 29.06.2016 addressed to Respondent No.3, she requested for the post in the office of City Survey Office, Aurangabad.

3. In the meantime, she has challenged the transfer order dated 31.05.2016 by filing O.A. before M.A.T. Aurangabad Bench but she withdrew it on 28.06.2016 after the Tribunal rejected interim relief to her. She again applied on 17.12.2016 for transfer to Pune for education of her daughter. By order dated 09.01.2017, her request was accepted and she was posted in Pune. Immediately, she joined at Pune on 11.01.2017. As such, she was absent on duty from 17.06.2016 to 10.01.2017 for 208 days. It is on this background, the Respondent No.3 by order dated 14.06.2017 rejected her claim for medical leave stating that she deliberately remain absent at the place where she was transferred. Against that order, the Applicant filed revision before the Government which was also came to be dismissed by order dated 25.06.2019 which is challenged in the present O.A.

4. Heard Shri V. S. Undre, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

5. Needless to mention that leave is not the right of employee/ Government servant. Section 10 of Maharashtra Civil Services (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. The grant of leave is governed by the provisions of '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 a certificate of authorized medical Attendant or medical officer equal status in Form No.3 provided in appendix V. Secondly, as per Rule 40(2) where leave is more than 2 months, a Government servant is required to appear before the Medical Board and it is only on certificate of Medical Board that leave is necessary for recovery then only further leave can be granted. In present case, the Applicant was absent from duty for 208 days but no such certificate from the Medical Board is produced.

6. Now let us see the medical certificate tendered by the Applicant along with application for leave. Perusal of record reveals that on 17.06.2016 while proceeding on leave, the Applicant submitted the certificate issued by private practitioner stating that she is suffering from lumber spondylosis and recommended for leave from 16.07.2016 to 15.08.2016. Thereafter, on 13.02.2017, it is only after joining at Pune, she again applied for medical leave from 17.06.2016 to 10.01.2017 for 208 days along with application she had again tendered medical certificate issued by private practitioner. Here material to note that the said medical certificate which is at page 30 of PB reveals that it is only the counter signed by Civil Surgeon and it is not a medical certificate issued by the Medical Board as contemplated under 'Leave Rules'. Indeed, there is some over writing in the certificate. In certificate, initially the date of issuance of certificate was written as 17.06.2016 but it was erased. In the said certificate, Dr. Prakash Sigedar who is admittedly private practitioner recommended for medical leave from 17.06.2016 to 10.01.2017. It is strange to note

that if the certificate was issued on 17.06.2016 how the period up to 10.01.2017 has been specifically written in the medical certificate. It is thus explicit that the said certificate was obtained only after she joined at Pune, and therefore, there is reference of leave period from 17.06.2016 to 10.01.2017.

7. Be that as it may, it is not a medical certificate issued by the Medical Board as contemplated under Rule in grant of medical leave for more than two months. Except this certificate no other document was placed on record to show that the Applicant was really suffering from any such ailment and incapacitated to remain present in the office. On the contrary, the Applicant's conduct clearly shows that she was not willing to join at the place where she was transferred, and therefore, for one or other excuse remain absent.

8. The Applicant first challenged the transfer order by filing O.A. before M.A.T. Aurangabad Bench but interim relief was rejected, and therefore, she withdrew the O.A. Even thereafter also she did not join. Then she applied by application dated 29.06.2016 for transfer in City Survey Office, Aurangbad and then by application dated 17.12.2016 applied for transfer to Pune. She joined only after her transfer to Pune. She was transferred to Pune by order dated 09.01.2017 and on very next date immediately she joined at Pune. All these conducts of the Applicant leaves no doubt that there was no such ailment or medical ground to remain absent and only reason for absent was transfer to other office. Admittedly, she was due for transfer having completed three years. It is thus explicit that only to avoid transfer order she proceeded on leave on the pretext of illness. Indeed this amounts to misconduct.

9. For the aforesaid reasons, I see no illegality in the impugned transfer order. The challenge to the transfer order is devoid of merit and O.A. 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 : 04.03.2022.
Dictation taken by : VSM
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