

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**REVIEW APPLICATION NO.03 OF 2021  
IN  
ORIGINAL APPLICATION NO.792 OF 2019**

**DISTRICT : PUNE**

Dr. Dattatraya B. Bamane, )  
Age 61 years, working as Medical Supt. )  
Sub District Hospital, Bhore, Tal. Bhore, )  
Dist. Pune. )  
R/o. Palshi Road, Shirwal, Tal. Khandala, )  
Dist. Satara. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Addl. Chief Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai 400 032. )
2. The Deputy Director, Health Services, )  
Pune Circle, Pune. )
3. The Director of Health Services, )  
M.S. Mumbai, Arogya Bhavan, in the )  
Campus of Saint Georges Hospital, )  
P.D'Mello Road, Mumbai 400 001. )....**Respondents**

**Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant**

**Smt. Kranti Gaikwad, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 20.07.2021.**

**JUDGMENT**

1. The Applicant has filed Review Application under Article 47 of Code of Civil Procedure (CPC) read with Section 22 (3)(f) of Administrative Tribunal Act, 1985 to review the judgment delivered by

this Tribunal in Original Application No.792/2019 to the extent of confirming the order passed by the Government treating absence of the Applicant from 28.06.2007 to 04.09.2011 as unauthorized absence and extra ordinary leave without pay and without considering for pension purpose.

2. Shortly stated facts giving rise to this application are as under:-

In the year 2007, the Applicant was serving as a Medical Officer (Group-A) at Sub District Hospital, Bhore, Dist. Pune. He was transferred to Indapur, Dist.Pune by order dated 31.05.2007 and consequently came to be relieved on 27.06.2007. However, he did not join at Indapur. In O.A., he contends that he made various application for leave on medical ground. After recovery from illness, he made an application on 05.08.2011 requesting Respondent No.2 –Deputy Director, Health Services, Pune to allow him to join. Thereafter, there was correspondence in between department inter se and ultimately the Respondent No.1- Government of Maharashtra issued order dated 10.11.2014 by granting permission to the Applicant to join at Bhore subject to condition that he should execute the bond that his absence period will be treated as without pay and allowance. Accordingly, the Applicant had executed the bond and joined at Bhore. Thereafter, he again made representation that he was kept out of service from the period from 05.08.2011 to 09.11.2014 without any fault on his part and requites to treat the said period as waiting period.

3. On the above background, the Respondent No.1 by order dated 18.06.2019 treated the entire absence period from 28.06.2007 to 09.11.2014 as unauthorized absence and treated the said period as extra ordinary leave without pay relying upon G.R. dated 02.06.2003 read with Rule 63 of Maharashtra Civil Services (Leave) Rules, 1981 (hereinafter referred to as 'Leave Rules 1981').

4. The Original Application was heard and decided by order dated 22.12.2020. It was partly allowed by passing following operative order:-

*“ORDER*

- (A) Original Application is allowed partly.*
- (B) The Applicant’s absence from 28.06.2007 to 04.09.2011 shall be treated as unauthorized absence and extra ordinary leave without pay and the said period shall not be considered for pension purpose.*
- (C) The Applicant is held entitled for pay and allowances from 05.09.2011 to 09.11.2014 with all consequential service benefits by treating the said period as compulsory waiting period and monetary benefits be paid within two months from today.*
- (D) Respondent No.1 is directed to cause enquiry into the matter and to fix the responsibility upon person responsible for delay in issuance of necessary order and shall recover the amount now payable to the Applicant from them in accordance to law.*
- (E) Respondent No.1 is directed to submit compliance report within two months from today.*
- (F) Though the matter is disposed of it be listed before the Tribunal on 22.02.2021 for compliance of order.*
- (G) No order as to costs.”*

5. Now, this Review Application is filed in respect of Clause (B) of operative order whereby the order of Government treating the absence period from 28.06.2007 to 04.09.2011 as unauthorized absence and extra ordinary leave without considering the same for pension purpose. Thus, this R.A. is restricted to Clause (B) of the operative order of judgment dated 22.12.2020. Insofar as other part of judgment is concerned it is being implemented.

