

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.18 OF 2019

DISTRICT : SATARA

Shri Sambhaji Achyutrao Patil.)
Age : 58 Yrs., Occu.: Retired as Dy.S.P.)
R/o. Plot No.34, Koyana Sanmitra)
Cooperative Housing Society, Godoli,)
Satara - 415 004.)...**Applicant**

Versus

1. The Additional Chief Secretary.)
Home Department, Mantralaya,)
Mumbai.)
2. Director General of Police.)
M.S, Mumbai, having Office at)
1, Shahid Bhagat Singh Marg,)
Colaba, Mumbai - 400 005.)
3. The Addl. Director General of Police)
(Training & Special Units), M.S.,)
1, Shahid Bhagat Singh Marg,)
Colaba, Mumbai - 400 005.)...**Respondents**

Applicant in person.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.10.2019

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JUDGMENT

1. The Applicant has challenged the impugned order dated 04.04.2018 whereby his absence from 19.01.2016 to 17.07.2016 for 180 days is treated as Earned Leave, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.
2. Short question posed for consideration is whether the impugned order dated 04.04.2018 treating absence of Applicant for 180 days as Earned Leave can be faulted with.
3. By order dated 18.01.2016, the Applicant was transferred from the post of Police Inspector, Control Room, Osmanabad to Deputy Superintendent of Police, T.R.T.I, Gadchiroli on promotion. He was also relieved on the same day. However, he did not join the promotional post and was absent from 19.01.2016 to 17.07.2016. The Applicant contends that he was not aware what was the posting of T.R.T.I. given to him on promotion and where to report. Therefore, he could not join the promotional post. He further submits that, in the meantime, he had filed O.A.No.79/2016 before M.A.T, Aurangabad challenging the posting given to him at Gadchiroli on the ground that his presence at Satara is necessary for attendance of Criminal Case as well as departmental enquiry initiated against him. It appears that before filing O.A, he had made representation to the Department for cancellation of his posting. The O.A. was disposed of by Tribunal on 30.04.2016 giving direction to the authorities to consider his representation for transfer in annual general transfer of 2016. Later, he was posted at Turchi, Tal. Tasgaon where he joined on 18.07.2016. As such, the question was about his absence from 19.01.2016 to 17.07.2016. The Applicant made a representation on 16.12.2016 addressed to DGP to treat the said period as compulsory waiting period. He again made another representation on 12.03.2018 requesting that the absence period be treated as Commuted Leave, as

he is going to retire on 31.05.2018. However, by impugned order dated 04.04.2018, the absence period has been treated as Earned Leave and was adjusted towards Earned Leave at his credit, which is under challenge in the present O.A.

4. The Applicant in person sought to contend that he was not aware of the details of new posting of TRTI, Gadchiroli given to him, and therefore, could not join the promotional post. This submission is not at all acceptable from the senior Police Officer of Class-I Cadre. In view of promotion and posting at TRTI, Gadchiroli, he ought to have joined the said promotional post. But it appears that on the ground of inconvenience, he avoided to join the promotional post at Gadchiroli. Admittedly, during that period, he did not make any application for grant of leave. On the contrary, he had filed O.A.79/2016 challenging posting at Gadchiroli. Admittedly, there was no stay to his posting order in O.A.79/2016 by M.A.T, Aurangabad. As such, there was no justification whatsoever it may be, not to join promotional post. The excuse put forth that he was not aware about the place of posting and its detail is nothing but absurd and not all acceptable from the person holding senior position in Police Department.

5. The learned P.O. has rightly pointed out that in absence of any stay to the posting at Gadchiroli, there was absolutely no justification for non-joining the promotional post and the Applicant kept himself away from the posting without any lawful excuse.

6. In so far as the submission advanced by the Applicant for not treating absence period as Commuted Leave period is concerned, admittedly, during the absence period, the Applicant did not apply for Commuted Leave on medical ground. It is only after joining at Turchi, he made representation to convert absence period into Commuted Leave on medical ground. Obviously, such claim was not tenable as

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in reality and factually, the Applicant was not ill, and therefore, the question of converting absence period into Commuted Leave period did not survive. Otherwise, it would have been amounting to regularize leave on false grounds.

7. At this juncture, it would be apposite to refer Maharashtra Civil Services (Leave) Rules, 1981. Rule 61 of M.C.S. (Leave) Rules, 1981 is material, which is as follows :-

“61. Commuted leave.- (1) Commuted leave not exceeding half the amount of half pay leave due may be granted on medical certificate to a Government servant subject to the following conditions :-

- (a) the authority competent to grant leave is satisfied that there is reasonable prospect of the Government servant returning to duty on its expiry;
- (b) when commuted leave is granted, twice the amount of such leave shall be debited against the half pay leave due;
- (c) the authority competent to grant leave obtains an undertaking from the Government servant that in the event of his resignation or retiring voluntarily from service he shall refund the difference between the leave salary drawn during commuted leave and that admissible during half pay leave.

(2) Commuted leave upto a maximum of 90 days may be allowed during the entire service (without production of medical certificate) where such leave is utilized for an approved course of study whether full time or part time certified to be in the public interest by the leave sanctioning authority and also for the preparation of the final examination.

(3) Where a Government servant who has been granted commuted leave resigns from service or at his request is permitted to retire voluntarily without returning to duty, the commuted leave shall be treated as half pay leave and the difference between the leave salary in respect of commuted leave and half pay leave shall be recovered :

Provided that no such recovery shall be made, if the retirement is by reason of ill-health incapacitating the Government servant for further service or in the event of his death.

Note.- Commuted leave may be granted at the request of the Government servant even though earned leave is due to him.”

As such Authority must be satisfied that concern Government servant is medically unfit and it should be supported by medical certificate. In the present case, the Applicant was not ill. On the contrary, he was avoiding joining on promotional post. It is a case of willful absence.

8. It is thus explicit that the Applicant avoided to join the promotional post at Gadchiroli for no valid excuse. Therefore, his request of treating the absence period as compulsory waiting period is rightly rejected. This is not a case where due to some other justifiable reasons or administrative difficulties on the part of Department, the Applicant was kept without posting so as to treat the intervening period as compulsory waiting period. The Applicant himself choose not to join promotional post. In such situation, the absence period particularly when it is willful absence, the same cannot be converted into compulsory waiting period.

9. The Applicant's contention that at the relevant time, he had Medical Leave at his credit, and therefore, the absence period should have been converted into Commuted Leave is not at all acceptable for the simple reason that admittedly, he was not prevented to join promotional post due to illness or medical ground. As Earned Leaves were at his credit, the Department rather has taken sympathetic view to convert absence period into Earned Leave instead of treating absence period as a wilful absence and break in service, which would have affected the Applicant's pension and other retiral benefits.

10. The Applicant's contention that, at the time of posting order at Gadchiroli, he was above 55 years of age, and therefore, he could not have been posted in Gadchiroli in terms of G.R. dated 6th August, 2002 is misconceived. Once he is posted as a senior Police Officer of discipline Police Force, he was required to join and then make representation, as may be permissible in Rules. However, he choose

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not to report at the promotional post and kept himself away for no justifiable reasons.

11. In this view of the matter, I see no illegality in the impugned order and O.A. is devoid of merit. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 04.10.2019

Dictation taken by :

S.K. Wamanse.

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