

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
ORIGINAL APPLICATION NO.60/00710/2020**

ORDER RESERVED ON 22.01.2021

DATE OF ORDER: 17.02.2021

**CORAM:**

**HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)**

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

**HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)**

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

Usha, W/o Sh.Rahul Chaudhary  
Aged about 42 years  
Senior Technician (X-Rays)  
(Group B), Department of  
Radiodiagnosis and Imaging  
Post Graduate Institute of Medical  
Education and Research, Chandigarh.  
R/o # 1036, Sector 38 B  
Chandigarh.

....Applicant

(By Advocate Shri Hemender Goswami – through video conference)

Vs.

1. Post Graduate Institute of Medical  
Education and Research  
Through its Director  
Sector 12, Chandigarh.  
PIN-160012. Email: [pgimer.chd@nic.in](mailto:pgimer.chd@nic.in)
2. The Director  
Post Graduate Institute of Medical  
Education & Research  
Sector 12, Chandigarh  
PIN-160012. Email: [pgimer.chd@nic.in](mailto:pgimer.chd@nic.in)

## 3. The President of PGIMER

Chandigarh-cum-Appellate Authority  
Ministry of Health & Family Welfare  
Nirman Bhawan, New Delhi-110011.  
Email: [hfm@gov.in](mailto:hfm@gov.in)

....Respondents

(By Advocate Shri Vikrant Sharma – through video conference)

**ORDER****PER: RAKESH KUMAR GUPTA, MEMBER (A)**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunal's Act 1985 seeking the following relief:

- a. Quash the impugned order dated 7.10.2019 vide which recovery of Rs.6,19,184/- on account of study leave has been ordered to be effected from the applicant after waiving off the interest portion (Rs. 4,83,185/-) and further adjusting the leave of kind due (LOKD) (Rs. 1,19,416/-), passed in supersession of the earlier impugned order dated 01.04.2017 wherein an amount of Rs. 12,21,785/- was ordered to be recovered.
- b. Quash the impugned orders dated 30.01.2020, 05.08.2020 and 02.09.2020 vide which the appeal against the recovery orders dated 07.10.2019 had been rejected and the applicant was directed to deposit the above mentioned amount within a specific period failing which recovery would be initiated against the salary.
- c. The respondents may be directed not to make recovery from the impugned orders and also not to adjust any of the leave/leave of kind due in her leave account in the name of effecting such recovery/waiving/adjusting any such recovery.
- d. May pass any other order in favour of the applicant which it may deem fit in the peculiar facts and circumstances of the case and costs of the applicant may also be awarded in favour of the applicant.

2. As an interim measure, the applicant also prayed that the respondents may be restrained from making/affecting the recovery from the applicant and the operation of the impugned order may be stayed.
3. The facts of the case, as pleaded by the learned Counsel for the applicant, Shri Hemender Goswami are as follows:
  - a. The applicant completed her B.Sc. Medical Technology (X-rays) degree course from the University College of Medical Sciences(UCMS), GTB Hospital, New Delhi in the year 1999. She joined PGIMER, Chandigarh, as a Junior Technician (X-rays) on adhoc basis in the year 2001. Her services were regularized as Junior Technician w.e.f. 31.03.2005.
  - b. The applicant applied for study leave under the applicable rules of the respondent institute, for pursuing higher studies/M.Sc. course in Medical Imaging Technology (Radiography). The applicant was sanctioned two years study leave from 26.07.2010 to 22.07.2012 by the competent authority vide orders dated 24.07.2010 for pursuing her M.Sc. degree course in Medical Imaging Technology (Radiography) from the University College of Medical Sciences (University of Delhi) and Guru Teg Bahadur Hospital, Delhi. The applicant was asked/required to execute a 3 years service bond before availing the study leave. The applicant executed the requisite bond dated 12.08.2010 which is appended as Annexure-A2.
  - c. The applicant passed 1<sup>st</sup> years M.Sc.(MIT) Radiography degree in the year 2011 and also got 1<sup>st</sup> position in the examination. Unfortunately, during the 2<sup>nd</sup> year of M.Sc. course, the applicant suffered serious health issues and

she had to be hospitalized in G.B.Pant Hospital, New Delhi and had to undergo major Brain Surgery in November, 2011. She remained hospitalized for about three months, and was advised complete rest from 18.11.2011 to 14.02.2012. Due to this illness, the applicant could not attend her classes regularly and was, therefore, not allowed to take her 2<sup>nd</sup> year examination of M.Sc. Part-II in July, 2012 due to lack of requisite attendance.

