

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1661/2004

New Delhi, this the 5th day of May, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.K.Misra, Member (A)

Umesh Varma
Director (CP&PR) (Retired)
Department of Telecommunications
Ministry of Information Technology &
Communications
R/o 11270, Verma Building
Varma Lane, New Rohtak Road
New Delhi – 110 005. Applicant

(By Advocate: Sh. S.S.Ray with Sh. S.N.Anand)

Versus

1. Union of India through Secretary
Department of Telecommunications
Ministry of Information Technology and
Communications
Sanchar Bhawan
20, Ashoka Road
New Delhi – 110 001.
2. The Director
National Council for Educational Research and
Training
Aurobindo Marg
New Delhi. Respondents

**(By Advocate: Sh.K. R. Sachdeva with Sh. R.K.Singh and Ms.
Deepa Ray)**

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (Umesh Varma) retired as Director (CP&PR). He superannuated on 30.11.1994. By virtue of the present application, he seeks setting aside and quashing of the order of 12.6.2003 to the extent it denies the applicant to count

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past service rendered by him in NCERT for pensionary benefits. He seeks that his service from 15.10.1965 to 9.10.1974 be treated as qualifying service for the purpose and consequential benefits should be given with interest.

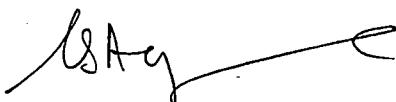
2. The impugned order dated 12.6.2003 reads as under:

"I am directed to refer to representation on the above subject and to say that the same was considered but it is regretted that the request cannot be acceded to on the following grounds:

It has been intimated that you were appointed as temporary Junior Artist in NCERT against a short term vacancy. During the period you were working in NCERT, you had proceeded on training abroad on your volition even as the leave sought for 5 years was neither sanctioned nor admissible to you under the rules of Council. Further, since the service rendered by you in NCERT was on short term basis, the same will not qualify for pension purposes.

As regards, the question of fixation of pay under CCS (Revised) Pay Rules, 1997, it is stated that since your appointment to the post on deputation basis was not extended beyond 30.6.95, the benefit of fixation of pay in the post could not be given. Therefore, your pay was fixed in the pay scale of Rs.10,000-15,200/- w.e.f. 1.1.96."

3. Some of the relevant facts, which resulted in filing of the application, are that while working in NCERT the applicant availed French Scholarship for higher studies in Graphic Art which was, according to the applicant, certified to be in the interest of NCERT. The applicant applied for the Scholarship through proper channel. The Government of India, Ministry of Education had duly sponsored the applicant for Scholarship. On 27.5.1968, the French Government had asked the NCERT



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to relieve the applicant. The applicant applied for Extraordinary Leave for the purposes of his studies in France. His contention is that the Ministry of Education vide their letter of 11.6.1969 sought his willingness to accept the revised programme of French Scholarship for Specialized Training in Graphic Art. The applicant had conveyed his acceptance for the Scholarship. On 16.6.1969, the applicant reminded the Secretary, NCERT for sanction of five years study leave. He was relieved on 24.6.1969. After reaching Paris, he again applied for Extraordinary Leave. His plea is that on 26.11.1969, he received a letter from the First Secretary (inf.), Indian Embassy in (Paris) France informing him that the NCERT has acceded to his request and the Council is interested in the studies being pursued by him. After coming back to India, on 1.4.1974, the applicant had requested for suitable posting in the NCERT. He did not get any response. Thereafter, he served in different other capacities. His precise grievance is that leave thus has been sanctioned and resultantly he is entitled to count the said period towards his service and consequential benefits.

4. The application has been contested.

5. On behalf of Respondent No.1, it was pointed that Respondent No.2 is basically contesting the application and, therefore, Respondent No.1 is not interested in submitting a separate reply. In the reply filed by Respondent No.2, it has been pointed that under CCS (Leave) Rules, the requirements

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to be satisfied were not satisfied by the applicant. Respondents plead that study leave cannot be granted under Rule 50 of CCS (Leave) Rules. It envisages three conditions, namely, (1) It should be in the exigency of public service and the study or training is of definite advantage to the Government from the point of public interest; (2) The study is connected with the post and is required to enhance the skill of the employee; (3) Employee must have completed his probation and rendered not less than five years regular continuous service.

