

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 626 OF 2018  
(Subject – Leave / Salary)**

**DISTRICT : DHULE**

**Dilip S/o Shankar Pawar,** )  
Age : 59 years, Occu. : Retired, )  
R/o Vidyavihar Colony, Plot No. 3, Near Sant )  
Narhari Marathi Shala, Sakri Road, Dhule, )  
District Dhule. )

.... **APPLICANT**

**V E R S U S**

1. **State of Maharashtra,** )  
Through Principal Secretary, )  
Revenue and Forest Department, )  
Maharashtra, Mantralaya. )
2. **Accountant General-1,** )  
101, Karve Road, Mumbai. )
3. **The Principal Chief Conservator of** )  
Forest (Territorial), Lenin Chowk, Near )  
Santoshi Mata Mandir, Maharashtra )  
State, Dist. Dhule 424001. )
4. **Deputy Conservator of Forest,** )  
Yawal Forest Division, Dist. Jalgaon. )

... **RESPONDENTS**

**APPEARANCE** : Shri K.B. Jadhav, counsel holding for Shri  
S.N. Suryawanshi, Counsel for the Applicant.

: Shri D.M. Hange, Presenting Officer for  
respondent authorities.

**CORAM** : **Justice Shri V.K. Jadhav, Member (J)**

**RESERVED ON** : **27.08.2024**

**PRONOUNCED ON** : **24.10.2024**

**ORDER**

1. Heard Shri K.B. Jadhav, learned counsel holding for Shri S.N. Suryawanshi, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the sides at the admission stage.

3. By filing the present Original Application, the applicant is seeking quashment of order dated 08.02.2018 (Exhibit A-8) passed by respondent No. 1, thereby treating the leave of the applicant up to 244 days as extraordinary leave without salary and allowances and further seeking directions to the respondents to treat 244 days leave period as Earned Leave and Commuted Leave period, as well as, Medical Leave period and regularize the period of 89 days as compulsory waiting period in accordance with the rules and the applicant may be paid all the consequential pecuniary benefits of the said period of 244 days within a stipulated time.

4. Brief facts as stated by the applicant giving rise to the present Original Application are as follows :-

(i) The applicant while working on the post of Forester, Forest Division Shahada, Dist. Nandurbar was promoted vide order dated 08.02.2010 as Range Forest Officer at Gadchiroli. The applicant came to be relieved for joining on the said post on 25.02.2010. However, the applicant when went to Railway Station, Nandurbar for booking his reservation on 04.03.2010, suffered chest pain and the Civil Surgeon, Nandurbar advised him to take bed rest till 05.04.2010. In consequence thereof, the applicant immediately submitted leave application on 05.03.2010 (Annexure A-1) along with medical certificate issued by Civil Surgeon and sought medical leave up to 05.04.2010. Further, the applicant has also submitted application on 07.04.2010 for further one month bed rest as per the medical advice along with certificate issued by the Civil Surgeon in this regard (Annexure A-2 collectively).

(ii) It is the further case of the applicant that his wife suffered from ill health and the applicant sought further medical leave by submitting application and medical certificate issued by the Civil Surgeon in favour of wife of the applicant (Annexure A-4).

(iii) The applicant further contends that thereafter the applicant was about to leave for Gadchiroli to join his promotional post, the applicant received orders that he came to be transferred in Dhule Forest Division vide order dated 05.08.2010. Accordingly, the applicant proceeded to join at Wadphali in Mevasi Forest Division on 11.08.2010. However, the applicant could not join on the said post, as the then Range Forest Officer working there had obtained stay to his transfer from the post on which the applicant was supposed to join. The applicant was required to wait till 27.10.2010, as the stay was operating in favour of Range Forest Officer Mr. Potdar. Further by order dated 15.10.2010 issued by respondent No. 1 in pursuance of which the order dated 26.10.2010 issued by respondent No. 3, the applicant came to be transferred as Range Forest Officer, Yawal East Division. Accordingly, the applicant joined the said post on 28.10.2010. The applicant on attaining the age of superannuation retired on 31.05.2017 from Yawal East Forest Division.