6. Shri A.V. Bandiwadekar, learned Counsel for the Applicant raised following ground for R.A. :-

- (a) The Applicant had applied for grant of leave with medical certificates but the Respondents did not pass any order thereon, and

therefore, the said period ought to have been treated as medical leave/ earned leave after adjusting medical leave, and it could not have been treated as extra ordinary leave without pay.

(b) Once the Respondents treated unauthorized absence as extra ordinary leave, it ought to have been considered for pension purpose.

(c) Since in view of Rule 35 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules, 1982) which *inter-alia* provides that all leave including extra ordinary leave during the period of continuous service shall count as qualifying service for pension, impugned order is contrary to Rules.

7. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer sought to justify the action of treating absence as extra ordinary leave without considering the same for pension relying upon G.R. dated 02.06.2003. She further submits that there is no such error apparent on the face of record and applicant has failed to satisfy the requirements of review as contemplated under order 47 of Rule 1 of CPC.

8. At this juncture, it would be apposite to reproduce Order 47 of Rule 1 of CPC, which is as follows :-

**“1. Application for review of judgment.-** (1) Any person considering himself aggrieved.-

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a

review of judgment to the Court which passed the decree or made the order.

9. Furthermore, it would be further apposite to have a look of relevant provisions in 'Leave Rules, 1981' and 'Pension Rules, 1982'.

10. Rule 10 of Leave Rule, 1981 is as under :-

**"10 :** (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."*

Rule 35 of Pension Rules, 1982 reads as under :-

**"35. Counting of all leave for pension :** *All leave including extraordinary leave during the period of continuous service shall count as qualifying service for pension."*

Rule 47 and Rule 48 of Pension Rules, 1982 are also relevant which are as under:-

**"47 : Effect of interruption in service** -(1) *An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases :-*

(a) *Authorized leave of absence;*

(b) *Unauthorized absence in continuation of authorized leave of absence so long as the post held by the absence is not filled substantively;*

(c) *Suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of superannuation while under suspension;*

(d) *Transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest;*

(e) *Joining time while on transfer from one post to another.*

(2) Notwithstanding anything contained in sub-rule (1), the appointing authority may, by order, commute (retrospectively) the period of absence without leave as extraordinary leave.

**48. Condonation of interruption in service** – (1) The appointing authority may, by order, condone interruptions in the service of a Government servant provided that –

(a) the interruption have been caused by reasons beyond the control of the Government servant;

(b) the total service pensionary benefit in respect of which will lost, is not less than five years duration, excluding one or two interruptions, if any, and

(c) the interruption including two or more interruptions, if any, does not exceed one year.

(Provided further that, such service of the Government servant shall be counted as qualified service for the purposes of Rule 33)

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service

(3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(4) Nothing in sub-rule (3) shall apply to interruption caused by resignation, dismissed or removal from service or for participation in a strike.

(5) The period of interruption referred to in sub-rule (3) shall not count as qualifying service.”

11. Needless to mention that the review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 of CPC. The review is by no means an appeal in disguise whereby the matter is re-heard. No doubt, under Order 47, Rule 1 of CPC, the Judgment/Order may be reopened to review, if there is mistake or error apparent on the face of record or on the discovery of new important material or evidence which even after exercise of due vigilance could not be produced by him when the order was passed in the matter or not within his knowledge. An error which is not self-evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of record justifying the Court to exercise its powers of review. In exercise of jurisdiction under Order 47 of CPC, it is not permissible that the matter to be re-heard and erroneous view to be corrected. Suffice to say, the Review

Petition cannot be allowed as an appeal in disguise. There is clear distinction between an erroneous decision and error apparent on the face of record. Erroneous decision can be corrected by the higher forum in appeal in appeal, whereas error apparent on the face of record can be corrected by exercise of review jurisdiction. This is fairly settled legal position.

