

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 732/1987  
TAX No.

199

DATE OF DECISION 25.2.1991

T.S.Rajan

Petitioner

Mr.D.N.Goburdhan

Advocate for the Petitioner(s)

Versus

Indian Agricultural

Research Institute, N.Delhi

Respondent

Mr.A.K.Sikri

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. N.V.Krishnan, Administrative Member

The Hon'ble Mr. Maharaj Din, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

ORDER

(N.V.Krishnan, Admve. Member)

The applicant was employed as a Laboratory Technician at the Nuclear Research Laboratory, Indian Agricultural (IARI) Research Institute, Pusa, New Delhi under the first respondent. His grievance in this application is that he has not been paid the salary due to him for the period he was on study leave and that, further, he has not been paid any salary for the period subsequent to 24.6.81 after resuming duties on return from study leave.

2. The brief facts which have given rise to these grievances can be stated as follows:

2.1 Admittedly, the applicant was sanctioned study leave from 1.9.78 to 30.6.80 for pursuing a course of study in MSc (Physics) in the Meerut University, Meerut, by the first

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respondent's order dated 13th December 1978 at Annexure-B. The order states that during the period of study leave the official is entitled to study leave pay as admissible under the rules.

2.2 The endorsement to that order directs the Project Director, Nuclear Research Laboratory, under whom the applicant was working, to release the study leave pay only after the applicant produced a surety bond in terms of a circular dated 6.3.78 which has been exhibited by the respondents as Annexure-R3.

2.3 The subsequent events thereafter are narrated in para 3 and 4 of the application which are reproduced below:

"3. That the applicant thereafter joined Meerut University. As the applicant desired to continue his studies further in Madurai, Madras State, the applicant made a representation on 29.7.78 to the respondent respondent requesting for extension of leave on loss of pay. True copy of the said representation is annexed hereto and marked as Annexure C. The said extension was refused by the respondent, vide Memo No.18-14/78-OMV dated 24.6.81 (Ann.D).

4. That the applicant joined duty with the respondent immediately, but the respondent has been refusing to make the applicant present for attendance and is further intimidating the applicant inspite of his regular attendance."

2.4 The applicant contends in the rejoinder that he has submitted the required surety bond as early as around December 1978 to Dr. B.R.Murthy, Project Director of the Nuclear Research Laboratory. Yet, his salary for the study leave period has not been disbursed.

2.5 When the applicant's request for extension of study leave was refused by the Annexure-D letter dated 24.6.81, the applicant claims that he joined

duty with the respondents immediately, though the respondent has refused to either mark his presence or to disburse his pay and allowances.

2.6 In regard to the second grievance, it is contended that by an order dated 5.2.82 an enquiry was instituted against him and he was removed from service. This order was set aside by the appellate order dated 29th August, 1984 (Annexure-E). It was directed therein that the departmental enquiry be conducted *denovo*.

2.7 In pursuance of this order the applicant joined duty on 4.12.84 and he claims that he has been reporting for duty regularly till date. Subsequently, in pursuance of the aforesaid order, a *denovo* inquiry was initiated by the issue of a fresh memorandum of charges dated 28.5.85 (Annexure-F series). Two charges were made against the applicant, both based on the allegation that after resuming his duties on 4.12.84 he wilfully and unauthorisedly remained absent continuously from 6.12.84.

2.8 In respect of these charges, the Enquiry Officer submitted a report. This was considered by the Director who found that the prescribed procedure has not been followed and therefore by his order dated 3.5.86 (Ann. F series) he remitted the case for further enquiry.

2.9 The applicant does not state as to what happened to this fresh enquiry. His only contention is that he has been prevented from attending office due to animosity of the Project Director and he has not been paid salary for the entire period he was on duty.

3. It is in these circumstances that he has claimed the following reliefs in this application:

- i) That the applicant should be paid study leave salary under FR 56, CCS (Leave Rules), 1972.
- ii) That the applicant should be paid his salary and any other dues from 24.6.81 till date alongwith interest.
- iii) Direct the respondent to permit the applicant to discharge his duties as an Analyst in the Nuclear Research Laboratory without any interference or obstruction by the officers and agents of the respondent Institute.
- iv) Direct the respondent to issue medical, identity and library cards to the applicant forthwith.
- v) Direct the respondent to forward articles sent by the applicant for publication in the leading scientific journals for their consideration.
- vi) Direct the respondent not to do any act to disturb, obstruct, interfere in the discharge of duties by the applicant.
- vii) Direct the respondent not to do any act to harass or intimidate the applicant.

4. The respondents have filed a reply denying the allegations and they contend that the applicant is not entitled to any relief. Their stand is as follows:

4.1 It is admitted that by the Annexure-B order, study leave for the period from 1.9.78 to 30.6.80 was granted to the applicant. It was also stipulated in that order itself that the study leave salary will be released only on production of a surety bond in terms of the circular dated 6th March 1978 (Ann.R3).

4.2 It is contended that the applicant did not execute such a surety bond. He was therefore informed

by letter dated 9.5.79 (Ann.R2), sent by registered post/AD to his address in the Meerut University where he was prosecuting higher studies, that as he had not executed the bond he has not been paid the monthly salary. He was advised to visit the office and execute the bond and take his salary, failing which the amount of salary drawn would have to be deposited back in the Treasury.