- d. As the period of two years of the leave granted to her for her higher study was going to expire, therefore the applicant joined back her duties in the respondent Institute on 23.07.2012. The applicant requested for permission to complete the lectures to make good the shortage of attendance so that she is able to complete her studies. Accordingly, she applied for 20 days Earned Leave/ LOKD(Leave of Kind Due) from 24.09.2012 to 13.10.2012 to complete her short attendance so as to appear in the examination of M.Sc. (MIT) final year. The applicant was granted the leave as requested by the institute so as to complete her short attendance.
- e. The applicant attended the classes during the sanctioned leave and completed her short lectures from 24.09.2012 to 13.10.2012 at University College of Medical Sciences (UCMS). She requested University authorities (University College of Medical Sciences) for permission to appear in the supplementary examination to be held during Nov-Dec., 2012. However, her request was turned down by the University College of Medical Sciences (UCMS) on the ground that there is no provision for supplementary

examination of M.Sc. (MIT) course. The applicant applied to the UCMS for allowing her to appear in the M.Sc. Part-II examination of the course to be held during 2013. However, the applicant was not informed about the examination nor the UCMS ever sent any intimation to the respondent PGIMER, from where she was a sponsored candidate, to spare her for the examination for 2013. Since the applicant had to join back her duties on completion of study leave, therefore, she had no intimation regarding examination like a regular student and nor was she issued roll number/allowed to appear in examination. She was, therefore, deprived of the chance to appear in the examination of M.Sc. Part-II held during the year 2013.

- f. The applicant then requested the UCMS to allow her to appear in the 2<sup>nd</sup>/final year examination of M.Sc. (MIT) degree/course to be held during the year 2014. The applicant appeared in the examination in 2014, but she could not pass the exam due to lack of concentration since she was facing problems on account of ill effects of major Brain surgery and prolonged gap/break which had occurred due to the facts and circumstances beyond her control.
- g. The applicant had made all efforts that she could and had taken full interest for completing the M.Sc. (MIT) degree course. She completed her thesis work, which had been duly approved and also attended the entire tenure/duration of course. She had made her sincere and honest efforts to appear and pass the 2<sup>nd</sup>/final year examination even at the cost of spending

her Earned Leave. The applicant submitted a representation to the UCMS authorities on 07.10.2015 requesting therein to allow her to appear in 2<sup>nd</sup> year (part-II) examination of the M.Sc. (MIT) course, to complete her studies, if permissible under Rules. However, despite repeated representations made by her in 2015, 2016 & 2017 to the UCMS to permit her to appear in 2<sup>nd</sup> year examination she did not get any response.

- h. The UCMS, finally, vide memo dated 24.01.2017, intimated that in a meeting held on 3.5.2016 of the Faculty of Medical Sciences, University of Delhi, it was decided that another chance to appear in M.Sc. (Radiology and Medical Technology) Examination cannot be given to the applicant as the total span period of the course has expired. A copy of this memo was also given by the UCMS to the respondent Institute (PGIMER) vide communication dated 10.01.2017.
- i. Subsequently, the Director, PGIMER, Chandigarh issued an order dated 01.04.2017 whereby an amount of Rs.12,21,785/- was ordered to be recovered from the applicant on the ground that she has failed to complete her studies for which she was granted the study leave while invoking the provisions of Rule 63 of CCS(Leave) Rules, 1972.
- j. The applicant moved a representation dated 24.04.2017 to the Director, PGIMER, Chandigarh explaining all the facts and circumstances due to which she could not complete her course and requesting therein to waive of the recovery from her, as the circumstances were beyond her control. After due deliberation and consideration, the PGIMER decided to refer the matter

to the President of respondent Institute (Hon'ble Minister of Health & Family Welfare) vide UO note dated 12.03.2018. The applicant had also submitted her formal appeal to the respondent No.3 on 8.12.2017 requesting to waive of the recovery and also requesting therein to grant her chance/opportunity to pursue the course through distance learning programmes being run by various Universities as many of her colleagues have done.

