

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.534 OF 2019**

DISTRICT : THANE

Shri Ganesh Ramchandra Wani,)
Guard (Sheeopy), Taloja Central Jail, New Bombay)
R/o Room No.6, T-1, B-2, Taloja Central Jail,)
Karmachari Vasahat, Kharghar, Navi Mumbai 410210)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary, Home (Prisons),)
Mantralaya, Mumbai)
2. Superintendent, Taloja Central Jail,)
Navi Mumbai 410210)
3. The Special Inspector General,)
South Division, Clare Road, Near Bhyakhala)
Jail, Bhyakhala (W), Mumbai 400008)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

Shri S.D. Dole – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

RESERVED ON : 30th August, 2019

PRONOUNCED ON : 3rd September, 2019

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Shri S.D. Dole, learned Presenting Officer for the Respondents.

2. The applicant remained absent while working in Taloja Central Prison from 7.9.2017 to 29.11.2017 (84 days) without permission. The same has been treated as Extra Ordinary Leave vide impugned order dated 6.2.2019. The applicant has agitated against this impugned order and prayed that he may be granted Earned Leave in respect of the same. In support of the above the applicant submits that he intended to appear for the examination of LL.B. and he was permitted for the same. He submitted his leave application well in advance. However, the same was not decided in time. According to the applicant it was obligatory on the part of respondent no.2 to sanction leave. He further mentions that the leave should have been sanctioned to him within 30 days from his application but the same was not done so. The applicant claims that there is adequate earned leave in his credit and therefore instead of extra ordinary leave he should be sanctioned earned leave.

3. The respondents have filed their affidavit in reply. According to the same the applicant was permitted to appear for the LL.B. Examination on the following conditions:

“(1) During this course, it will not affect on the security system of the prison.

(2) No expenses will be granted by the Government for the course.

(3) *During the examination of course the entitled leave should be prior sanctioned.*

(4) *Leave is not a right of the applicant.*

(5) *Decision regarding leave will be taken by the sanctioning authority i.e. the Superintendent, which will depend upon the situation and security of prison.”*

(Quoted from page 100-101 of OA)

4. The affidavit mentions that the applicant remained absent from 7.9.2017 to 29.11.2017 and did not fulfill any conditions laid down by the Special IGP, Southern Region, Byculla, Mumbai. Unauthorized absence from the Central Prison is likely to result in serious developments.

5. I have perused the documents furnished by the applicant as well as the respondents. The respondent has enclosed a chart indicating the days on which applicant remained absent from 29.10.2015 to 31.12.2017. The applicant has been proceeding on leave without sanction on number of occasions. The available record shows that he was absent on 13 occasions for different spans of time. After the applicant submitted his application for leave it is necessary for him to await the decision regarding the same. There is nothing erroneous in following the same but proceeding on leave without sanction stating that he had intimated about absence amounts to insubordination and violation of the rules. While it is obligatory on the part of the respondents to take decision and communicate the same, the applicant cannot take a plea that because he has intimated the leave has to be sanctioned as requested by him. The applicant is working in high security prison which houses notorious criminals and there is an urgent need to escort prisoners to hospital, court etc. Any unauthorized absence in such a security scenario is likely to

result in avoidable administrative lapses. Earned leave has to be sanctioned and cannot be availed at the will of the Government servant. Rule 10 of the MCS (Leave) Rules, 1981 reads as under:

“10. Right to leave.- (1) Leave is permission granted by a competent authority at its discretion to remain absent from duty.

(2) Leave cannot be claimed as of right.

(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.”

6. The rules stated above clarify that the Government servant cannot proceed on leave and cannot claim the same as his right.

7. The Original Application is therefore devoid of any merit. For the reasons stated above the Original Application is dismissed. No order as to costs.

(P.N. Dixit)
Vice-Chairman (A)
3.9.2019

Dictation taken by: S.G. Jawalkar.