12. Now, turning to the facts of the present case, learned Counsel for the Applicant sought to contend that while proceeding on leave, the Applicant had tendered applications along with medical certificates. In this behalf, he has tendered some documents in Review which are at Page Nos.27 to 41. First application dated 23.05.2007 is accompanied with medical certificate wherein on account of severe lumber spondylosis, the Applicant was advised to take rest from 22.05.2007 to 30.06.2007. On the basis of this certificate, the Applicant prayed for medical leave starting from 22.05.2007 without specifying further period. It was addressed to Medical Superintendent (Rural) Hospital, Bhor. Then come another application dated 06.06.2007 accompanied by medical certificate issued by private practitioner Dr. Sharad Kamble. Surprisingly, he advised rest from 04.06.2007 for thirty months without specifying severity of alleged illness and justifying such a long leave of thirty months. Then it comes one more application dated 06.07.2007 addressed to Deputy Director, Health Services, Pune which was accompanied by the same medical certificated issued by Dr. Sharad Kamble dated 04.06.2007. Thereafter, he claims to have made another application dated 28.11.2007, 04.06.2008, 20.10.2009 and 15.01.2010 and 16.02.2011 addressed to Deputy Director Health Services, Pune for grant of medical leave.

13. On the basis of these documents, learned Counsel for the Applicant submits that the Respondents ought to have granted

medical leave and earned leave against leave of his credit and it is not a case of unauthorized absence.

14. Indeed, these applications and certificates which the Applicant claimed to have been submitted for grant of leave were not at all placed on record in original O.A. Not a single document to that effect was produced in O.A. It is on this background while deciding O.A. the Tribunal in Para Nos.8, 9 and 21 reads as under :-

*“8. Admittedly, while the Applicant was serving at Sub District Hospital, Bhore, by order dated 31.05.2007, he was transferred to Indapur and was relieved on 27.06.2007. As such, he was to join at Indapur on 28.06.2007 but admittedly he did not report for duty at Indapur and remained absent. Though in O.A. (Ground No.6.3), the Applicant contends that he was on medical leave due to arthritis of lower limb and sent leave application dated 01.07.2007 to 15.01.2010 along with medical certificates surprisingly in O.A., no such documents are produced. In this behalf, specific query was made to the learned Counsel for Applicant that no such applications or medical certificates are forthcoming on record to which he had no satisfactory answer. Needless to mention that leave cannot be claimed as of right as provided under Rule 10 of ‘Leave Rules, 1981’.*

*9. It was incumbent on the part of Applicant to submit an application for leave supported by medical certificate and to get it sanctioned prior to proceeding on leave. He was to join at Indapur on 28.06.2007 but did not join and remain absent for four years. It is only on 05.08.2011, he wrote a letter to Deputy Director showing his willingness to join and requested to get him join. Suffice to say, no record either in the form of leave application or representation or letter is forthcoming to substantiate that before proceeding on leave, he had applied for grant of leave. Had any such application was made as the Applicant tried to contend, he would have filed the copies of all these applications to show his bonafides. In absence of any such record, it is obvious that he remained absent unauthorisedly for the period of four years. It is only on 05.08.2011, he made an application to Deputy Director, Health Services, Pune to request to get him join. As such, the conduct of the Applicant and non production of any such record leaves no room of doubt to hold that he did not bother to apply for grant of leave and unilaterally remain absent from duty for long period of more than four years. This being the position, the period from 28.06.2007 to 05.08.2011 has to be treated as an extra ordinary leave without pay and without considering the same for pension purposes in terms of Rule 63(6) of Leave Rules, 1981 read with G.R. dated 02.06.2003 and order to that extent cannot be faulted with. The Applicant renders himself ineligible for grant of any service benefits for this period and the impugned order to that extent is in consonance with Leave Rules, 1981.*



21. *In so far as the period from 28.06.2007 to 04.09.2011 is concerned. It has to be treated as extra ordinary leave without pay. The said period shall not be considered for pension purpose in terms of Rule 63(6) of Leave Rules, 1981 read with G.R. dated 02.06.2003 which inter-alia states that in case of unauthorized absence, the said period shall not be considered even for pension purpose.*

15. Thus, for the first time in R.A. the Applicant is producing some documents without establishing that after exercise of due diligence, it could not be produced as mandated for exercise of review under Order 47, Rule 1 of CPC. There is absolutely no such material to establish that these documents could not have been produced for some or other reason in O.A. On the contrary, all these documents being within his knowledge ought to have been produced in O.A. This being the position, now such documents cannot be entertained or relied upon to exercise the powers of review. He must suffer for his own negligence.

