

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 561 of 1997 decided on 25.11.1997

Name of Applicant: Mana Masih

By advocate: Shri B.B.Raval

Versus

Name of Respondents: UOI THROUGH SECY MINISTRY OF HEALTH & FW

By advocate: Shri Madhav Panikar

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Hon'ble Mr. N. Sahu, Member (A)

1. To be referred to the Reporter or not?

2. Whether to be circulated to other
Benches of the Tribunal?

(N. Sahu)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 561 of 1997

New Delhi, this the 25th day of November, 1997

Mana Masih S/o Shri Mehngo Masih,
Aged about 36 years, Resident of
Quarter No.S-703, New Nurses Hostel,
Safdarjung Hospital, New Delhi and
employed as Nursing Sister (Rank No.
4329) in the Safdarjung Hospital
New Delhi.

- APPLICANT

(By Advocate - Shri B.B.Raval)

Versus

1 Union of India through the Secretary,
Ministry of Health & Family Welfare,
Government of India, Nirman Bhawan,
New Delhi -110 001.

2.The Medical Superintendent, Safdarjung
Hospital, New Delhi- 110 029 -RESPONDENTS
(By Advocate Shri Madhav Panikar)

J U D G M E N T

By Mr.N. Sahu, Member (Admnv)-

Heard the counsel.

2. This application is directed against an order dated 26.12.1996 issued by the Medical Superintendent, Safdarjung Hospital, New Delhi directing the applicant to refund the leave salary for the period from 15.7.94 to 14.5.1996 during which period he was granted study leave for a two year B.Sc. Nursing course at All India Institute of Medical Sciences (in short 'AIIMS'). This direction was given on the ground that he failed to submit certificate of examination passed for which leave was granted to him. A representation was submitted by the applicant on 3.1.1997 to the Medical Superintendent, Safdarjung Hospital informing him that he would submit a provisional certificate within a short time and requesting him not to recover the study

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leave salary. Prior to this, he also placed a copy of letter dated 21.8.1996 from the Principal, College of Nursing, AIIMS, New Delhi intimating that the applicant had completed Part-I examination and asking him to appear in Part-II of B.Sc. Nursing examination to be held in the month of December, 1996. He again represented that in view of this the leave salary paid to him need not be recovered. The impugned order is before the submission of the certificate dated 3.1.1997. The respondents relied upon Rule 63 of C.C.S.(Leave) Rules,1972 which states that if a Government servant fails to complete the course of study and is unable to furnish the certificate as required under Rule 53(5) of C.C.S. (Leave) Rules,1972 he shall be required to refund the actual amount of leave salary. Under Rule 53(5) it is stated that on completion of the course of study, the Government servant shall submit to the authority which granted him the study leave, the certificate of examination passed. The respondents had issued a memo dated 27.7.1996 for submitting a provisional certificate followed by a reminder on 21.8.1996. They enquired on 3.9.1996 from the Administrative Officer, AIIMS regarding his results. In view of the fact that he joined his duties on 15.5.1996 and as by that time he passed only the first year of B.Sc. Nursing course that too in the third attempt, the respondents passed the impugned order directing recovery of salary.

3. In view of the subsequent development the action of the respondents cannot be upheld. There are no conditionalities or time limits prescribed either

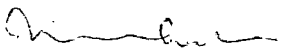
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under Rule 53 ibid or under Rule 63 ibid that any person availing study leave shall complete the course and pass the examination only in the first attempt and any effort made by him later to secure a pass degree in another attempt would render him liable to refund back the salary paid during study leave. If the Government as a policy decision allowed a person to take study leave to secure proficiency in a certain branch of his profession it would only aid him as an employee to render more useful efficient and effective service as a trained personnel in his service. It is with this intention that salary is paid also during study leave and that study leave is separate from other types of leave. If we view the purpose of the rules in this light, it will not be possible to uphold the action of the respondents. He joined his duties at Safdarjung Hospital in July, 1997 after the Principal informed that he would be writing the Part -II examination in the month of December, 1996. Ultimately, he availed of this, wrote the examination and qualified himself. The respondents have not shown me any rule or instruction which prohibits him from taking such a step to secure the provisional certificate or dis-entitles him to the salary received by him during the course of availing the study leave. In my view the applicant had substantially fulfilled the object of sending him on study leave by his completing his course of study during the period of leave and by passing the examination within a period of 8 months from the conclusion of the leave. In view of this, there is no justification for recovering the salary during the leave period. The impugned order dated 26.12.1996 is

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set aside. The interim stay granted on 11.3.1997 and continued thereafter shall become absolute. Any amount recovered before the stay became operative shall be refunded back to the applicant within a period of four weeks from the date of receipt of a copy of this order.

4. In the result, the O.A. is allowed. The parties shall bear their own costs.


(N. Sahu)
Member (Adminv)

rkv.