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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.3235/2002

New Delhi, this the 4th day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member(A)

K. Ganesan
Communication Assistant
Department of Civil Aviation
Office of Director General of Civil
Aviation, Opposite Safdarjung Airport
New Delhi-110003.

.. Applicant

(Shri R.Venkataraman, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Civil Aviation
Rajiv Gandhi Bhavan
Safdarjung Airport
New Delhi-110003.
2. Director General,
Department of Civil Aviation
Opposite Safdarjung Airport
New Delhi-110003.

3. Secretary
Department of Personnel & Training
North Block, New Delhi

.. Respondents

(By Shri R.P. Aggarwal with Shri Surender Kumar,
Advocates)

ORDER(ORAL)

Justice V.S. Aggarwal

Applicant was appointed as Communication Assistant in the Department of Civil Aviation. He joined in November 1984. On 30.5.1986, he was sent on mandatory deputation to the National Airports Authority along with other Communication Assistants. The rule of mandatory deputation of the Department of Civil Aviation employees ceased to operate with effect from 2.10.1989. The mandatory deputation of the applicant was terminated with

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effect from 23.10.1989. Thereafter the applicant was allowed to join duties in the office of Airworthiness, Civil Aviation Department vide the order of 24.10.1989. After creation of regular vacancies of Communication Assistant in the office, the applicant represented and requested respondent No.2 to transfer him to New Delhi against the regular post of Communication Assistant. The applicant claims that he was the senior most amongst those who opted for the service in the Director General of Civil Aviation. The applicant was relieved to enable him to join the office of respondent No.2.

2. The applicant claims that he was taken on the strength of Director General of Civil Aviation Headquarters with effect from 16.6.1993. However, he was subjected to be a surplus employee. He had submitted a representation in this regard.

3. In the meantime, the applicant applied for seeking admission in three years course of Master of Computer Applications with the Registrar, Alagappa University, Tamil Nadu. The application was forwarded by respondent No.2 to the Registrar of the said University. The applicant was informed by the Registrar to submit leave sanctioned order to undergo the said course. The applicant applied for grant of study leave. A letter was issued by respondent No.2 stating that the application was under active consideration of the Government. The applicant was relieved on 12.8.1993. He was told to

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apply for grant of leave of the kind due to him before joining the course.

4. By virtue of the present application, he seeks quashing of the order of 20.7.1993 stating that he is a surplus employee and the order of 21.8.2001 mentioning that he was granted leave for a period of 24 months and his request for grant of study leave had been rejected. He claims further that he is entitled to the study leave.

5. The application has been contested. It has been pointed that so far as treating the applicant as surplus employee is concerned, a supernumerary post of Communication Assistant has been created and he has been adjusted therein. Thus it is claimed that the applicant's prayer for quashing the order of 20.7.1993 has become infructuous. As regards the study leave, it was asserted that the same could not be granted to the applicant for the reason that he was considered to a surplus employee awaiting re-deployment on repatriation from National Airports Authority. The study leave was denied on the advice of respondent No.3. After creation of supernumerary post and the adjustment of the applicant against the same, the case for grant of study leave for the said period had again been prepared and sent for consideration.

6. We have heard the parties' counsel.

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7. From the sequence of facts, it is patent that so far as the question of the applicant being a surplus employee is concerned, the said prayer pertaining to declaring him as surplus employee and quashing of the said order has been withdrawn. The sole question, therefore, for consideration was if from 9.9.1993 to 23.6.1995, the applicant could claim study leave.

8. The impugned order dated 21.8.2001 reads:-

"Subject: Amendment of Establishment Order No.23/1993 dated 20.7.1993 and grant of study leave for prosecuting higher studies in the Field of Computer Applications (MCA) Course.

With reference to his application dated 19.12.2000 and subsequent reminder dated 02.03.2001 & 10.7.2001 on the above subject. According to which earlier application dated 7.9.93, Shri K.Ganesan, Communication Asstt, in the office of Director General of Civil Aviation was granted E.O.L. for a period of 24 months to undertake the course of Master of Computer Applications in Alagappa University, Karaikudi, Tamil Nadu after consultation with Deptt. of Personnel & Training.

Therefore, the request of Shri K.Gansan, Communication Asstt. for amendment of Establishment Order No.23/93 dated 20.07.1993 can not be accepted."

The said order referred to above is based on the order of 20.7.1993. It relates to the fact that the applicant is a surplus employee repatriated from National Airports Authority. We have already referred to above that the controversy that the applicant is a surplus employee had come to an end and, therefore, the logic for refusing

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study leave to the applicant had ceased to be valid.

9. The facts of the present case reveal that when the applicant applied for study leave for his admission in the Alagappa University, the Deputy Director of Administration had written to the Registrar, Alagappa University without any rider. The said letter reads:-

"Subject: Admission to the M.C.A. Course
(3 years) during the academic year
1993-94.

Dear Sir,

I have to forward herewith an application in the prescribed form received from Shri K.Ganesan, Communication Assistant in this office for admission to the above mentioned course in your University during the academic year 1993-94. The application contains the following accompanying documents:-

- (i) Demand Draft No.043005 dated 03.06.93 for Rs.50/- drawn at Indian Bank, Karaikudi;
- (ii) Attested copies of Mark Sheets of B.Sc. Degree;
- (iii) Xerox copy of B.Sc. (Provisional) Certificate;
- (iv) A copy of the judgement of Consumer Redressal Forum, Sivaganga.

2. It is requested that his application may kindly be considered and your decision in the matter communicated directly to the candidate.

Yours faithfully,

Sd/-

(V.Jayachandran)

Deputy Director of Administration
for Director General of Civil Aviation "

Even on 23.7.1993, another letter was written to the

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Registrar, Alagappa University pointing out that the request of the applicant for grant of study leave was under active consideration. The said letter clearly shows that the applicant had never been informed that he is not being granted study leave or that he is not entitled to the same. We have already referred to above that the applicant no more can be considered to be a surplus employee. In that view of the matter, refusal to grant study leave cannot be held to be loaded with any logic.

10. On behalf of the respondents, it was pointed that the impugned order was passed after consulting the Department of Personnel and Training. However, we need not go into this controversy for the reasons already recorded above. Suffice to mention that vide the instructions issued by the Government of India, Department of Personnel and Training Office Memorandum No.13023/25/84-Est. (L) dated 23.8.1985, it has been opined that the department can thus grant study leave up to a maxim limit of 24 months at a stretch. Therefore, even consultation was not mandatory.

11. Confronted with this position, the learned counsel for the respondents has drawn our attention to Rule 50 of the Central Civil Services (Leave) Rules, 1972. On the strength of the same, it was urged that the course attended by the applicant does not have any direct or close connection with the sphere of his duty.

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12. We have least hesitation in rejecting this plea because firstly when the application of the applicant was forwarded due care and caution was not taken at that time. Secondly, the impugned order so passed was not based on such a plea. It is too late in the day to rake up this controversy.

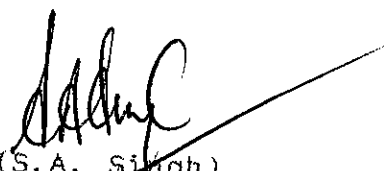
13. For these reasons, we dispose of the present application with the following directions:-

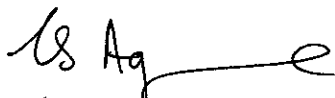
(a) So far as the question of applicant being a surplus employee is concerned, that plea has been withdrawn

(b) It is directed that the applicant is entitled to the study leave from 9.9.1993 to 23.6.1995.

No costs.

Announced.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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