

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. 61/528/2020



Pronounced on: This the 24th day of September 2021

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)**

Mr. Javed Iqbal, age 42 years, S/o Ghulam Rasool, R/o Village Fatehpur, P.O. Fatehpur, Tehsil and District Rajouri

.....Applicant

(Advocate: Mr. Abhinav Sharma, Sr. Advocate assisted by Ms. Saba Atiq)

Versus

1. Union Territory of J&K, Secretary to Govt. Health and Medical Education Department, Civil Secretariat, Srinagar/Jammu.
2. Director, Health Services, Jammu.

.....Respondents

(Advocate: Mr. Rajesh Thappa, learned D.A.G.)

(ORDER)

(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J)

1. Applicant Dr. Javed Iqbal has filed the present O.A. seeking the following reliefs:-

“(a) allow the instant original application;
(b) quash the Communication bearing No. HD(Gaz)Gen-116/2014 dated 16.01.2019 to the extent it grant approval of the administrative department to settle the period of the applicant w.e.f., 26.06.2014 to 25.06.2017 as leave of

whatever kind due except study leave strictly as per the leave account of the applicant.



- (c) quash Communication bearing No. HD/GAZ/Gen-116/20 dated 18.11.2019 to the extent it directs that the remaining period of shortfall, if any, of the applicant after treating the period w.e.f., 26.06.2014 to 25.06.2017 as leave of whatever, kind except study leave, as dies-non and further, it directs the applicant not to leave his place of posting for any occasion in future;
- (d) direct the respondents to treat the period of commencing from 26.06.2014 to 25.06.2017 as on deputation;
- (e) direct the respondents to grant all service benefits to the applicant to which the applicant is entitled to for the period commencing from 26.06.2014 to 25.06.2017 after treating the said period as on deputation.
- (f) Any other relief which the Hon'ble Tribunal may consider just and fair in the facts and circumstances of the case.”

2. Case of applicant is that on being given the ‘No Objection’ by Under Secretary to Government vide letter dated 24.06.2014 and on being relieved by Director Health Services, Jammu vide order dated 24.06.2014, applicant proceeded to join three years DNB course at LRS Institute of Respiratory Medicine, New Delhi. On completion of the course, applicant vide application dated 27.12.2017 to respondent No. 2 requested that period three years of course be treated as study leave. On respondent No.1 issuing order that to settle the period of applicant, the



course period be treated as leave of whatever kind due except study leave, as per leave account of applicant. Whereas, applicant informed respondent No. 1 and 2 that leave of three years was not due to him as he was appointed in the year 2010.

3. It is the further case of applicant that respondent No. 1 vide impugned letter dated 16.01.2019 informed respondent No. 2 to settle the course period of applicant as leave whatever kind due except study leave, as per, the leave account of applicant and vide impugned letter dated 18.11.2019, respondent no. 1 informed respondent no. 2 about settlement of the course period and further directed that remaining period of short fall, be treated as Dies Non. Further the applicant be warned not to leave his place of posting for any occasion in future un-authorizedly. Applicant has challenged the aforementioned impugned letters/orders.
4. In the objections filed by the respondents, the factual position of the case as pleaded in the O.A. has not been rebutted. It has been averred that in a similarly situated situation, the issue has been reconsidered, it has been found that Article 44-F has been misinterpreted for the vested interests of Government employees as it is specifically for training courses which are departmentally obligatory for Government Servants and not for availing higher study courses by the Government Employees for their own benefit on pretext of training courses and therefore, the present case of applicant has been rightly settled by the Administration and the O.A. being meritless be dismissed.



5. Learned Counsel for applicant says that the warning giving in the impugned letter/order is unwarranted. Applicant joined the course after being given a 'No Objection' by respondent No. 1 and being relieved by respondents No. 2. This contention of applicant is absolutely correct and to be accepted. There was no occasion for the respondents to give the warning which is uncalled for. The warning deserves to be struck off. Respondents would issue the necessary orders to correct the impugned letters/orders and strike off the warning.
6. It has been further argued by learned counsel for applicant and rightly so, that direction to treat short fall as Dies-Non has been taken in violation of principles of natural justice since the applicant was not given an opportunity of being heard before this decision was taken by the respondents and placed reliance upon order dated 12.05.2009 passed by the Hon'ble High Court of J&K in SWP No. 2785 of 2001 titled Ashok Kumar v/s State.
7. In case of Ashok Umar (supra), the Hon'ble High Court held that:
 - “9. Undoubtedly, treating the period of absence as 'dies-non' is not a punishment under Civil Service Regulation, but it has the effect of taking away the vested rights of a person. That is to say the period will not be counted towards his service, both for pensionary and monetary benefits. Before taking away any right which vests in a person, the principles of natural justice are required to be followed. I say so because right to pay has been held to be a property under Article 19 of the Constitution and the same cannot be denied to the petitioner unless he is heard.
 10. Even Article 108-D clearly indicates that before taking any decision in respect of any amount which is to be paid to the



petitioner for the period he remained absence, a notice is required to be given to the beneficiary.

11. Be that as it may, treating the period of absence from duty as 'dies-non' has direct bearing on the rights of the petitioner which cannot be taken away unless he is heard in the matter."

8. Learned Counsel for applicant further submitted that in similar case, the respondent department vide order No. 219- HME of 2014 dated 23.04.2014 directed that the whole period of study (three years) spent by one Dr. Shoket Mahmood Chowdry, the then Assistant Surgeon for undergoing DM Gastroenterology at PGI Chandigarh shall be treated as deputation under Art. 44-F of J&K CSR Vol.1 (Annexure A9 to the OA) but in the case of applicant, the respondents have adopted a step motherly treatment against his client and thereby discriminated against him.

