

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.965 OF 2019

DISTRICT : PUNE

- 1) Mr. Vishwas Jagannath Pagare,)
R/at: C/o Mr.Ajunkya Shankar Ambekar,)
A-102, Shraddha Anand Soc., Jijamata Nagar,)
Kamgar Hospital Rd., Nitin Company,)
Thane (W) 604.) ... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through the Secretary,)
Soil & Water Conservation Department,)
Mantralaya, Mumbai-400 032.)
- 2) The Regional Water Conservation Officer,)
(Superintending Engineer),)
Soil & Water Conservation Circle,)
Bungalow No.3, Jail Rd., Yerwada, Pune 6.)...**Respondents**

Shri Kishore Jagdale, Advocate for Applicant.

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.01.2021

JUDGMENT

The Applicant has invoked the jurisdiction of this Tribunal challenging the order passed by the Respondent No.1- Government on 20.10.2018 thereby rejecting the claim of the Applicant for extra

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ordinary leave of five years in terms of G.R. dated 07.10.2002 and confirming the order passed by the Respondent No.2 on 24.08.2012.

2. The Applicant retired on 30.06.2019 on the post of Circle Officer, Water Conservation Department under the control of Respondent No.2. While the Applicant was in service, Respondent No.1 – Government of Maharashtra issued G.R. dated 07.10.2002 for grant of special extra ordinary leave for the period of five years for certain Government employees subject to terms and conditions mentioned in the G.R. One of the condition of G.R. is that employee was required to get special extra ordinary leave sanctioned before proceeding on leave. The Applicant while serving as Civil Engineer Assistant made an application on 13.08.2003 addressed to Respondent No.2 for five years leave w.e.f. 01.09.2003 in terms of G.R. dated 07.10.2002. The Executive Engineer forwarded the same to Superintending Engineer who is appointing authority of the Applicant. The Applicant then unilaterally proceeded on leave without waiting orders of prior sanction. He then rejoined on 11.01.2008 and retired on 30.06.2019. At the time of rejoining, he again submitted an application for special extra ordinary leave or medical leave for the period from 01.09.2003 to 11.01.2008 along with medical certificate. On the basis of it, initially the Respondent No.2 sanctioned extra ordinary leave without pay and allowances for the period from 01.09.2003 to 11.01.2008 on medical ground by order dated 23.09.2010. However, later it was transpired to the Respondent No.2 that as per medical certificate issued by the Sassoon General Hospital, Pune it was not to be used for regularisation of past leave on medical ground. Having noticed it, the Respondent No.2 by order dated 24.08.2012 cancelled its earlier order dated 23.09.2010 to the extent of reason of leave and instead of leave on medical ground, he passed the order i.e. absence will be treated as unauthorized absence. Consequently, the Applicant was not granted increment for the period

of absence /extra ordinary leave. Hence, he had earlier filed O.A.No.380/2018. In the meantime, the Applicant has also made representation to the Government. However, the Government by order dated 20.10.2018 confirmed the order passed by the Respondent No.2 on 24.08.2018 treating the Applicant's absence as extra ordinary leave without pay and allowances showing reason as unauthorized absence. In view of the said order, the O.A. was disposed of with liberty to the Applicant to challenge the order dated 20.10.2018 by filing fresh O.A.

3. It is on the above background, the Applicant has filed present O.A. challenging the order dated 20.10.2018.

4. Shri K.R. Jagdale, learned Counsel for the Applicant sought to assail the impugned order dated 20.10.2018 contending that in terms of G.R. dated 07.10.2002 once the Applicant had tendered the application to avail the benefit of the said G.R., he was entitled to treat his absence as special extra ordinary leave so that he can get benefit of increments etc. According to him, tendering of application dated 13.08.2003 in the office was enough compliance for benefit of G.R. dated 07.10.2002. He further submits that once the extra ordinary leave was granted, the medical ground by order dated 23.09.2010, it should not have been subsequently cancelled by order dated 24.08.2012, and therefore, the impugned action is unsustainable in law.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer for the Respondents pointed out that in terms of G.R. dated 07.10.2002, the Applicant was required to get prior sanction for extra ordinary leave and then proceed on leave. As regards cancellation of order dated 23.09.2010 by order dated 24.08.2012, he submits that in both the orders absence was treated as extra ordinary leave without pay

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and allowances with only difference that by subsequent order dated 24.08.2012 reason of absence is changed from medical ground to unauthorized absence in view of the medical certificate that the medical certificate should not be used for regularization of previous leave period.

6. In view of the submission, the issue posed for consideration is whether the impugned communication dated 20.10.2018 suffers from any legal infirmity in law and answer is in emphatic negative.

7. At the very outset, let us see the terms and conditions of G.R. dated 07.10.2002 whereby Government has introduced a scheme known as special extra ordinary leave scheme for Government servants excluding Teachers, Doctors, Nurses and Police Force. As per this G.R., the Government seems to have taken policy decision to extend the benefit of five years leave once in a service. Clause No.6 and 7 of G.R. is material which are as follows :

“६. विशेष असाधारण रजा पूर्व परवानगीने मंजूर करून घेणे आवश्यक राहिल.