(iv) It is the case of applicant that on 02.12.2013 (Annexure A-5), the applicant had submitted detailed representation to respondent No. 3 for regularization of said

leave period. The applicant had claimed medical leave from 26.02.2010 to 27.10.2010 i.e. total 244 days. The proposal for regularization of leave period of the applicant was forwarded by respondent No. 4, taking into consideration the medical certificate issued by the Civil Surgeon and the fact that the applicant had a credit of Earned Leave of 300 days and Medical Leave of 520 days. However, till the date of retirement i.e. 31.05.2017, the leave period of the applicant was not decided. The applicant has received communication dated 21.02.2018 (Annexure A-8) issued under the signature of respondent No. 4, about the regularization of his leave period of 244 days by treating the same as extraordinary leave (without salary and allowances) vide order dated 08.02.2018 (Annexure A-7). Hence, the present Original Application.

5. Learned counsel for the applicant submits that respondent No. 3 has expressed doubt about the medical certificate submitted by the applicant and respondent No. 1 has informed that since the applicant was going to be retired on 31.05.2017, it is necessary to finalize his pension proposal and as such, leave period is required to be treated as extraordinary leave for medical reasons (without salary and allowances).

Annexure A-10 is the copy of said communication dated 11.12.2017.

6. Learned counsel for the applicant submits that the entire approach on the part of respondents in treating the said period of 244 as extraordinary leave (without salary and allowances) is arbitrary, unreasonable and the same is discriminatory and violative of Article 14 of the Constitution of India. It is a matter of record that the applicant had in fact total 320 days Earned Leave and 522 days Medical Leave to his credit. The applicant had time to time submitted medical certificates issued by the Civil Surgeon of Nandurbar along with the leave applications those were never doubted. The respondents never asked the applicant to go before the Medical Board so as to ascertain genuineness of the medical certificates submitted by the applicant. There is an inordinate delay caused in treating the leave period and that too done in an arbitrary and unreasonable manner. It thus reflects non-application of mind of the respondents. Learned counsel thus submits that the present Original Application deserves to be allowed in terms of the prayers made therein.

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1, 3 & 4 submits that the applicant was working in the Forest Department as Range Forest Officer and retired on superannuation on 31.05.2017. The Government of Maharashtra vide order dated 30.01.2010 promoted some officers to the post of Range Forest Officer including the applicant. Though the applicant had to join at Wadsa on promotional post, but he did not join there. He was communicated vide his letter dated 02.12.2013 that he was proceeded to join at Wadsa, but he was not feeling well and taken bed rest as advised by the Civil Surgeon of District Hospital till 05.04.2010. The applicant has applied for leave to Deputy Director, Social Forestry Division, Gadchiroli vide his application dated 05.04.2010. The Civil Surgeon, Nandurbar issued unfit certificate in favour of the applicant for the period from 05.03.2010 to 08.07.2010 for three times on various dates. Further the Civil Surgeon, District Hospital, Nandurbar issued fitness quoting therein that the applicant is fit to join on duty from 08.07.2010. Learned P.O. submits that after getting fitness certificate, the applicant had to join duty at Wadsa, but again he had proceeded on leave for the period from 01.07.2010 to 31.07.2010 as communicated by him vide his application dated

02.12.2013. The certificate issued by the Medical Officer, Medical College and Hospital, Dhule dated 29.01.2011 to that effect is also found doubtful.

8. Learned Presenting Officer submits that the Government of Maharashtra by order dated 05.08.2010 changed the posting of applicant from the post of Plantation Officer, Wadsa, Gadchiroli District to Range Forest Officer, Wadfali (Territorial) against one Shri R.B. Potdar, who was working as Range Forest Officer, Wadfali (Territorial). However, said R.B. Potdar had filed O.A. No. 685/2010 before the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad. This Tribunal stayed the order of transfer of Shri R.B. Potdar from the post of Range Forest Officer, Wadfali (Territorial). Thus the Government had again changed the posting order of the applicant as Range Forest Officer, Yawal West (Territorial) in Dhule Circle vide order dated 15.10.2010, on which post the applicant immediately joined on 28.10.2010.