9. Learned counsel for applicant also relied upon SWP No. 502/2016 titled Dr Syed Javid Farooq Qadri vs State of J&K decided by the Hon'ble High Court of J&K at Srinagar vide order dated 26.08.2018 wherein one Dr Mohammad Younis, after undergoing course at the Institute of Kidney Diseases and Research Centre, Ahmedabad requested the Government to treat the period as on deputation, as has been done in the similar cases where the training period has been treated as on deputation but no action was taken and in the writ petition filed by him, the Hon'ble High Court while issuing the writ held that:

“7. What principally emerges from the above quoted passage extracted from the Government Order no.812-HME of 2015



dated 18th December 2015, is that a similarly situated person as the petitioner, namely, Dr Mohammad Younis, had on the auspices of the order dated 2nd March 2012 passed by this Court n SWP no.373/2012, underwent DNB Course. The present petitioner was also beneficiary of the aforesaid order dated 18th December 2015, so he also underwent the DNB Course. After completion of three years tenure of DNB Course, Dr Mohammad Younis resumed his duties on 27th February 2015, so was the present petitioner. The matter for settlement of the period spent for undergoing the DNB Course qua Dr Mohammad Younis was initiated and processed, which culminated in issuance of Government Order no.812-HME of 2015 dated 18th December 2015, treating the period spent for undergoing DNB Course as 'on deputation'. Worth to be seen is that the respondents in the Government Order no.812-HME of 2015 dated 18th December 2015, indubitably admit and accept that approval has been conveyed for treating the period of PG/Super Specialist Medical Courses as 'on deputation' in favour of inservice doctors including some petitioners who have undergone and/or are undergoing such studies in various colleges. It was in view of the said policy decision that the period spent by similarly situated person, namely, Dr Mohammad Younis, has been treated as 'on deputation'. Having said so, the present petitioner, therefore, cannot be discriminated and denied the benefit vouchsafed to similarly



situated person, Dr Mohammad Younis. In that view of matter, the stand of the respondents that the period spent by the petitioner for undergoing DNB Course is to be decided by them separately as according to the respondents for the said period the petitioner had been unauthorisedly absent, could not withstand the test of fairness and therefore is pregnant with arbitrariness.”

And the Hon’ble High Court allowing the petition held that:

“31. Taking the foregoing discussion, observations and reasons together, the writ petition is allowed. The respondents are directed to treat the period undergone in training as on deputation as has been done in case of Dr Mohammad Younis vide Government Order no.812-HME of 2015 dated 18th December 2015 and give the petitioner all the service benefits for the said period, to which he is entitled to.”

10. The contention of respondents is that on reconsideration it has been found that Article 44-F has been misinterpreted as it is specifically for training courses which are departmentally obligatory for Government Servants and not for availing higher study courses by the Government Employees. No such order of the Government has been placed record in support of this contention. In any case, in view of the orders placed on record by the applicant and the settled position laid down by the Hon’ble High Court in Dr Syed Javid Farooq Qadri (supra), the contention of the respondent has no force of law and is accordingly, rejected.



11. We would like to add an observation here. We find that a number of similar cases are being filed in this Tribunal by the Doctors. The facts of these cases are more or less similar, where they had been given NOC to join the course with the stipulation that the period of absence will be decided after the course has been completed. Their grievance is also the same that either the period has not yet been decided or it has been decided inappropriately. We find this practice of deciding the period after the completion of the course, rather odd. Normally, in any organization where an employee asks for leave of any kind his eligibility for the same, availability of leave in his leave account, ability of the administration to spare the Doctor for the said period etc are checked and decided before his attending the course and not after the course. For instance, Study Leave can be granted only to such Doctors who have put in the requisite minimum years of service, therefore, anyone who has put in lesser period of service, his application is straightforwardly rejected and he is not given any NOC for attending the course at all. Moreover, since most of these courses are done by Doctors in their initial years of service, they do not have sufficient leave available in their leave accounts to cover long periods of 2-3 years of such courses. In such cases, it would be preferable to settle the issue of the period before giving NOC to join the course. Secondly, most of these cases are also filed regarding use of the term dies non in the decision regarding their period of training. Normally, the term 'dies non' is to be used very sparingly wherever the absence of an employee is of a serious nature and the administration may use the term to avoid the punitive term such as 'break in service'. Since this term is



frequently used by the administration to cover the balance period after exhaustion of all kinds of leave, it is perceived to have a negative connotation and the Doctors expect a show cause notice be given to them before imposing this term on them. It is felt that the term 'leave without pay' may be used in place of dies non, if the rules so permit.

We have repeatedly been asking the Government Advocates to provide us the prescribed procedure for granting study/other kinds of leave, but the same has not yet been provided to us. We are recording our observations for the respondents to reconsider the existing practice so that the avoidable grievances of the Doctors can be taken care of. We are not directing the respondents to follow any particular procedure/policy.

12. Looking to the factual situation and the legal position laid down by the Hon'ble High Court in the case of Dr Syed Javid Farooq Qadri (supra), we are of the opinion that the applicant has been definitely discriminated against by the respondents by denying the relief as was given repeatedly given to other doctors.
13. Accordingly, the O.A. is allowed. Respondents are directed to treat the period undergone in training as on deputation and give the applicant all the service benefits for the said period, to which he is entitled to. No costs.

(ANAND MATHUR)
MEMBER (A)

Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)