6. The applicant had not satisfied any of the conditions. He was not a permanent employee of NCERT. He was only appointed temporarily against the lien vacancy of one Mr. Sanan. There was no exigency in the NCERT for the applicant to undergo professional or specialized training and lastly the applicant had not completed five years continuous regular service. It has further been pleaded that the applicant was temporary employee. He was appointed as Junior Artist, Department of Audio Visual Education against the short-term and lien vacancy arising due to transfer on deputation basis of Mr. Sanan. On 24.6.1969, the Council relieved him from services. There was no order granting sanction of study leave by the NCERT. The leave had never been sanctioned. The applicant was informed on 10.7.1969 that leave has not been sanctioned and the applicant was aware of it. Therefore, his claim that leave had been sanctioned is without basis. So far

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as reliance placed on the communication of 26.11.1969 is concerned, the respondents deny the correctness of the same. The applicant filed a fresh affidavit on 12.4.2005 stating that he has been able to trace two documents of 2.11.1965 and 30.5.1969 issued by Respondent No.2 and one letter of 3.4.1970 from Dilip Bakshi, Head of the Graphic Unit to the applicant's Professor in Paris. The copies of the said documents have been filed so as to show that five years leave has been sanctioned to him.

7. We have heard the parties' counsel and have seen the relevant record.

8. The short question which craves for answer is as to whether the applicant had been granted the leave or not?

9. Annexure A-4 is the letter from the Section Officer of the Ministry of Education addressed to the applicant pertaining to the French Government Scholarships. Paragraphs 5 and 6 of the same read:

“5. It may be added that the Government of India will not be responsible for any expenditure incurred or inconvenience undergone by you as a result of this provisional intimation communicated to you.

6. With a view to equipping yourself with information regarding Indian History, Culture, Education and recent developments in the country, you are advised to go through as many of the books as possible, mentioned in the enclosed list before your departure for France if finally approved.”

10. On 11.6.1969, another letter was addressed to him from the Ministry of Education and Youth Services on the

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same lines requesting the applicant to intimate his willingness to accept the revised programme. The said letter is also being reproduced for the sake of facility:

"I am directed to refer to your letter dated 2nd June, 1969, on the above subject and to say that this Ministry's letter No.F.5-71/68-ESI, dated 26.5.1969 was written on the basis of the advice received from the French Embassy, New Delhi. You are requested to intimate your willingness to accept the revised programme to this Ministry immediately. A copy of the Information Circular regarding the Specialised Training in Art Subjects Scheme is enclosed."

11. On 13.6.1969, he was informed further by the National Institute of Education that in case the leave is not granted, the forwarding of application would not be a valid ground for grant of the leave. Thereafter, on 24.6.1969, an Officer Order was issued that the applicant has been awarded a French Scholarship for higher studies and he has been relieved from his duties on 24.6.1969(FN). The said order reads:

OFFICE ORDER NO.217

Shri Umesh B. L. Verma, Artist (Jr.) who has been awarded a French Scholarship for higher studies, is hereby relieved of his duties in this Department w.e.f. 24.6.69 (F.N.) as desired by the Ministry of Education vide their letter No.F.5-72/68-ESI dated 20.6.69."

12. Strong reliance in fact is being placed on the letter of 26.11.1969 from the First Secretary (Infr.) of the Indian Embassy in Paris, which reads as under:

"Dear Shri Verma,

Your representation dated 5th November, 1969 addressed to Shri Shib K.



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Mitra, Joint Director, National Institute of Education, NCERT, New Delhi-16 had been forwarded to the Council.

We have just received Government's reply to your application for the grant of extraordinary leave which is as follows:

"The case has been reconsidered by the Joint Director and the National Council of Research and Training. They have acceded to his request interalia the Council is interested in the studies being pursued by Shri Umesh B.L.Verma for which he has applied extraordinary leave for 5 years".

13. In addition to that, it was contended that on 2.9.1987, the sequence of the applicant's services have been explained by the Divisional Engineer (Admn.), which are as under: "Subject: Your correspondence for rectification of dates of joining in Service Book.