9. Learned Presenting Officer submits that in the backdrop of these facts, the absence of the applicant from 26.02.2010 to 27.10.2010 has been regularized as extraordinary leave (without pay and allowances) by the Government as



proposed by the Chief Conservator of Forests, (Territorial) Dhule and Additional Principal Chief Conservator of Forests (Administration-Subordinate Cadres), Maharashtra State, Nagpur.

10. Learned Presenting Officer submits that there are various Circulars and guidelines issued by the Government from time to time like Government Circular dated 21.03.2012 and Circular issued by the Additional Principal Chief Conservator of Forests (Administration-Subordinate Cadres), Maharashtra State, Nagpur dated 09.02.2015, in which instructions have been issued regarding those officers who do not resume their duties and proceeded on medical leave and thereafter managed to get transferred at the place of their choice. It is strategy of such an employee to forward leave application to higher authorities for sanction of their leave. This tendency is increased day by day. Learned P.O. submits that it clear from the aforesaid fact that the applicant had proceeded on leave by avoiding joining on duty at the place of promotional post. In view of the same, the impugned order dated 08.02.2018 is legal, proper and correct. It is denied that the order impugned is not reasonable so also discriminatory and violative of Article 14 of the Constitution of India. Learned P.O. thus submits that the applicant is not

entitled for any of the reliefs sought for against the respondents in the present Original Application. The Original Application is thus liable to be dismissed with costs.

11. By filing the present Original Application, the applicant is seeking directions to the respondents to treat 244 days leave period as Earned Leave and Commuted Leave period, as well as, Medical Leave period and regularize the period of 89 days as compulsory waiting period in accordance with the rules.

12. By order dated 08.02.2010, the applicant was promoted as Range Forest Officer from the post of Forester, Forest Division Shahada, Dist. Nandurbar and posted at Gadchiroli. He was relieved for joining on the said post on 25.02.2010. It is the case of applicant that on 04.03.2010, the applicant had suffered chest pain and he went to the Civil Surgeon, Nandurbar, who advised him to take bed rest till 05.04.2010. The applicant has immediately submitted leave application on 05.03.2010 (Annexure A-1) along with medical certificate issued by Civil Surgeon and sought medical leave up to 05.04.2010. The applicant was again advised to take further one month bed rest. Accordingly, the applicant has submitted another application dated 07.04.2010. Further wife of the

applicant suffered from ill health and the applicant sought further medical leave by submitting application and medical certificate issued by the Civil Surgeon in favour of wife of the applicant. Copy of the medical certificate of wife of the applicant is marked as Annexure A-4.

13. It appears that the applicant is seeking commuted leave on medical ground for the period from 26.02.2010 to 07.07.2010. So far as this entire period of absence is concerned, the same is explained by the applicant supported by medical certificates issued by the competent authorities. Those certificates are in the format issued by the concerned in-charge Civil Surgeon.

14. Rule 40 of the Maharashtra Civil Services (Leave) Rules, 1981 prescribes the provisions for grant of leave on medical grounds to Gazetted Government servants. In terms of Rule 40(1)(a) of the said Rules, if the leave together with extension of leave (if any) asked for its of 2 months' duration or less, he may be asked to obtain a certificate in Form 3 in Appendix V from his Authorized Medical Attendant; or Medical Officer of equal status and Rule 40(1)(b) speaks about leave (if

any) asked for its for more than two years. Rule 40 of the Maharashtra Civil Services (Leave) Rules, 1981 reads as under :-

**“40. Grant of leave on medical grounds to Gazetted Government servants.-** (1) *Where leave of any kind (together with extension of leave, if any) is asked for on medical grounds, the competent authority may, if he considers it necessary to have a medical opinion, follow the following procedure :-*

(a) *if the leave together with extension of leave (if any) asked for is of 2 months' duration or less, he may be asked to obtain a certificate in Form 3 in Appendix V from his Authorized Medical Attendant; or Medical Officer of equal status.*

