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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2396/2001

This the 10th day of March, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)

Surya Prabha Parasher
W/o Dr. C.D. Parasher
R/o C-22 Hauz Khas,
New Delhi-110016

....Applicant

(By Advocate: Sh. G.D.Bhandari)

Versus

1. Raj Kumari Amrit Kaur
College of Nursing
Through Principal,
Lajpat Nagar,
New Delhi-110 024.
2. Directorate General of
Health Services,
Nirman Bhawan,
New Delhi.
3. Union of India
through Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
4. Mrs. B. Bhattacharya
Principal,
Raj Kumari Amrit Kaur,
College of Nursing,
Lajpat Nagar,
New Delhi-110 024.

... Respondents

(By Advocate: Sh. N.S.Mehta)

OBJECTION (ORAL)

Applicant has assailed an order dated 21.3.2001 vide which the respondents have started recovering a sum of Rs.4000/- from the salary of applicant from April 2001 onwards. Applicant had filed the OA and had also asked for interim relief against this order and this court vide order dated 21.9.2001 had restrained the respondents for further recovery w.e.f. 21.9.2001.

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2. The facts as alleged by the applicant in brief are that the applicant had joined the service with the respondents department as a Clinical Instructor. It is further stated that in the year 1983 she received an assignment in nursing under the Director General, Health Service, Govt. of Saudi Arabia and she was applied for leave and permission under the rules for a period of 3 years and she was assured that the same would be sanctioned and when the leave was not sanctioned she has to resign from her post on 19.1.83. Applicant thereafter rejoined the respondents college in the month of August 1985 and rendered honorary services to the college with the assurance that she would be assigned the tutor post as soon as a vacancy arises. It is further stated that the applicant had received a grant from the UGC which was released by respondents for the nation-wide research activities which involved extensive field visits but the absence of the applicant was considered as Extra Ordinary Leave by the authorities which could not have been determined until and unless all other leaves have been exhausted. Applicant also states that the office of the respondents had overpaid her salary and applicant genuinely believed that the amount was being adjusted towards her field work. Thereafter, however, the respondents then informed her that they would deduct Rs.4000/- p.m. from her salary to recover the amount which they have paid for 10 months during her research period.

3. Applicant further alleges that she had pointed out that there were other persons who were allowed to avail university vacations for their project work and there was also a

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provision for Duty leave under the UGC scheme where the leave for research was considered as EOL. Hence her salary was being deducted.

4. It is also pleaded that the authorities have wrongly construed that study leave cannot be extended beyond 24 months as they have not properly appreciated the DOPT order dated 31.8.90. Therefore, the petitioner submits that she was entitled to Study Leave and should not have been penalised and discriminated in this matter and no payment should be deducted from her salary.

5. Respondents are contesting the OA. Respondents in their reply submitted that the maximum amount of Study Leave had already been sanctioned to the applicant as per provision contained in Rule 51 of the CCS (Leave) Rules, 1972 and as per Rule 52 (4) of the CCS (Leave) Rules 1972 Study Leave is limited to 24 months maximum and can be combined with other kind of leave but in no case shall the grant of leave in combination with leave with other than EOL, i.e. Earned Leave, Half Pay Leave, leave not due etc. involved a total absence of more than 28 months generally and 36 months for the courses leading to PhD degree from the regular duties of the Govt. servant. The OM dated 31.8.90 does not provide for Study Leave of 36 months but Study Leave can be combined with leave other than Extra Ordinary Leave limited to 36 months maximum. As per Leave Rules the period more than 36 months can be regularized as Extra Ordinary Leave subject to condition stipulated in leave rules. If the Govt. employee has no leave to his/her credit the period of absence beyond 24 months can be regularized by granting Extraordinary Leave.

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6. Applicant in this case had availed maximum Study Leave of 24 months in two spells, i.e. 1.10.90 to 5.10.91, i.e., 12 months 5 days and then 2.9.96 to 27.8.97, i.e., 11 months 26 days as per the provision contained under Rule 51 of CCS (Leave) Rules, 1972. Since there was no other leave in her credit, she applied for and was granted Extraordinary Leave from 28.8.97 to 27.9.98. It is further stated that no faculty or any other staff member has ever been sanctioned Study Leave beyond 24 months so far. Thus, it is submitted that since there was no leave to the credit of the applicant, the absence beyond 24 months was treated as Extraordinary Leave for which the applicant had also applied and since salary for the said period has already been paid, so now the department is recovering the same by the impugned order. The same is justified and OA deserves to be dismissed.

7. I have heard the learned counsel for the parties and gone through the record.

8. Though the learned counsel for the applicant submitted that the applicant has been treated in a discriminatory manner and he has also referred the list of certain other faculty members who are stated to have been granted leave beyond 24 months but no record has been shown to say as to the grant of leave to those persons as mentioned in Annexure-3. Besides that applicant cannot claim any extra leave against the rules. Since there is no dispute about the rule that under Rule 51 of CCS (Leave) Rules, 1972 Govt. employee can be granted leave for 24 months and the said leave can be combined with any other kind of leave after 24 months upto 28 months and if the course is leading to PhD degree then combined leave can be extended to 36 months. Though in this case applicant had

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undertaken a project leading to PhD degree but applicant has failed to prove on record, if there is any other kind of leave standing in her credit which she could have combined with Study Leave. Rather the documents on record show that her period of absence from 28.8.97 to 27.9.98 was regularised as Extraordinary Leave as applied by Ms. Parashar which means that applicant had herself applied for treating the said period as Extraordinary Leave. Rule 54(2) of CCS (Leave) Rules is quite clear to the fact that the Govt. employee could not be granted leave beyond 24 months. However, if the Study Leave has been taken by the Govt. employee leading to PhD degree than the Govt. employee can combine any other leave alongwith Study Leave and the maximum period for that purpose is 36 months. Since in this case there was no other leave to her credit, the department had considered her request for grant of Extraordinary Leave but the Extraordinary Leave cannot be combined with the Study Leave.

9. Thus, we find that the wages paid for the period has been wrongly paid and the department has a right to recover the same. OA has no merits and the same is dismissed.


(KULDIP SINGH)
Member (J)

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