- k. The respondents, subsequently, vide order dated 07.10.2019 intimated that the appellate authority/Minister, Health & Family Welfare, vide letter dated 06.09.2019 has conveyed approval on decision of Standing Finance Committee to make recovery of Rs.6,19,184/- on account of study leave from the applicant after waiving of interest part amounting to Rs.4,83,185/- and LOKD amounting to Rs.1,19,416/- after adjusting against 91 days Earned Leave and 38 HPL/the leave of kind due.
- l. The applicant on 18.11.2019 filed an appeal/representation to respondent No.2 requesting therein to waive off the entire recovery. However, this appeal/representation was turned down by respondent No.2 vide his order dated 30.01.2020 wherein the order of recovery passed earlier on 07.10.2019 was reaffirmed. The applicant again moved representations on 31.07.2020 and 10.09.2020 but to no avail.
- m. The applicant has averred that the impugned order dated 07.10.2019 ordering recovery of Rs.6,19,184/- is illegal and not sustainable since there is no condition in the bond that if the applicant could not complete the

M.Sc. degree then the entire salary and other benefits could be recovered from the applicant.

- n. The applicant is governed by the provisions of the Central Civil Services (Leave) Rules, 1972 forming part of the Fundamental Rules and Supplementary Rules, Part III framed by the Constitution of India wherein there is no clear cut provision in the bond either expressly referring to Rule 63 or strictly imposing a condition that if a candidate fails to complete the course/study during the period of sanctioned leave, she will have to refund to the respondent-institute the total amount of leave, salary and other benefits availed of by her during the period of study leave. In this case, the applicant has not been able to complete her study due to peculiar and extraordinary circumstances, absolutely beyond her control. It is not a case where the applicant never wanted to complete her study and was only interested in enjoying the paid leave. She had passed the M.Sc. 1<sup>st</sup> year of her study in first class and got 1<sup>st</sup> position. She could not complete her degree on account of major brain surgery and hospitalisation for about 3 months. Hence, the impugned order is liable to be quashed even as per the provision 63(3) of CCS (Leave) Rules, 1972. The provisions of Rule 63(3) of CCS(Leave) Rules clearly stipulate that in peculiar circumstances of the case, the President was having ample powers to waive of the recovery in the light of peculiar and extraordinary circumstances beyond the control of the applicant which has led to the situation where applicant failed to complete her studies despite her whole hearted efforts.



- o. The applicant further cited an instance, where a similarly situated employee namely Mrs.Divya, had availed the Study Leave to pursue M.Sc. Radio Diagnosis & Imaging from 02.01.1999 to 31.12.2000. But she failed to complete her studies within the permissible period. The Institute did not proceed to make any recoveries from her. Rather, she was given another chance to complete her M.Sc. degree from PGIMER itself after a gap of 7 years i.e. from 31.07.2007 to 30.06.2009 after she had been granted extraordinary study leave for this purpose. Thus the respondent institute had treated the applicant in more discriminatory manner while ordering to effect recovery, thus making the action of the respondents violative of Articles 14 & 16 of the Constitution of India.

4. Shri Vikrant Sharma, learned counsel for the respondents in his reply has averred as follows:

- a. The action of the respondents is perfectly legal and valid as per existing Rules and Regulations. The applicant had been sanctioned study leave for two years w.e.f. 26.07.2010 to 25.07.2012. The applicant was directed to submit a bond. As per the condition of the said bond, it has clearly been mentioned and undertaken by her that in case she failed to complete the course of study or at any time within a period of five years after her return to duty, she shall forthwith pay to the Institute on demand, the said sum of Rs.7,16,084/- together with interest hereon from the date of demand of Government rates for the time being in force on government loans.

b. The applicant joined back the services after completion of study leave period on 23.07.2012. The Institute vide its letter dated 28.07.2012 directed the applicant to submit the course completion certificate. Instead the applicant submitted a request for granting 20 days leave to complete her short attendance to appear in the final year examination. Thereafter she again kept on requesting the authorities for grant of leave to complete her attendance on the pretext of her ill health. The request was considered sympathetically and leave as requested was sanctioned to her. Thereafter, the Institute received a representation dated 23.07.2013 stating therein that the applicant has not received any date sheet/roll no. from the University and came to know about the examination only on 15.07.2013, therefore she could not appear in the M.Sc. final examination. This clearly shows the conduct of the applicant, lack of devotion as a Government servant and casual approach towards her academics. In the said letter, she had also requested to permit her to appear in the examination next year in 2014. She was accordingly permitted to appear next year in 2014, vide Institute letter dated 30.08.2013. She appeared in the examination in the year 2014 but failed to clear the same. Finally after lot of correspondences between the applicant and the concerned University College of Medical Sciences, the said college refused to grant further permission to her, to appear in the examination, since according to them, it was not permissible as per their University rules. This clearly shows that the applicant was unable to complete the course due to her own act and conduct. She could not