७. अनधिकृतपणे अनुपस्थित असलेल्या कर्मचा-यास विशेष असाधारण रजा मंजूर करता येणार नाही.”

As per Para No.9 of G.R. dated 07.10.2002, the competent authority for grant of special extra ordinary leave would be appointing authority i.e. Superintending Engineer (Respondent No.2).

8. Thus, it is explicit that such special extra ordinary leave requires prior sanction of appointing authority and if the employee remains absent unauthorisdeley then he will not be entitled to take benefit of this scheme.

9. True, while proceeding on leave, the Applicant had submitted an application on 13.08.2003 (Page No.16 of PB) addressed

to Superintending Engineer for five years leave w.e.f. 01.09.2003 on personal ground. It is equally true that the said application was forwarded to by Executive Engineer to the office of Superintending Engineer. Admittedly, no orders were passed by the Superintending Engineer about grant of leave. Material to note that the office had issued communications to the Applicant on 13.08.2003, 18.09.2003, 06.10.2003, 21.11.2003 and 03.05.2006 informing him that he is absent unauthorizably and explanation was sought as to why departmental action should not be initiated against him. (Page Nos. 79 to 87 of PB).

10. Thus, what transpires from the record that the Applicant simply made an application on 13.08.2003 for seeking five years extraordinary leave w.e.f.01.09.2003 and without getting it sanctioned proceed on leave and remained absent in the office. He joined only on 11.01.2008. In the meantime, the office had issued various letters to him pointing out that he is absent unauthorizably and explanation was sought for initiation of departmental proceeding. As such, there is no denying that one of the condition of G.R. dated 07.10.2002 that employee should get special extra leave sanctioned before proceeding on leave is not complied with. The Applicant simply forwarded the application dated 13.08.2003 and unilaterally proceeded on leave assuming that the leave is granted. Needless to mention that leave cannot be claimed as of right and it is always governed by the Maharashtra Civil Services (Leave) Rules, 1981 (hereinafter referred to as 'Leave Rules'). Rule 10 of 'Leave Rules' specifically provides that leave cannot be claimed as of right. Whereas, Rule 63 of Rules 1981 provides for grant of extra ordinary leave.

11. Suffice to say, in absence of prior sanction of special extraordinary leave, the employee is not entitled to take benefit of the scheme formulated by G.R. dated 07.10.2002. Therefore, the

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Applicant's contention that he was entitled to benefit of the scheme under G.R. dated 07.10.2002 is totally misplaced. He should have obtained prior sanction to his application before proceeding on leave. Despite various communications by the office to him, he did not bother to resume the duty and joined only after the period of five years. Only because he was allowed to join on 11.08.2008 that does not *ipso facto* regularize his absence period. Indeed, the Respondents have taken lenient view by allowing him to join instead of initiating departmental proceeding against him.

12. In so far as the order dated 23.09.2010 and 24.08.2012 are concerned, it is true that initially the absence period was considered as extra ordinary leave without pay and allowances on medical ground but later by order dated 24.08.2012, the absence was shown unauthorized but it was treated as extra ordinary leave without pay and allowances. Material to note that it is only after rejoining, the Applicant had submitted an application in prescribed format for grant of special extra ordinary leave on medical ground along with medical certificate (Page No.20 and 23 of PB) and on that basis, initially extra ordinary leave was granted on medical ground. In medical certificate there was specific mention that the medical certificate should not be used for regularization past leave period. The mistake was subsequently noticed, and therefore, by order dated 24.08.2012, the Respondent No.2 corrected the order treating absence period as extra ordinary leave without pay and allowances on the ground of unauthorized absence. As such, the mistake was corrected by order dated 24.08.2012. In both the orders dated 24.08.2012 and 23.09.2010, the absence period was treated as extra ordinary leave without pay and allowances.

13. As such, material on record clearly spells that the Applicant proceeded on leave unilaterally without prior sanction to leave by the

competent authority which is condition precedent for the benefit of scheme introduced by G.R. dated 07.10.2002. He remained absent unilaterally and despite communicated by the office failed to resume the duty. It is only after five years, he rejoined the office. The submission advanced by the learned Counsel for the Applicant that the Applicant was entitled for increment for the period of absence if it is granted on medical ground is misplaced and misconceived. He remained absence without getting prior sanction to leave and remained away from duty for five years. This being the position, the impugned order treating his absence as extra ordinary leave without pay and allowances cannot be faulted with. I, therefore, see no illegality in the impugned order.

14. The totality of the aforesaid discussion leads me to conclude that the challenge to the impugned order is devoid of merit and Original Application deserves to be dismissed. Hence the following order :-

ORDER

Original Application is dismissed with no order as to costs.

A. P. Kurhekar
Sd/-

v

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 04.01.2021
Dictation taken by : Vaishali Mane
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