



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.3237/2019

This the 15th February, 2021

Through Video Conferencing

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Krishna Venkatarama Sharma,
S/o Shri V. Sankara Krishna Sharma,
Aged 54 years, Scientist F,
Ministry of Earth Sciences,
Government of India,
National Centre for Coastal Research,
NIOT, Campus, Velachery-Tambaram Road,
Pallikaranai, Chennai-600100
Mobile No.: 9968293675

Resident of:
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6, GST Road Guduvanchery,
Chennai-603202

- Applicant

(By Advocate: Mr. Prateek Tushar Mohanty)

Versus

Union of India through
The Secretary,
Ministry of Earth Sciences,
Government of India,
Prithvi Bhawan, Lodhi Road,
New Delhi-110003

- Respondent

(By Advocate : Mr. GS Virk)

O R D E R (ORAL)**Hon'ble Ms. Aradhana Johri :**

The applicant is a Senior Scientist, being Scientist F, with the respondent organization, Ministry of Earth Sciences, National Centre for Coastal Research. He applied for study leave w.e.f. 03.08.2007 to 02.08.2008 for pursuing PhD which was sanctioned. He later applied for extension of study leave from 03.08.2008 to 02.09.2009 for the same purpose. Not being able to complete his PhD during this period, he again applied for earned leave on 01.12.2009 w.e.f. 03.08.2009 to 02.02.2010 (184 days), which was sanctioned. However, he joined duty only on 17.02.2020. He has also signed the bond in Form 7 by which he undertook to pay to the President of India on demand the sum of Rs.11 lakhs together with interest thereon. The PhD, for which he had submitted his study leave application, was to be completed at Jawaharlal Nehru University (JNU).

2. The applicant brought to the notice of the competent authority in writing that the research work to be done from other institutes is yet to be done and it is expected that the thesis would be submitted by the end of 2010. He applied for de-registration from JNU. The report was acceded to, and the de-registration from the PhD programme was permitted,



effective from 22.07.2010 vide their letter dated 18.11.2010. A condition was stipulated that the applicant must re-register himself and submit PhD thesis within a period stipulated under clause 9(iv) of the Ph.D ordinance. However, the applicant did not re-register himself nor did he obtain the PhD degree, even though more than 11 years have elapsed since he availed of study leave followed by earned leave.

3. The applicant addressed letter dated 18.05.2011 with a request to waive the condition as to submission of Ph.D thesis within four years of joining; after availing study leave, since he was proceeding on a foreign assignment. This request was not acceded to by the competent authority. The applicant was asked to re-appraise the rule position under which his request was made. However, he did not give any reply. The respondents consulted DoPT in this matter and issued a show cause notice vide OM No.DOD/11/27/1997-Estt. dated 29.03.2012, requiring him to explain as to why action be not initiated against him, including the one of recovery of the actual amount of leave salary, the period of study leave and the leave taken thereafter till 16.02.2010 being treated as non-qualifying for the purpose of calculation of residency for in-situ upgradation under MFCS. The reply submitted by the applicant was not found satisfactory.



4. Another show cause notice was issued vide OM No. F.No. DOD/11/27/1997-Estt., dated 05.05.2016, invoking Rule 63(1) of CCS(Leave) Rules, 1972 and attendant conditions governing grant of study leave and the condition of bond executed by which he was liable to refund an amount of Rs.15,02,188/- (Rs.13,54,708 + Rs.1,37,480/-). The applicant submitted reply to this. The competent authority inquired from JNU about the facts of completion of PhD. JNU, vide communication dated 18.04.2019, clarified that the applicant had not even applied for re-registration for completion of Ph.D till that date and he had completed his M.Phil course of 14 credits only as against the stipulated 17 credits. After considering notices, the replies thereto and the facts, the competent authority came to the conclusion that the applicant failed to complete his PhD. degree, despite availing all opportunities and thereby violated the terms and conditions of study leave in terms of Rule 63(1) and 63(2) of the CCS (Leave) Rules, 1972 and therefore, was liable to refund leave salary as per bond executed by him. It was also found his case not eligible for any waiver/reduction in terms of Rule 63(3) of CCS (Leave) Rules, 1972. Accordingly, recovery of leave salary along with interest at GPF's rates, amounting to Rs.15,02,188/- was ordered. He was given one last opportunity to explain as to why



this recovery should not be done. The applicant's reply was to the effect that he had met all the conditions and making any recovery would be a criminal breach of trust. Finally, on 26.09.2019, the respondents passed an order directing recovery of leave salary, amounting to Rs.15,02,188/-, including interest, from the applicant.

5. The applicant has prayed for quashing of the OM dated 26.09.2019. It is his contention that as per the terms of sanction of study leave, he was to submit a certificate of completion of the course and that he has done it accordingly; and thereby complied with the terms of sanction of study leave. He has also cited several rulings in his favour. It is his contention that recovery orders are bad in law since the respondents delayed this recovery and kept quiet periodically after issuing show cause notices. It was also brought out that the applicant has filed another OA 833/2016 challenging the non-inclusion of the period of leave as qualifying for grant of in-situ upgradation under MFCS.

6. The respondents filed a detailed reply. They strongly denied the contentions of the applicant. It is stated that the applicant's request for grant of study leave was for pursuing PhD from JNU, and he cannot now turn around and say that he obtained a



certificate of completion of the course and need not complete the PhD.

7. The respondents pointed out that contrary to the applicant's contention, he has submitted a request on 18.05.2011 through the competent authority for waiver of PhD submission within four years of joining after availing of study leave, and that establishes that he was aware of the consequences of non-submission of PhD in the stipulated period. It is also stated that he was silent when the authorities asked him to cite the Rule under which he claimed waiver but he did not reply.