appear in the 2013 examination due to her own fault. Thereafter, she appeared, but could not pass the examination in 2014 despite the opportunity granted by the Institute. The applicant had also applied for and had been granted maternity leave and child care leave from 01.01.2014 to 19.01.2015. The above facts, show that she was not very serious to complete her studies which was required as per the Rules. The applicant was given a show cause notice on 08.12.2015 vide which she was directed to intimate whether she would be appearing in the M.Sc. examination or not within a period of 14 days from the receipt of the said letter, failing which it would be presumed that she has nothing to say in this regard and action can be taken as per terms and conditions of the study leave granted to her. The applicant failed to give any reasonable explanation/reply to this show cause notice. Finally, vide office order dated 01.04.2017, the recovery of Rs.12,21,785 was initiated, as per Rule 63 of the CCS(leave) Rules, 1972.

- c. The applicant kept on making representations against the recovery order and thereafter, as per the direction of the President of the Institute, the matter was referred to the Standing Finance Committee. The Committee, after examining the matter thoroughly, and taking a lenient view, recommended as under:

*“The Standing Finance Committee recommended to send the proposal as a special case to the Ministry of Health & Family Welfare for further examination and decision in the matter. It was principally agreed to waive off the interest and grant/adjust the leave of kind due”*

- d. Thereafter, this recommendation was finally approved by the Ministry and order dated 07.10.2019 was issued with the direction to recover a sum of Rs.6,19,416/- after waiving off interest part amounting to Rs.4,83,185/- and LOKD amounting to Rs.1,19,416/- adjusted against 91 days Earned Leave and 38 days Half Pay Leave. These indicate that the final order has been passed after considering all the aspects and in fact a lenient view was taken by the Competent Authority by reducing the amount from Rs.12,21,785/- to Rs.6,19,184/-. The applicant failed to show any special/peculiar circumstances for waiver of the whole amount as requested by her. As such the action of the answering respondents is perfectly legal and valid and the same is as per Rules and Regulations.
- e. The case of Mrs.Divya referred to by the applicant in her OA is totally different from the case of the applicant and cannot be compared with each other. Mrs.Divya pursued her M.Sc. course from the PGIMER itself, whereas the applicant pursued her course of study from a different University (University of Delhi) which is not under the control of the PGIMER. Mrs.Divya had availed the Study leave to pursue M.Sc. Radiodiagnosis & Imaging from 02.01.1999 to 31.12.2000 in this Institute. But she failed to complete her study within the permissible period. The Institute granted Mrs.Divya another chance to complete the M.Sc. degree and for this purpose, she was granted Extra Ordinary Leave (without pay) w.e.f. 31.07.2007 to 30.06.2009. On the other hand, the applicant has been pursuing the course from University Colleges of Medical Sciences. The faculty of Medical Sciences, University of Delhi

has decided that the applicant will not be given another chance to appear in M.Sc. (Radiography & Medical Technology) Examination, since the span period of the course has expired vide letter dated 24.01.2016. As such the order of recovery from the applicant does not amount to discrimination.

5. After going through the pleadings of the respective counsels and hearing the arguments put forth by them during the course of hearing of the case, the following is observed:

- a. A careful perusal of the bond as agreed by the applicant and the relevant condition in the bond relating to in the event of failing to complete the course of study, reads as follows:

*“5. Now the condition of the above written obligation is that in the event of my failing to resume duty, resigning or retiring from service or otherwise quitting service without returning to duty after the expiry of termination of the period of study leave or failing to complete the course of study or at any time within a period of Five years after my return to duty. I shall forthwith pay to the Institute or may be directed by the Institute, on demand the said sum of Rs.7,16,084/- (Seven lakh sixteen thousand & eighty four only) together with interest hereon from the date of demand of Government rates for the time being in force on government loans.”*