(b) *if the leave together with extension of leave (if any) asked for is for more than two months, or if the certificate obtained under clause (a) above so recommends, he may be asked to appear before a Medical Board.*

(2) *If according to (1) (b) above, appearance before a Medical Board is required, the authority competent to grant leave, shall request the Civil Surgeon of the district in which the Government servant is serving or in which he falls ill or to which he proceeds for treatment to set up a Medical Board. The Government servant shall present himself before the Medical Board with two copies of the statement of his case.*

(3) *The Medical Board may give the Government servant a certificate to the following effect, namely:-*

*"We do hereby certify that, according to the best of our professional judgment and after careful personal examination of the case, we consider the health of Shri/Shrimati/Kumari..... to be such as to render leave of absence for a period of .....absolutely necessary for his/her recovery".*

*Note.-Where the leave recommended is for more than three months or where the leave for three months or less is extended beyond three months, the Medical Board shall state, at the time of giving this certificate, whether the Government servant should or need not appear before another Medical Board for obtaining the certificate of fitness for return to duty.*

(4) *Where the Medical Board entertain a doubt, it may, before giving the certificate under sub-rule (3), provide for the keeping of the applicant under professional observation for a period not exceeding fourteen days and give him a certificate, to the following effect, namely :-*

*"Shri/Shrimati/Kumari .....  
having applied to us for a medical certificate recommending  
the grant to him/her of leave, we consider it expedient,  
before granting or refusing such certificate, to keep Shri/  
Shrimati/Kumari .....under professional  
observation for.....days."*

*(5) If the state of health of the applicant is certified by the Civil Surgeon or District Medical Officer to be such as to make it impracticable for the applicant, for a specified period, to present himself/herself at the place where a Board can be assembled, the authority competent to grant the leave may, in lieu of the certificate prescribed in sub-rule (3), accept a certificate signed by any two Medical Officers, not below the rank of a Civil Surgeon.*

*(6) Notwithstanding anything contained in sub-rule (5), the authority competent to grant leave may dispense with the procedure laid down in sub-rules (2) and (3) when the applicant is undergoing treatment in a hospital as an indoor patient and the leave is recommended by the Medical Officer-in-charge of the case in the hospital not below of a Civil Surgeon for the period of hospitalization or convalescence.*

*(7) A Medical Officer shall not recommend the grant of leave in any case in which there appears to be no reasonable prospect that the Government servant concerned will ever be fit to resume his duties and in such case, the opinion that the Government servant is permanently unfit for Government service shall be recorded in the medical certificate.*

*(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.*

*Note.-In Greater Bombay, certificates from the Police Surgeon, Bombay, and the Superintendents/Dean of St. George's, J. J. and G.T. Hospitals, and those signed by the Honorary Medical Staff of these institutions and countersigned by the Superintendents/Dean may be accepted for purposes of this rule. The Superintendents/Dean of the above Hospitals are empowered to countersign medical certificates from other Registered Medical Practitioners in Greater Bombay or require the applicant to present himself before him for medical examination before counter signature.*

*Instruction.-In case the leave is for sixty days or less, the last sentence of the medical certificate in Form 3 should be modified by scoring out the irrelevant words. In case the leave is for more than sixty days, the last sentence of the medical certificate should be completely scored out.*

*Note 2.-Certificates signed by the Medical-in-charge, Cama and Albless Hospitals, Bombay, may be accepted for purposes of this rule so far as female Government servants of Gazetted rank in Greater Bombay are concerned.*

*Note 3.-Certificates signed by the Assistant to the Civil Surgeon, Pune, provided he is an officer of Class I of the Maharashtra Medical and Health Services, may be accepted for the purposes of this rule.”*

15. It appears that the absence of the applicant solely on medical ground does exceed two months duration. It appears that the applicant has immediately applied for commuted leave on medical ground along with medical certificates. However, it is not the case of respondent authorities that the applicant was asked to obtain a certificate in Form 3 in Appendix V from his Authorized Medical Attendant; or Medical Officer of equal status. Since the said period is more than two month, there is no order of referring the applicant to Medical Board.