16. Apart, the leave cannot be claimed as of right as specifically provided under Rule 10 of Rules, 1981 as reproduced above.

17. Furthermore, where a Gazetted Government servant ask for leave for more than two months on medical ground, it requires certificate from the medical board as provided under Rule 40 of 'Leave Rules 1981'. Even grant of medical certificate by medical board does not itself confer upon a Government servant any right to leave as specifically provides under Rule 40(8) of Leave Rules, 1981. Suffice to say, such a long leave of more than four years could not have been granted merely on the basis of applications without medical certificate from medical board.

18 Now, comes to Rule 63 of Leave Rules, 1981 which provides for grant of extra ordinary leave. As per Clause 6 of Rule 63, the authority competent to grant leave can commute retrospectively the period of absence without leave into extra ordinary leave. The Respondents treated the absence of Applicant as an extra ordinary leave retrospectively in exercise of this rule. As per instructions

attached to G.R. dated 02.06.2003, it was clarified by the Government as under:-

अ.क्र.	नियम क्रमांक	अधिकारांचे स्वरूप	अधिकार प्रत्यायोजित केलेला प्राधिकारी	व्याप्ती	शेरा
१	२	३	४	५	६
३	६३(६)	रजेशिवाय अनुपस्थित राहिल्याचा पूर्ण कालावधी भूतलक्षी प्रभावाने असाधारण रजेमध्ये परिवर्तित करण्याचा अधिकार	नियुक्ती प्राधिकारी	पूर्ण अधिकार	<p>अस्थायी कर्मचाऱ्यांच्या बाबतीत - नव्वद दिवसापर्यंत आणि</p> <p>स्थायी कर्मचा-यांच्याबाबतीत - एका वर्षापर्यंत मात्र, वरील मर्यादेच्या पलिकडील रजा खालील अटीच्या अधीन राहून मंजूर केली जाईल :-</p> <p>(१) रजेशिवाय अनुपस्थित राहिल्याच्या कालावधीपूर्वी किमान ५ वर्षे इतकी सतत सेवा झालेली असावी.</p> <p>(२) जो कर्मचारी रजेशिवाय अनुपस्थित राहिला असेल व त्याने वेळोवेळी अर्जाद्वारे याबाबतची माहिती कार्यालयास दिलेली असेल तर अशा कर्मचा-यांच्या बाबतीत सक्षम प्राधिका-याच्या मते त्याची अनुपस्थिती समर्थनीय असेल तर रजेशिवाय अनुपस्थितीचा कालवधी देय व अनुज्ञेय रजा मंजूर करून नियमित करण्याबाबत नियुक्ती प्राधिका-याने निर्णय घेणे आवश्यक असेल. जर कर्मचा-याची अनुपस्थिती समर्थनीय नसेल तर त्याच्याविरुद्ध शिस्तभंग कार्यवाही सुरू करण्यात यावी.</p> <p>(३) शिस्तभंगविषयक कार्यवाहीअंती जे कर्मचारी समर्थनीय नसलेल्या कारणस्तव रजेशिवाय अनुपस्थित असतील अशांच्या बाबतीत त्यांची संपूर्ण अनुपस्थिती “अकार्यदिन” (Dienon) म्हणून समजण्याच्या दृष्टीकोनातून निर्णय घेण्यात यावा.</p> <p>(४) रजेशिवाय अनुपस्थित राहिल्याचा कालावधी असाधारण रजेमध्ये परिवर्तित करण्याचा / अकार्यदिन</p>