- b. The applicant had also given an affidavit relating to the bond on 01.11.2010 which is as follows:

*“That I herewith execute a service bond for the recovery of Rs.7,16,084/- (Seven lakh sixteen thousand & eighty four only) of amount of leave salary, study allowance, cost of fees and travelling and other expenses to be incurred by the Institute, if any together with interest at rate of 12% per annum from the date of demand and giving undertaking therein that I will serve the Institute for a period of 5 years after completion of the*

*course of pay to the Institute the said amount in default thereto together with interest.”*

- c. The relevant provisions for the Central Civil Service(Leave) Rules, 1972 concerning study leave and rules governing resignation or retirement after study leave or non-completion of the course of study, are as follows:

***63. Resignation or retirement after study leave or non-completion of the course of study:***

*(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 Government, 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-*

*(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.*

6. A careful perusal of the bond executed by the applicant, as well as the provisions governing the study leave in the event of non-completion of course of study, clearly specify that in the event of non-completion of course of study, the Government servant shall be required to refund the actual amount of leave salary, Study Allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India together with interest thereon at rates for the time being in force on Government loans from the date of demand. There is a provision which allows the President, 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.
7. The provision of study rule for Government Servants has a laudable objective to achieve. Study leave with salary and allowances etc. is allowed so as to enable the Government servant to enhance his/her skills, at the expense of the Institute. This is ultimately for the benefit of the Institute, the person concerned as well the patients being served by them. It is expected from the person concerned that once

he/she comes back and joins the Institute, the patients concerned will be benefited by the skill/knowledge and expertise acquired by the person, A candidate who avails of leave, but is not able to complete the course successfully is doing a disservice to the Institute as well as to the patients of the Institute. Care has to be taken to ensure that public money is spent for a public purpose for the mutual benefit of all concerned.

8. Admittedly, there are mitigating circumstances in this case, caused due to the unfortunate illness suffered by the applicant in 2012. She had accordingly sought leave of the Competent Authority to grant her some more time to complete the course. This was also granted to her. However, despite grant of additional time, she was not able to successfully complete her course of study. No cogent reason has been given by her to explain her non-appearance in the examination in 2013. This is all the more evident, since she had taken earned leave to complete her short attendance in 2012 only. As per her own statement, the lapse of not appearing in 2013 examination was due to the fact that she failed to get the due date of the examination intimated to her. This however, indicates an extremely casual approach by the applicant towards her course. She did appear in the examination in 2014 but could not pass the same. Finally, the University authorities conducting the course, intimated to her, as well as the PGIMER, that she cannot be granted any further attempt to clear the examination since the span of the course has expired.



9. Keeping the above facts in view, the Competent Authority cannot be faulted for subsequently initiating recovery proceedings against her in 2017 on the grounds of her failure to complete the course despite being given sufficient opportunity.
10. The applicant has represented that she may be given a chance to obtain the degree through distance education mode from some other University since now the Delhi University has refused permission to her to complete the course due to the prolonged delay and the fact that the time span of the course is over. This has been vehemently opposed by the counsel for the respondents, stating that the study leave was allowed to the applicant so as to enable her to upgrade her skills/knowledge by getting the degree on a full time basis from a reputed University/Institute. This purpose will not be achieved by her getting a degree through distance education mode probably from a not so reputed institution.
11. The case of the applicant cannot be considered to be similar to the case of Mrs. Divya quoted by her, since in that case, according to the respondents, the person finally completed her course from the Institute, after taking leave (without pay) of two years.
12. The case of the applicant has been considered sympathetically by the competent authority (President of the Institute), and keeping in view the peculiar circumstances of the case, the liability has been substantially reduced from Rs.12,21,785/- to Rs.6,19,184/- after waiving off the interest portion (Rs. 4,83,185/-) and further adjusting the leave of kind due (LOKD) (Rs. 1,19,416/-).
13. In view of the discussions made in the foregoing paragraphs, we do not find any merit in the present Original Application and the same deserves to be dismissed.

14. Accordingly, the Original Application is hereby dismissed. However, the respondents shall be at liberty to consider the applicant's request and effect recovery of the amount due from the applicant in instalments.

15. There shall be no orders so as to costs.

**(RAKESH KUMAR GUPTA)**  
**MEMBER (A)**

**(SURESH KUMAR MONGA)**  
**MEMBER (J)**

/ps/