16. It appears that the wife of applicant suffered from ill-health and the applicant sought further medical leave by submitting application and medical certificate issued by the Civil Surgeon in favour of the wife of applicant. Copy of the medical

certificate of wife of the applicant is marked as Annexure A-4. The applicant has requested Earned Leave for the said period.

17. In view of above, the commuted leave on medical grounds, so also, Earned Leave for the reason of health issues of wife, the applicant has submitted applications supported by medical certificates. It appears from the affidavit in reply filed on behalf of respondent Nos. 1, 3 & 4 that reference is given of one Government Circular dated 09.02.2015, in which instructions have been issued regarding those officers, who do not resume their duties and proceeded on medical leave. In the instant case, the applicant was given the posting on promotion and there is no question of exercising any option about the choice place. If the respondent authorities have noticed the peculiar tendency, which is increasing day by day and in case of the applicant in order to avoid to resume the duties at Gadchiroli, the applicant went on medical leave, the respondent authorities should have directed the applicant to present himself before the Medical Board or should have initiated certain proceedings against the applicant in this regard. Merely on the basis of aforesaid Government Circular issued by the Additional Principal Chief Conservator of Forests (Administration-Subordinate Cadres), Maharashtra State, Nagpur dated 09.02.2015, the doubts have been expressed and

on the basis of some guess work, it has been presumed that the applicant went on medical leave without any basis with an ulterior motive to avoid posting at Gachiroli. I do not think that the approach of respondent authorities is proper, correct and legal.

18. The applicant came to be transferred to Dhule Forest Division vide order dated 05.08.2010. Accordingly, the applicant proceeded to join at Wadphali in Mevasi Forest Division on 11.08.2010, where he was transferred. Thus from 01.08.2010 to 10.08.2010 the applicant is entitled for the said period as joining time and there is no dispute about it.

19. Undisputedly, the applicant could not join the said post as Range Forest Officer, Wadphali (Territorial), as the Range Forest Officer working there viz. R.B. Potdar had obtained stay to his transfer from the post on which the applicant was supposed to join. The applicant was required to wait till 26.10.2010, as the stay was operating in favour of said Shri R.B. Potdar.

20. Rule 9(14) of the Maharashtra Civil Services (Pension) Rules, 1982 defines duty. In terms of Rule 9(14)(f) of the said Rules, the period for which a Government servant is required to wait compulsorily until receipt of his posting orders. In terms of



clause Nos. (i) to (iii) of Rule 9(14)(f), the said compulsory waiting period is considered as duty period. So far as the period from 11.08.2010 to 27.10.2010 total 89 days is concerned, the applicant to wait compulsorily due to stay order passed by this Tribunal in O.A. No. 685/2010 in respect of Range Forest Officer Shri R.B. Potdar, in whose place the applicant was supposed to join. Even this period is not required to convert into any kind of leave. However, even if the said period of 244 days for which break-up is given as aforesaid, in my considered opinion, if the applicant has got title and credit of commuted leave on medical ground and Earned Leave, the said period is required to be converted into commuted leave on medical ground, so also, as Earned Leave suitably.

21. In view of above discussions, the present Original Application deserves to be allowed. Hence, the following order :-

**ORDER**

- (i) The Original Application is hereby allowed.
- (ii) The order dated 08.02.2018 (Exhibit A-8) passed by respondent No. 1, thereby treating the leave of the applicant of 244 days as extraordinary leave without salary and allowances is hereby quashed and set aside.

- (iii) The respondents are hereby directed to treat 244 days leave period of the applicant as Commuted Leave on medical ground and Earned Leave and regularize the period of 89 days as compulsory waiting period.
- (iv) The respondents are hereby directed to pay all the consequential pecuniary benefits of the said period of 244 days to the applicant and for that purpose issue necessary orders within a period of two months from the date of receipt of this order.
- (v) In the circumstances, there shall be no order as to costs.
- (vi) The Original Application is accordingly disposed of.

**PLACE : Aurangabad.**  
**DATE : 24.10.2024**

**(Justice V.K. Jadhav)**  
**Member (J)**