4.3 No response was received from the applicant to this letter.

4.4 It was submitted that in terms of the surety bond the applicant would have to resume duty on the expiry of the study leave and would have to normally serve the Institution for a period of 3 years, failing which the amount spent by the Institution on the applicant by grant of study leave salary would be recovered from him. In the present case, the applicant did not report for duty on the expiry of leave. This will be clear from the Annexure-R5 letter dated 30th November 1981 of the applicant addressed to the respondent in which he admits that he had not joined duties, perhaps, due to the fact that he had not been given the protection he had sought for or the transfer requested for by him had not been considered. He also adds therein that he is prepared to render service in the IARI in any other wings. He concludes the letter stating that if this was not acceptable to IARI, they should treat the letter as his resignation and relieve him from duties.

4.5 It is also admitted that disciplinary proceedings were initiated as mentioned in the application. However, it is contended that even before the date on which this application was filed, the applicant has been removed from services with immediate effect by an order dated 3rd February 1987, on the basis of two charges framed against him on 28.5.85 and 3.5.86 (Ann.R1). The first charge is that after resuming duties on 4.12.84, the applicant attended duties only for two days and has remained absent thereafter. The second charge is that the applicant proceeded on study leave for getting MSc degree from Meerut University and he has thereafter not joined duties and has continued to remain absent unauthorisedly.

4.6 It is therefore contended that due to the applicant's own wilful disobedience of the standing instructions and orders, he has forfeited the leave salary for the study leave period and in view of the Ann.R1 order, which has not been challenged in appeal, the applicant is not entitled to any wages from 24.6.81 because a charge of wilful absence from duty ever since he proceeded on study leave has been proved against him and therefore he is not entitled to any wages for periods after the expiry of his study leave.

5. We have carefully perused the records and heard the learned counsel for both the parties. The applicant's contention in his rejoinder that he executed the bond in December 1978 itself is not at all convincing because he did not respond to the Ann.R2 registered letter dated 9.5.79 which alleged that he has not executed the bond. The applicant's counsel also admitted that though no salary was paid

to him for the study leave period he had not taken any action in any court of law to press for his payment. Normally, if salary is not disbursed for two years, one would have taken stringent steps against the respondents to enforce payment. The applicant's conduct shows that he was not on strong grounds to claim salary, as he knew that he had not complied with the requirement to file a surety bond.

6. There is another aspect which totally belies the claims of the applicant. A perusal of para 3 of his application which has been reproduced above in para 2.3 will clearly show that after completing his course at Meerut University, he did not resume duties at Delhi as is required by rules and instructions. Instead, he proceeded to South to prosecute further studies at Madurai. By a representation, he sought extension of leave on loss of pay for this purpose. The representation sent from Karaikudi, Madras State, in this behalf (Ann.C) is ~~not~~ dated 29.7.81 and not 29.7.78 as mentioned in para 3 of the application. Obviously, the Annexure-D letter dated 24.6.81 of the respondent refusing extension of leave was issued before the Annexure-C representation was made. Therefore, one cannot believe the applicant, when he states in para 4 that he joined duty immediately after the letter dated 26.4.81 (Annexure-D) was received, because on 29.7.81 he was still in Karaikudi in Madras State vide Annexure-C letter. It is thus clear that the applicant

(b)

had violated an important condition for the grant of study leave and the payment of study leave salary by not reporting for duty on the expiry of study leave.

7. The study leave is a concession granted to government servants, which is something like a paid holiday during which an employee does not render any service to his employer, but is engaged in studies to improve his qualification so as to be of more use to his employer. In consideration of this concession, the employer legitimately expects the employee to report for duty promptly on the expiry of leave and serve the employer for a period of 3 years as in the present case. That explains why a surety bond is required to be executed. We see from the facts of the case that while the applicant availed himself of the facility of study leave he did not discharge his liability towards the institution. He did not either execute the surety bond or resume duty after expiry of leave. This is clear from the Annexure-R1 proceedings removing him from service which remain unchallenged. Therein, one charge is that ever since he proceeded on study leave he has not joined his duties and has continued to be absent unauthorisedly except for 2 days on 4.12.84 and 5.12.84. We are therefore of the view that the respondent was fully justified in refusing to pay him the study leave salary.

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8. The other reliefs prayed for in this application have no life as by the Annexure-R1 order, which is not impugned in this application, the applicant has been removed from service on one ground that he was absent ever since he proceeded on leave except for being on duty on 4.12.84 and 5.12.84. Therefore, the applicant is not entitled to any of these other reliefs.

9. Therefore, this application deserves to be dismissed. Before we pass that order we would like to advert to two points.

10. Firstly, the applicant has admittedly worked for two days. In fairness to him the respondents should have paid salary for these two days on the first of January 1985 itself. We are not clear whether this salary has been paid. If it has not been paid, we are of the view that this salary should be paid to him along with interest at 12% considering the long delay.

11. Secondly, the learned counsel of the applicant was not quite sure whether the applicant has separately filed any appeal before the competent authority against the Annexure-R1 order dated 3rd February 1987 removing him from service. If any such appeal has been filed, the respondent's rights in regard to that appeal will have to be protected.

12. Therefore, while we dismiss this application, we direct the respondents to pay within 2 months from the date of receipt of this order the salary for 4.12.84 and 5.12.84--if not already paid--along with

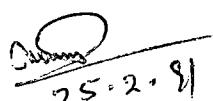
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interest at 12% per annum computed from 1.1.85 till the 1st of the month in which payment is made by remitting the amount by money order to the applicant to the address given by him in this application unless the applicant desires it to be sent to any other address.

13. We also make it clear that in case the applicant has filed an appeal against the Annexure-R1 order before the competent authority, this judgement shall not stand in the way of that authority and he will be at liberty to dispose of that appeal in accordance with law.

14. The application is disposed of as above. There will be no order as to costs.

  
25.2.91  
(Maharaj Din)

Member (Judicial)

  
25.2.91  
(N.V. Krishnan)  
Administrative Member

25.2.1991