

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 701 OF 2019
(Subject:-Medical Leave)**

DISTRICT: - AHMEDNAGAR

Shri. Bapusaheb Vishwanath Patore,)
Age: 57 years, Occu: Service as)
Superintendent of Excise,)
R/o. Kalpana Housing Society,)
Ward No. 7, Shrirampur,)
Tq. Shrirampur, Dist. Ahmednagar.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
Through its Additional Chief Secretary,)
State Excise Department,)
Mantralaya, Mumbai – 400 032.)
- 2. The Commissioner for State Excise**)
Old Jakat House, 2nd Floor,)
Shahid Bhagatsing Road, Fort,)
Mumbai – 400023.)..**RESPONDENTS**

APPEARANCE : Shri V.B. Wagh, learned Advocate for
the applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **09.01.2023.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned communication/order dated 16.05.2017 (Annex. 'A-10') issued by the respondent No.2 treating the absence period of 127 days i.e. from 11.07.2016 to 14.11.2016 as extraordinary leave without pay and seeking consequential direction for grant of commuted leave for the said period from the applicant's leave account.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant came to be initially appointed on the post of Deputy Superintendent of State Excise 16.02.2005. He came to be promoted as per order dated 15.06.2016 (Annex. 'A-1') issued by the respondent No.1 to the post of Superintendent of State Excise and was given posting at Parbhani. Pursuant to the said promotion order, the applicant was relieved from the post of Deputy Superintendent of State Excise, Nashik by letter dated 09.07.2026 (Annex. 'A-2') as per the direction of the respondent No.2 issued on

08.07.2016. The applicant at that time was suffering from medical problem and the doctors had advised him for the surgery for urological disorders. In view of that the applicant submitted representation dated 25.07.2016 together with medical certificate (Annex. 'A-3' collectively) to the respondent No.2 intimating that he would join his promotional post at Parbhani after completion of medical treatment.

(ii) The respondent No.2 however, issued show cause notice dated 19.05.2016 (Annex. 'A-4') to the applicant as to why action should not be taken against the applicant for not having joined his promotional post. The applicant submitted his written explanation dated 06.10.2016 (Annex. 'A-5') to the said show cause notice reiterating the medical ground and sought modification of posting order at Aurangabad or Ahmednagar.

(iii) It is submitted that thereafter the applicant after being medically fit, joined his duty at Parbhani on the post of Superintendent of State Excise on 15.11.2016 and submitted joining report dated 15.11.2016 (Annex. 'A-6') to the respondent No.2. The applicant on the same day, made representation dated 15.11.2016 (Annex. 'A-7') to the respondent No.2 to consider his leave on medical ground as

commuted leave and attached medical certificate. The respondent No. 2 however, by issuing letter dated 28.02.2017 (Annex. 'A-8') directed the Divisional Deputy Commissioner, State Excise Aurangabad to ask the applicant to remain present before Medical Board, Aurangabad and to submit his report within seven days. The applicant appeared before the Medical Board, Aurangabad and after having obtained the certificate from Medical Board, submitted the same to the respondent No.2 under letter dated 11.04.2017 (Annex. 'A-9' collectively). Thereby he requested to consider his leave on medical ground for the period of 127 days i.e. from 11.07.2016 to 14.11.2016.

(iv) The respondent No. 2 thereafter issued impugned communication/order dated 16.05.2017 (Annex. 'A-10') thereby treating the absence period of 127 days from 11.07.2016 to 14.11.2016 as extraordinary leave without pay particularly as per Rules 10 (2) (3), 28, 29, 63 (6) of Maharashtra Civil Services (Leave) Rules, 1981. Upon receipt of the said impugned communication/order dated 16.05.2017 (Annex. 'A-10'), the applicant made representation dated 22.05.2017 (Annex. 'A-11') to the respondent No.2 to convert 127 days extraordinary leave without pay into commuted

leave stating that he was on medical leave and 349 days half pay leave and 279 days earned leave were in balance in the leave account of the applicant. The respondent No.2, however failed to consider his representation in accordance with law.

