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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-2102/98

New Delhi this the 1st day of December, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

Prof. V.K. Gupta,
R/o 1322, Poorvanchal Hostel,
JNU,
New Delhi-57.Applicant

(By Advocate Shri V.K. Rao)

-Versus-

1. Union of India through,
Secretary,
Ministry of Personnel, Public
Grievances & Pensions,
South Block,
New Delhi.

2. Director,
Lal Bhadur Shastri National
Academy of Administration,
Mussoorie-248179.Respondents

(By Advocate Shri P.H. Ramchandani)

ORDER

By Reddy, J.:-

The issue that is involved in this case is whether the applicant, who was granted ~~study~~ ^{study} leave, is liable to pay the actual amount of leave salary, city allowance etc. incurred by the Government on his resignation after returning from leave.

2. The applicant was appointed as a Professor of Law in the Lal ^a _h Bhadur Shastry National Academy of Administsration, Mussoorie, respondent No.2 herein, on 14.10.88. While working with respondent 2 he applied for one year study leave and the same was granted. He proceeded on the study leave on 1.3.95. It is the case of the applicant that during study leave he edited and published a book, namely, "Perspective on

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Human Right". Before he went on study leave he was asked to furnish a bond for Rs.30,000/- which was duly executed by him. In the said bond his liability was expressly limited to Rs.30,000/- in the event of his not returning to service after availing the study leave or resigning within a period of three years after return.

3. While the applicant was on study leave, he applied for the post of Professor, Faculty of Law in Jamia Millia Islamia, a Central University established under the Act of Parliament. The applicant's resignation has been accepted. However, the respondents had not issued the Last Pay Certificate. Respondents have also not transferred the gratuity and leave encashment amounting to Rs. 61,054/- . Thereafter the respondents raised a demand for payment of Rs.73,091/-, being the balance of the amount that was incurred by the Government towards his actual leave salary.

4. It is contended by the learned counsel for the applicant that the respondents having fixed the amount of liability of the applicant in case of any violation of the condition of sanctioning study leave the respondents are estopped from making any demand over and above the said amount. It was also contended that the action of the respondents is illegal as being contrary to rule 63 (1) proviso (b) and 63 (3) of the CCS (Leave) Rules (for short, Rules).

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5. The learned counsel for the respondents, raises a preliminary objection as to limitation. On merits, he submits that a liability ^{is} cast upon the applicant under rule 63 since he has quit service within a period of three years after returning from study leave, for refunding the actual amount of leave salary and allowances that ~~had~~ been incurred by the Government of India and the bond was taken under Rule 63 (4) of CCS (Leave) Rules only by way of better protection of the interest of the Government in securing the amount of liability. It is, therefore, contended that the bond will not obliterate the liability under the Rules.

6. We have given our careful consideration to the contentions advanced by the learned counsel on either side.

7. It is not in dispute that the applicant has received an amount of Rs.1,35,145/- towards study leave salary for the period 1.3.95 to 10.2.96. Though he rejoined service after the study leave had expired, as he was appointed as Professor in Jamia Millia Islamia, he resigned his job soon thereafter and left the organisation.

8. The only question that is involved in this case is what is the extent of the applicant's liability? Is he liable to pay the actual leave salary etc. incurred by the respondents or only the amount of Rs.30,000/- as obliged by him in the bond?



9. We will now take up the objection of limitation. It is contended by the learned counsel for the respondents that the starting point for limitation would start, in the present case, from 22.4.96 or in any event from 2.8.96 when the applicant was informed by the respondents that he was liable to pay the actual amount of leave salary etc. in the event of his resignation being accepted. We are not prepared to accede to this contention. The final order which has been passed by the R-2 deciding to recover an amount of Rs.73091/- after deducting Rs. 61054/- from 1,31,923/- towards the leave salary was communicated to the applicant in its letter dated 27.8.98. As the letter dated 16.9.97 was not addressed to the applicant, it cannot be treated as a starting point for limitation. It is further contended by the learned counsel for the respondents that in the letter dated 22.4.96 and in the representation made by the applicant to the Secretary Govt. of India in his letter dated 2.8.96 the applicant himself admitted that he had committed breach of the service rules and hence the said circumstance would be taken as starting point of limitation. But again it should be noticed that the letter dated 22.4.96 was addressed not to the applicant but to the Director Lal Bahadur Shastri National Academy of Administration and the decision of the Government cannot be termed as a final order against the applicant. Again in the letter dated 2.8.96 the applicant has been pleading for condoning of the recovery of the actual leave salary. In the circumstances, we are of the view that the OA is not hit by Section-21 of the Administrative Tribunals Act, 1985.