8. The respondents stated that they consulted with DoPT, before initiating action under Rule 63(1), 63(2A) and 63(3) of the CCS (Leave) Rules 1972. They have also pointed out that the applicant did not even take any steps for completion of his PhD since he did not apply for re-registration though, this and the submission of PhD thesis within four years from 07.09.2010, was the condition subject to which the JNU had acceded to his request for de-registration from the PhD programme w.e.f. 22.07.2010. They have stated that JNU apprised them, vide letter dated 18.04.2019, that the applicant did not complete his M.Phil degree which required 17 credits while he got only 14 credits. They have emphasised that they



issued show cause notices at each stage to enable the applicant to reply and present his position to the authorities. The respondents have also dealt with in detail, the issue of not considering the period of study leave as qualifying period for grant of in situ promotion under MFSC.

9. We heard Mr. Tushar Ranjan Mohanty, learned counsel for the applicant and Mr. G.S. Virk, learned counsel for the respondents and perused the record.

10. The applicant was holding a very senior position as Scientist 'F' in the National Centre for Coastal Research (NCCR), Ministry of Earth Sciences. Even while in 2007, he entertained an idea of pursuing Ph.D in research work in the Jawaharlal Nehru University (JNU). He initially applied leave for one year between 03.08.2007 and 02.08.2008. That was sanctioned and on his request, it was extended by one year. But the second time, the leave was extended to 02.02.2010. He did not inform the department about the progress made in the study, much less he completed the Ph.D. It was only in the year 2020, i.e. 13 years ever since he was granted the first spell of leave that he joined the duty.

11. As in the case of any other employee, the applicant executed a form, undertaking to pay a sum



of Rs.11 lakhs together with interest, if he fails to complete the course of study for which he was granted the leave.

12. There may be instances where the course of study, which has begun according to the schedule, meets with certain objections, and it could not be completed within the stipulated or normal period. The leave for further period is granted for enabling the completion thereof. In the instant case, despite being on leave for years together, not only the applicant failed to complete the Phd. Programme but also got himself de-registered. There is no evidence to show that he got re-registration. Even while permitting the de-registration, the University imposed a condition that the applicant shall be under obligation: (a) to re-register himself; and (b) submit the thesis, within four years from the date of de-registration, i.e. 07.09.2010. Nothing of that sort had happened. What is more startling is that even by the time, he reported for duty, being absent for about 13 years, he did not even submit the thesis, later on it having led to the conferment of the Ph.D.

13. Much emphasis is laid by the applicant on the certificate said to have been issued to the effect that he completed that study on Ph.D. Here itself, we make it clear that leave that was granted to



the applicant, was to enable him to get Ph.D and not for completion of any course as such. Further, the study, which leads to Ph.D, is not something which is similar to Graduation or Post Graduation. It is the effort of the candidate under the guidance of the supervisor that leads to submission of thesis. Here, we are not concerned with the nature of activities undertaken by the applicant or his acumen on the subject. What is relevant is whether he accomplished the purpose for which study leave was granted.

14. The absence of senior Scientist at level 'F' for years together in the organization virtually renders his being on the rolls, redundant. It is after many years of experience that a person comes up to that level. For all practical purposes, the organization nurtures him in coming to such a high position, naturally with the expectation that his services would be available to fit. Granting of leave for years together with salary was with a fond hope that his further study would help the organization to improve its activities. If time is spent without achieving with deliberate goals, a serious lapse takes place on the part of the employee.

15. Reliance is placed upon the judgment of the Tribunal in **OA No.3785/2014** wherein it was held that if the concerned institution certifies that the



employee has undergone the requisite amount of study or research work for completion of the Ph.D Programme, it is not essential that the award must have taken place already. In the instant case, when the applicant himself has de-registered from the University and failed to re-register, the question of treating him as being completed the study does not arise. We are of the clear view that the applicant failed to accomplish the purpose for which he was granted the leave. He has cited certain other rulings, none of which is applicable in this case.

16. The Rule 53 5(a) of the Rules becomes relevant in this behalf. It indicates the manner in which the course of study, for which leave was granted, would stand terminated. It reads as under:-

“53 5(a) On completion of the course of study, the Government servant shall submit to the authority which granted him the study leave, the certificates of examinations passed or special courses of study undertaken, indicating the date of commencement and termination of the course with the remarks, if any, of the authority in charge of the course of study.

17. The consequences that flow on account of the failure to study the course for which the leave was granted, are provided under Rule 63 of the Rules. It reads as under:-



“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, traveling 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.”

18. One of the conditions that entails in recovery of the amount is where the employee fails to complete the course of study and thereby unable to furnish the certificates as required under sub-rule 5(a) of Rule 53. On account of his failure to obtain the Ph.D. degree, the applicant exposed himself for consequences of the said Rule.

19. Reliance is placed upon the judgment of this Tribunal in the case of **Vipin Kumar Chaudhary Vs. Union of India** (OA No. 2735/2010). That was a case in which the recovery was proposed to be made from the candidate straightway alleging that he failed to complete the course. In the instant case, the applicant was put on notice, and a detailed order was passed after taking into account, the explanation submitted by him. We take serious exception to the attitude exhibited by the applicant towards the



Institution which enabled him to grow and has also put up with the gross act of indiscipline of remaining absent for more than a decade. Anybody in his place would have been apologetic and implored organization to extend him whatever benefits, within the framework of law. The applicant, however, has threatened the respondents with a prosecution for criminal breach of trust. If at all anyone it was he, who was guilty of such a wrong or omission. Having been paid heftily from the public funds, he has taken the institution for a ride and thereby caused extensive loss to the public exchequer.

20. We do not find any merit in the OA. It is accordingly, dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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