With reference to your letter dated 27th May, 1985 it is intimated that the date of your joining ALTTC now stands corrected as 9th December, 1980. Your sequence of service in chronological order stands as follows:

August, 1963 to October, 1965	Visual Artist, TV Centre, Akashwani Bhavan, New Delhi.
October, 1965 to June, 1969	Junior Lecturer, National Institute of Audio Visual Education, NCERT (now Deptt. of Teaching Aids, NCERT, New Delhi).
June, 1969 to October, 1974	For Post Graduate Studies on Govt. of India Scholarship under French Govt. Scholarship Scheme in
October, 1974 to December, 1980	Senior Artist, Department of Advertising and Visual Publicity, Ministry of I & B,

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	PTI Building, New Delhi.
December, 1980 till date	Dy. Director (Media Support), ALTTC, Ghaziabad. Stands absorbed permanently in DOT on 4 th July, 1986 vide No.372- 1/86-STG-III and posted to ALTTC, Ghaziabad.

14. On the contrary, the respondents strongly relied on the fact that leave of the applicant had been rejected on 10.7.1969, which is a letter on behalf of the Registrar. The applicant was aware of it. It reads:

"Reference Department of Teaching
Aids letter No.F.14-8/65-Admn/4177 dated
the 18th June, 1969 on the subject cited
above.

Under the rules, the extra-ordinary leave for 2 years is granted to persons who are in permanent employ and in the cases where the undertaking of advanced studies is in the interest of Department concerned. Since Shri Umesh B.L.Verma was working against a post on which another person, i.e., Shri R.P.Sanon held a lien and the requisite certificate that the undertaking of advanced studies is in the interest of the Council, cannot be given in this case by the competent authority, it is regretted that Extra-ordinary leave for 2 years cannot be granted to Shri Umesh B.L.Verma. Shri Verma may be informed accordingly."

15. Admittedly, the said letter had been received by the

applicant as is apparent from his document of 05.11.1969 (Annexure A-15) in which he acknowledged the receipt of the letter of 10.7.1969.

16. On behalf of the applicant, reliance was being placed on the certificate/letter of the Divisional Engineer (Admn.) addressed to the applicant, dated 2.9.1987. On the strength of the same, it was being contended that it recognized that

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the applicant had been granted the leave with which we are presently concerned. Perusal of the said letter clearly shows that pertaining to the period June 1969 to October 1974, it was recorded that the applicant was pursuing the Post Graduate Studies on Government of India Scholarship under French Government Scholarship Scheme in France. It does not mean that leave as such had been sanctioned.

17. Strong reliance in any case has been placed on the letter dated 26.11.1969, which we have reproduced above. On our query as to if he could produce the original letter, the answer given was vague. The learned counsel informed us that he will have to look into the old record. We find that the said contention necessarily must be repelled for the reason that the applicant had got a copy of the same prepared but did not have courage to produce the original. It makes the document by itself suspicious. This is for the added reason that on 10.7.1969, the leave application of the applicant had been rejected and the applicant in his communication of 5.11.1969 had admitted this fact

18. These facts clearly shows that the applicant's leave had been rejected on the ground that Extra Ordinarily Leave is only given to persons who are in permanent employment while the applicant was working against the post of another person and that the respondents were not willing to give certificate that it was in the interest of the Council.

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19. There was no reason how the same could be reconsidered or the rigours of Rule 50 of CCS (Leave) Rules could be given go-by subsequently.

20. In fact, Respondent No.2 has made available to us the departmental file and the letters so much relied upon find no mention therein. The sequence of events to which we have referred to above clearly indicate that leave of the applicant had never been sanctioned.

21. So far as the additional documents that have been placed by the applicant vide the affidavit of 12.4.2005 are concerned, it was rightly pointed by the learned counsel for Respondent No.2 that letter particularly of 3.4.1970 on the basis of which it is claimed that leave had been sanctioned, has been typed on an Electronic Typewriting Machine which had not even come into vogue in the year 1970. Therefore, respondents' counsel urged that this cannot be taken to be a genuine document. This is an important fact, which cannot be ignored.

22. For these reasons, it must be taken that the applicant cannot be held to have been sanctioned any Extra Ordinary Leave as claimed.

23. Resultantly, the Original Application must fail and is dismissed.


(M.K. Misra)
Member (A)


(V.S. Aggarwal)
Chairman