

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 557/2022(S.B.)**

Vivek s/o Rajeshwar Zade,
Aged 39 years, Occupation Service,
R/o 201, Malti Apartment, Besides
MSEB Sub Station, Renge Layout,
Trimurti Nagar, NAGPUR-440 022.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Water Resource Department,
Mantralaya, Mumbai-4400032.
- 2) Chief Engineer,
Water Resources Department,
Sinchan Bhavan, Civil Lines, Nagpur.

Respondents

Shri R.M.Fating, Ld. counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondent no.1.
Shri T.M.Zaheer, Ld. counsel for the respondent no.2.

Coram:-Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 15th February 2023.

JUDGMENT

Judgment is reserved on 9th February 2023.

Judgment is pronounced on 15th February, 2023.

Heard Shri R.M.Fating, learned counsel for the applicant, Shri V.A.Kulkarni, learned P.O. for the Respondent no.1 and Shri T.M.Zaheer, learned counsel for the respondent no.2.

2. Case of the applicant is as follows.

By order dated 17.08.2020 (Annexure A-2) the applicant was posted on promotion on the establishment of respondent no.2. He was relieved on 31.08.2020. Due to severe back pain he proceeded on medical leave from 01.09.2020. On 22.10.2020 he submitted application (Annexure A-3) to respondent no.2 communicating thereby that he was medically advised to take rest. On 05.11.2020, with application, he submitted medical certificate and prescription of medicines (Annexure A-4). On 16.12.2020 he submitted application (Annexure A-5) along with fitness certificate and prayed that he be allowed to resume duties. By communication dated 16.02.2021 (Annexure A-6) he was asked to get himself examined by the Medical Board. The Medical Board examined him, issued a certificate (Annexure A-7) that he was fit to resume duties but also remarked that no opinion of past illness and leave taken could be given and hence past leave taken may not be recommended on medical ground. On 18.12.2021, by application (Annexure A-8), respondent no.2 sought guidance from respondent no.1 about whether or not the applicant should be allowed to resume duties. By communication dated

06.01.2021 (Annexure A-9) respondent no.1 informed respondent no.2 to let the applicant resume duties. On 08.01.2021 the applicant resumed duties (Annexure A-10). On the same day he submitted application (Annexure A-11) to sanction leave for the period from 16.12.2020 to 07.01.2021 as earned leave. On 04.02.2021 he submitted application (Annexure A-12) to sanction leave for the period from 01.09.2020 to 15.12.2020 as commuted leave. By communication dated 05.07.2021 (Annexure A-13) application Annexure A-11 was allowed but application Annexure A-12 was in effect rejected by sanctioning the period of 106 days from 01.09.2020 to 15.12.2020 as extra ordinary leave on the ground that the Medical Board had remarked that past leave taken may not be recommended on medical ground. In view of G.R. dated 02.06.2003 (Annexure A-14) such order could not have been passed. On 26.07.2021 the applicant submitted application (Annexure A-15) to reconsider order of treating period of 106 days as extra ordinary leave. On 29.09.2021 he submitted application (Annexure A-16) mentioning therein case of one Achkarpohare and made an identical prayer. By the impugned order dated 28.03.2022 (Annexure A-17) request of the applicant was turned down by stating as under-

वित्त विभागाच्या दि.०२/०६/२००३ च्या शासन निर्णयामधील तरतुदीनुसार सक्षम प्राधिका-याच्या मते त्यांची अनुपस्थिती समर्थनीय असेल तर रजेशिवाय अनुपस्थितीचा

कालावधी देय व अनुज्ञेय रजा म्हणून मंजूर करण्याची तरतूद आहे. परंतु श्री.झाडे यांच्या रजेबाबत वैद्यकीय मंडळाची शिफारस विचारात घेता त्यांची विनंती अमान्य करण्यात येत आहे.

Hence, this O.A. for the following reliefs-

- (i) Hold and declare that the Applicant is entitled for sanction of commuted/earned leave on medical ground w.e.f. 01.09.2020 to 15.12.2020.**
- (ii) Quash and set aside the order dated 05.07.2021 issued by the Respondent no.2 to the extent of wrongful sanction of 106 days extraordinary leave, in the interest of justice.**
- (iii) Quash and set aside the communication dated 28.03.2022 issued by the Respondent No.1, in the interest of justice.**
- (iv) Direct the respondents to sanction 106 days paid and admissible leave on medical ground to the applicant, out of which, 75 days as Commuted Leave for the period 01.09.2020 to 14.11.2020 and 31 days as Earned Leave for the period 15.11.2020 to 15.12.2020, considering balance leave in his account, in the interest of justice.**

3. According to respondent no.2 the impugned order is in consonance with Rule 40 of the M.C.S. (Leave) Rules, 1981. So far as contention of the applicant regarding his case being identical to the case of one Achkarpohre is concerned, respondent no.2 has simply pleaded that the two cases are totally different.

4. Respondent no.2 has relied on Rule 40 (8) of the M.C.S. (Leave) Rules, 1981 relevant part of which reads as under-

(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.

5. As mentioned earlier, the impugned order refers to G.R. dated 02.06.2003. It *inter alia* states –

(२) जो कर्मवारी रजेशिवाय अनुपस्थित राहिला असेल व त्याने वेळोवेळी अर्जाद्वारे याबाबतची माहिती कार्यालयास दिलेली असेल तर अशा कर्मचा-यांच्या बाबतील सक्षम प्राधिका-याच्या मते त्याची अनुपस्थिती समर्थनीय असेल तर रजेशिवाय अनुपस्थितीचा कालावधी देय व अनुज्ञेय रजा मंजूर करून नियमित करण्याबाबत नियुक्ती प्राधिका-याने निर्णय घेणे आवश्यक असेल. जर कर्मचा-याची अनुपस्थिती समर्थनीय नसेल तर त्याच्याविरुद्ध शिस्तभंगविषयक कार्यवाही सुरु करण्यात यावी.

Aforequoted guideline envisages two contingencies viz. where absence of an employee is found to be justifiable and where such absence is found to be unjustifiable. In the first contingency the competent authority can regularise the period of absence by sanctioning leave standing to the credit of the employee. In the second contingency disciplinary proceeding is to be initiated against the employee. In this case the competent authority did not

deem it proper or necessary to initiate disciplinary proceeding against the applicant. Under the circumstances, the competent authority ought to have proceeded as per the first limb of the guideline contained in G.R. dated 02.06.2003. This conclusion receives supports from Rule 63(1) of the M.C.S. (Leave) Rules, 1981 which reads as under-

63. Extraordinary leave. – (1) Extraordinary leave may be granted to Government servant in special circumstances.

(a) when no other leave is admissible;

(b) when other leave is admissible but the Government servant applies in writing for the grant of extraordinary leave.

In this case neither of the contingencies provided in Rule 63(1) was attracted. Order dated 17.11.2016 [at page 59 which forms part and parcel of Annexure A-16] shows that case of one Shri Achkarpohre was identical and it was dealt with by relying on aforequoted guideline contained in G.R. dated 02.06.2003. Similar benefit ought to have been extended to the applicant. For the reasons discussed hereinabove the O.A. is allowed in terms of prayer clauses (i) to (iv) with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 15/02/2023

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 15/02/2023.
and pronounced on