10. The case of the applicant is governed by the CCS (Leave) Rules. Chapter VI deals with the granting of Study Leave. The conditions for granting of Study Leave are mentioned in Rule-50. Sub-Rule-1 of Rule-50 clearly states that the study leave may be granted subject to conditions specified in this Chapter. Sub-Rule(3) mandates that the study leave shall not be granted unless a bond is executed by the employee. Sub-Rule (4) (a) of Rule-53 specifies the procedure for executing the bond, which shall be in the form prescribed. Accordingly the applicant had executed a bond under Rule-53 (4) for an amount of Rs. 30,000/-. Rule-63 is the next important provision under this Chapter, which reads as follows:-

1) If a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty [or fails to complete the course of study and is thus unable to furnish the certificates as required under sub-rule (5) of Rule-53] he shall be required to refund-

(i) the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India; and (ii) the actual amount, if any, of the cost incurred by other agencies such as foreign Governments, Foundations and Trusts in connection with the course of study, together with interest thereon at rates for the time being in force on Government loans, from the date of demand, before his resignation is accepted or permission to retire is granted or his quitting service otherwise:

[Provided that, except in the case of employees who fail to complete the course of study nothing in this rule shall apply].

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(a) to a Government servant who, after return to duty from study leave, is permitted to retire from service on medical grounds; or

(b) to a Government servant who, after return to duty from study leave, is deputed to serve in any statutory or autonomous body or institution under the control of the Government and is subsequently permitted to resign from service under the Government with a view to his permanent absorption in the said statutory or autonomous body or institution in the public interest.

2. (a) The study leave availed of by such Government servant shall be converted into regular leave standing at his credit ~~on~~ the date on which the study leave commenced, any regular leave taken in continuation of study leave being suitably adjusted for the purpose and the balance of the period of study leave, if any, which cannot be so converted, treated as extraordinary leave.

(b) In addition to the amount to be refunded by the Government servant under sub-rule (1), he shall be required to refund any excess of leave salary actually drawn over the leave salary admissible on conversion of the study leave.

(3) Notwithstanding anything contained in this rule, the President may, if it is necessary ~~or~~ expedient to do so, either in public interest or having regard to the peculiar circumstances of the case or class of cases, by order, waive or reduce the amount required to be refunded under sub-rule(1) by the Government servant concerned or class of Government servants."

11. From a reading of sub-rule (1), it is clear that, if the Government servant seeks to resign from service within a period of three years after his return to duty, he shall be required to refund the actual amount of leave salary, study allowance etc. incurred by the Government of India together with interest. The proviso to sub-rule (1), however, provides exception in

the case of employees who, after return to duty from study leave, is deputed to serve in any statutory or autonomous body or institution under the control of the Government. Sub-rule(3) enables the President of India in the interest of public or having regard to the peculiar circumstances of the case, ^{to} waive or reduce the amount required to be refunded under sub-rule (1).

12. Thus it is manifest that the applicant having resigned from service after returning from duty is required to refund the actual amount of leave salary. Learned counsel for the applicant, however, contends that he was only liable for the payment of Rs. 30,000/- in the event of any breach of the obligation under the bond executed by him. Under Rule-53 (4) the applicant's liability having thus fixed at Rs. 30,000/-, it is not open to the respondents to claim any amount in excess of the said amount. We are unable to accede to this contention. As stated supra the execution of the bond is one of the conditions prescribed under the Chapter. Rule-50 sub-rule (1) clearly specifies that the study leave granted to the applicant is subject to the various conditions prescribed in the Chapter. The conditions of execution of the bond is one of such conditions in the Chapter. The mere execution of a bond in our view will not obliterate the liability of the applicant stipulated under other provisions in the chapter. Under sub rule (1) of Rule-63 an absolute and unqualified liability has been cast in the event of breach of any of the conditions mentioned therein. A perusal of the representation made by the applicant dated 2.8.96 to the Secretary to the Govt. of India also shows that the applicant was aware

of the fact that his joining the University amounts to a breach of the service rules. The condition of executing bond appears to have stipulated for better mode of recovery or an additional safeguard to recover the amount that may be found liable by the applicant. Hence, we are of the view that the execution of the bond would not take away or obliterate the liability under sub rule (1) of Rule 63 of the Rules.

13. It is next contended that the acceptance of the bond by the President of India tantamounts to waive or reduce the amount required to be refunded under sub-rule(1) of Rule-63, as the President is entitled under Sub-rule (3) for waiving or reducing the amount. We do not find any substance in this submission either, as it is wholly misconceived. A perusal of the bond makes it abundantly clear that it was executed under rule-53(4) of the rules which is a provision for requiring the Government servant to execute the bond as a condition precedent to grant study leave. The President of India has accepted the bond on behalf of the Government of India. This action cannot be said by any stretch of imagination to be an action taken by him under sub-rule (3) of Rule-63. Since the applicant had admittedly violated the conditions under rule-63 he is liable to pay the actual amount of leave salary and other amounts as mentioned under rule-63 (1) of the leave rules.

14. In the circumstances, we do not find any merit in the OA. The OA is, therefore, dismissed, in the circumstances, without costs.

Shanta
(Smt. Shanta Shastry)
Member (A)

Reddy
(V. Rajagopala Reddy)
Vice-Chairman(J)

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