(v) It is submitted that the applicant sought information under R.T.I. and collected the documents (Annex. 'A-12' collectively) which would show that 279 days earned leave and 349 days half pay leave were in balance in the leave account of the applicant. In spite of that, the respondent No.2 refused to grant commuted leave and granted extraordinary leave without pay for the reasons best known to him. The said impugned decision is not in accordance with law and it liable to be quashed and set aside.

3. The application is resisted by filing affidavit in reply on behalf of the respondent No.1 by Sudhakar Laxmanrao Kadam working as Superintendent of State Excise, Aurangabad. In nutshell, it is contended that leave cannot be granted as of right and therefore, leave can be denied by the competent authority in terms of Rules 10 and 14 of Maharashtra Civil Services (Leave) Rules, 1981. Moreover, Medical Board of Aurangabad did not recommend leave to the

applicant. The Board expressly mentioned that 'leave not recommended'. Based on this recommendation of the Medical Board and the relevant Rules of the Leave, the respondent sanctioned the absence of the applicant as extraordinary leave without pay, which is legal and proper. Otherwise also the applicant had undergone surgeries long back in 2008 and 2012. In view of that it is mentioned that in fact the applicant did not intend to join his promotional post at Parbhani. In view of that the applicant is misleading the respondent by giving false medical reason. Hence, application liable to be dismissed.

4. The applicant filed his affidavit in rejoinder denying the adverse contentions raised in the affidavit in reply and reiterating the contentions raised in the Original Application.

5. I have heard at length the argument advanced by Shri V.B. Wagh, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer for the respondents on other hand.

6. Upon perusal of the rival pleadings and documents on record and submissions of both the parties, it reveals that the applicant is working on the post of Superintendent of State

Excise, Parbhani since 15.11.2016 which is Group –A post. The applicant being aggrieved by the communication/order dated 16.05.2017 (Annex. 'A-10') issued by the respondent No.2 treating absence period of the applicant from 11.07.2016 to 14.11.2016 as extraordinary leave without pay, this Original Application is filed. The said absence period is in the background of the applicant's promotion from the post of Deputy Superintendent of State Excise to Superintendent of State Excise at Parbhani as per order dated 15.06.2016 (Annex. 'A-1'). For enabling the applicant to join on promotional post, he was relieved from the earlier post as per relieving order letter dated 09.07.2016 (Annex. 'A-2'). The applicant joined on the post of Superintendent of State Excise, Parbhani only on 15.11.2016.

7. It is contended that the applicant being relieved on 09.07.2016, made representation dated 25.07.2016 (part of Annex. 'A-3' collectively) to the respondent No.2 stating that he was suffering from urological problem and had undergone two surgeries previously. He also annexed medical certificate. The said representation made by the applicant did not bare any fruits. In spite of that the respondent No.2 issued show cause notice to the applicant dated 19.05.2016 (Annex. 'A-4')

as to why action should not be taken against him as per Maharashtra Civil Services (Conduct) Rules, 1979 as he failed to join the promotional post.

8. The applicant submitted his written explanation dated 06.10.2016 (Annex. 'A-5') contending and citing reasons of medical ground. Ultimately he joined on the post of Superintendent of State Excise, Parbhani on 15.11.2016 as per joining report and C.T.C. dated 15.11.2016 (Annex. 'A-6'). Thereafter, the applicant was referred to Medical Board. He appeared before Medical Board, Aurangabad and obtained medical certificate from Medical Board. In that regard he submitted Medical Board Certificate under letter dated 11.04.2017 and sought medical leave.