					<p>म्हणून समजण्याचा निर्णय घेण्यात आल्यास तो कालावधी कोणत्याही सेवा प्रयोजनार्थ (निवृत्तीवेतनविषयक लाभांसह) ग्राह्य धरण्यात येऊ नये व तशी स्पष्ट नोंद सेवा पुस्तकात घेण्यात यावी.</p> <p>(५) रजेशिवाय अनुपस्थित राहिल्याच्या कारणास्त विभागीय/न्यायिक चौकशी प्रलंबित नसावी.</p> <p>(६) रजेशिवाय अनुपस्थित राहिल्याच्या कारणास्तव संबंधित कर्मचा-यास सक्तीने सेवानिवृत्त /सेवेतून काढून टाकलेले किंवा बडतर्फ केलेले नाही अथवा त्याने राजीनामा दिलेला नाही याची सक्षम प्राधिका-याने खात्री करून तसे प्रमाणित करणे आवश्यक राहिल.</p> <p>(७) रजेशिवाय अनुपस्थित राहिल्याबद्दल संबंधित कर्मचा-याविरुद्ध वेळीच शिस्तभंगाची कार्यवाही न केलेल्या सक्षम प्राधिका-यावर या संबंधातील जबाबदारी निश्चित करण्यात यावी.</p>
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19. Thus, it is on the basis of Clause No.4 of G.R. dated 02.06.2003, the respondents treated unauthorized absence of the applicant as extra ordinary leave retrospectively.

20. Learned Counsel for the Applicant in reference to Rule 35 of 'Pension Rules, 1982' which is reproduced above sought to contend that extra ordinary leave requires to be counted as qualifying service for pension. Here it needs to remember that the Applicant was not granted extra ordinary leave during the period of his continuous service which can be counted as qualifying service as pension as contemplated under Rule 35. Indeed, he was unauthorizedly absent for more than four years but later it was treated as extra ordinary

leave with retrospective effect. In fact, there was interruption in service which would have entailed in forfeiture of past service as contemplated under Rule 47 of 'Pension Rules 1982'.

21. It may be noted that Rule 48 of 'Pension Rules, 1982' as reproduced provides for condonation of interruption in service in situation covered by Clause (a), (b) and (c). The Applicant's case does not fall in any of the clause. Notably, as per Rule 48 (2) the period of interruption even if condoned shall not count as qualifying service. This being the position, indeed the Respondents have taken compassionate view by granting extra ordinary leave with retrospective effect without considering the same for pension purpose and such action of the respondents is in consonance with rules.

22. As such, I see no such apparent error on the face of record to exercise the powers of review. There is distinction in grant of extra ordinary leave during the period of continuous service and grant of extra ordinary leave retrospectively for such a long absence of a Government servant.

23. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court ***Parsion Devi & Ors. Vs. Sumitri Devi & Ors. (1997) 8 SCC 715***, wherein it has been held that if an error is not self-evident and detection thereof requires longer debate and process of reasoning, it cannot be treated as error apparent on the face of record for the purpose of Order 47 under Rule 1 of CPC. In other words, the order or decision or Judgment cannot be corrected merely because its erroneous view in law or on the ground that the different view could have been taken on account of fact or law, as the Court could not sit in appeal over its own Judgment. Similar view was again reiterated by Hon'ble Supreme Court in ***AIR 2000 SC 1650 (Lily Thomas Vs. Union of India)*** where it has been held that the power of review can be exercised for correction of mistake only and

not to substitute a view. Such powers can be exercised within limits of statute dealing with the exercise of power and review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not ground for review.

24. The Tribunal is also guided by the decision of the Hon'ble Supreme Court in **Civil Appeal No.1694/2006 (State of West Bengal Vs. Kamal Sengupta & Anr.) decided on 16.06.2008** wherein the Hon'ble Supreme Court has laid down well settled principles in Para No.22 of the Judgment, which are as under :-

*“28. The principles which can be culled out from the above noted judgments are :*

*(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.*

*(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.*

*(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*

*(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).*

*(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*

*(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.*

*(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*

*(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”*

25. Suffice to say, there is no such apparent error on the face of record nor this is a case where the Applicant could not produce some evidence or documents after the exercise of due diligence. In such situation, the powers of review cannot be exercised as an appeal in disguise. If the view taken by the Tribunal is erroneous, remedy was to challenge it by filing Writ Petition before the Hon'ble High Court and not by filing review since it does not come within the parameters of review.

26. The totality of the aforesaid discussion leads me to sum up that review is not maintainable and 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 : 20.07.2021  
Dictation taken by : VSM  
*D:\E drive\VSO\2021\Judgment 2021\July 21\R.A.3 of 2021 in O.A.792 of 2019.doc*