9. Perusal of the medical certificate issued by the Medical Board, Aurangabad (part of Annex. 'A-9' collectively) would show that against the column No.16 of Fit/un-fit for appointment, it is mentioned as fit for appointment and against the column No.17 of Recommendation of leave from, it is mentioned as leave not recommended. However, by impugned communication/order dated 16.05.2017 (Annex. 'A-10'), the absence period of 127 days from 11.07.2016 to

14.11.2016 has been treated as extraordinary leave without pay. According to the respondents the said order said to have been passed in view of Rule 10 (2) (3), 28, 29 and 63 (6) of Maharashtra Civil Services (Leave) Rules, 1981. Moreover, in nutshell, it is the contention of the respondents that leave is not a matter of right. It is within discretion of the competent authority either to grant or refuse and thirdly the Medical Board did not recommend the leave.

10. In the abovesaid background, learned Advocate for the applicant placed reliance on Rule 40 and 41 of Maharashtra Civil Services (Leave) Rules, 1981. Rule 40 deals with grant of leave on medical grounds to Gazetted Government servants, whereas Rule 41 deals with grant of leave on medical grounds to non-gazetted Government servants. The applicant being as gazetted officer, Rule 40 would be applicable. Perusal of those Rules would show that for sanctioning leave on medical ground what is required is a certificate in Form 3 in Appendix V from his Authorised Medical Attendant or Medical Officer of equal status and in case leave is extended beyond two months and Government servant is referred to Medical Board, such certificate issued by the Medical Board. These Rules do not speak of power of

Medical Board to recommend or not to recommend leave. However, the period of leave can be specified.

11. In the case in hand, the Medical Board, Aurangabad instead of specifying the period, they have mentioned leave not recommended. In the background of Rule 40, in my considered opinion, such non recommendation after found the Government servant fit would be misconceived.

12. Upon perusal of the rival pleadings it is evident that as on the relevant date, half pay leave of 349 days and earned leave of 279 days were in balance in the leave account of the applicant. While refusing leave on medical ground, the respondents have referred to Rule 10 (2) (3), 28, 29 and 63 (6) of Maharashtra Civil Services (Leave) Rules, 1981. Leave 10 deals with right to leave, Rule 28 deals with final sanction of leave to Gazetted officer only when admissibility certified by Audit officer, Rule 29 deals with grant of leave to a Gazetted Government servant and Rule 63 deals with extraordinary leave.

13. Perusal of the facts on record would show that the applicant sought leave on medical ground which is governed by Rule 40. There is no whisper in the impugned order as to

why Rule 40 was not invoked and how it was not applicable. Rule 63 relating to extraordinary leave would come into play only when no other leave is admissible or when other leave is admissible but the Government servant applies in writing for grant of extraordinary leave.

14. It appears that the impugned communication / order dated 16.05.2017 (Annex. 'A-10') is issued by way of punishment for not joining on the promotion post of Superintendent of State Excise within prescribed period. That is not reflected in the impugned communication / order 16.05.2017 (Annex. 'A-10'). There is no specific observation in the impugned communication/order that his absence was un-authorized. In the circumstances, in my considered opinion, the impugned communication/order dated 16.05.2017 (Annex. 'A-10') rejecting the leave on medical ground to the applicant for the period of 127 days from 11.07.2016 to 14.11.2016 is not sustainable in the eyes of law. The reason for rejection of leave is sought to be stated in affidavit in reply, which is impermissible. In the circumstances, the impugned communication/ order is liable to be quashed and set aside and the applicant would be entitled for leave on medical ground for the said period as the

applicant has fulfilled the condition/stipulation mentioned in Rule 40 of Maharashtra Civil Services (Leave) Rules, 1981. Hence I proceed to pass the following order.

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned communication/order dated 16.05.2017 (Annex. 'A-10') issued by the respondent No.2 is quashed and set aside.
- (B) It is directed that the period of absence of the applicant from 11.07.2016 to 14.11.2016 shall be adjusted against half pay leave available in the leave account of the applicant at the relevant time and actual payment of emolument be made by the respondents. Compliance shall be made within the period of two months from the date of this order
- (C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date : 09.01.2023
SAS O.A.701/2019