

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. 62/716/2021



Pronounced on: This the 13th day of July 2021

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

Ulfat Gulzar, Age 33 years, D/o Gulzar Ahmad Zargar, R/o Bogund
Kulgam.

.....Applicant

(Advocate: Mr. Bhat Fayaz Ahmad)

Versus

1. Union Territory of Jammu & Kashmir through Financial Commissioner to Government Health and Medical Education Department, Civil Sectt. Jammu/Srinagar-190001.
2. Director Health Services, Kashmir, Srinagar-190001.
3. Chief Medical Officer, Kulgam-192231.
4. Medical Superintendent District Hospital, Kulgam-192231.
- 5.

.....Respondents

(Advocate: Mr. Amit Gupta, learned A.A.G.)

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

Learned counsel for the applicant states that the applicant is aggrieved by Order No. 86/NG of 2021 dated 30.03.2021 by virtue of which the respondents have declared the period undergone by the applicant for higher studies as dies non in pursuance of Government Order No. 918-JK (HME) of 2020 dated 23.12.2020. The applicant had applied for permission to undergo M.Sc. Nursing course in the year 2016 and Medical Superintendent, District Hospital Kulgam forwarded the application vide communication dated 25.04.2016. Thereafter, Deputy Director, Health Services, Kashmir vide his communication no. Est-5th/NG/181-III/2679 dated 15.11.2016 directed the Medical Superintendent, District Hospital, Kulgam to relieve the applicant from work, on her own risk and responsibility, pending the outcome of instructions approved by the administrative department, however, an undertaking should be obtained from the applicant attested by 1st Class Magistrate to the effect that she will not claim salary till the final outcome is received from the Department. Accordingly, in the light of the order passed by Respondent No. 2, the applicant came to be relieved vide order no. Estt/DHK/2016-17/1166-70 dated 26.11.2016. After completion of the course, the applicant approached the authorities for release of her salary. The leave duration from 26.11.2016



to 22.10.2018 was required to be settled by the Department. The respondents instead of granting study leave for treating the study leave have treated the period from 26.11.2016 to 22.10.2018 as dies non which amounts to break in service, however, if the respondents would have treated the period as leave without salary as permissible under law so that the service of the applicant would not have got broken down as by virtue of punishment of dies non which is harshly running against the applicant. The Hon'ble High Court in catena of judgements has quashed and held that employee should be not entitled for any salary for the period of suspension, however, the said period shall qualify for all other service benefits.

2. Learned D.A.G. strongly contended that it has been made very clear to the applicant vide order no. Est-5th/NG/181-III/2679 dated 15.11.2016 that the applicant will be relieved on her own risk & responsibility pending outcome of instructions/approval from the Administrative Department. However, the Medical Superintendent was directed to obtain an undertaking from the applicant duly attested by Ist Class Magistrate to the effect that she will not claim for salary till final outcome is received from Administrative Department. He further stated that that vide Order No. 86/NG of 2021 dated 30.03.2021, it has been clarified that the whole period from 26.11.2016 to



13.06.2017 has been treated as earned leave/half pay leave and even leave not due and the balance period from 14.06.2017 to 21.10.2018 has been treated as dies non in pursuance of Govt. order No. 918-JK(HME) of 2020 dated 23.12.2020. Therefore, the administration has rightly regularized the different kinds of leave available to her and only the remaining period has been treated as dies non.

3. We have heard Mr. Bhat Fayaz Ahmad, learned counsel for the applicant and Mr. Rajesh Thappa, learned D.A.G. for the respondents and perused the records.

4. At the time of argument, learned counsel for the applicant was informed that the grievance of the applicant that dies non will pose a break in service is ill conceived since dies non is virtually opposite of break in service. Therefore, the service rendered by the applicant before her proceeding to pursue higher studies will be counted as qualifying service but the actual period of the course will not be taken into account for counting the qualifying service. The sole purpose of treating the period as dies non is to maintain continuity of service and it certainly does not mean break in service.

5. Learned counsel for the applicant was satisfied with the
aforementioned clarification, and requested that direction may be given to
count the previous service of the applicant and maintain continuity of service
of the applicant.



6. Accordingly, the O.A. is disposed of by directing the respondents to
implement their own order of dies non in its true sense i.e., treat it as a
bridge between the previous service and the service after completion of the
course and not as break in service.

7. No order as to costs.

(ANAND MATHUR)
MEMBER (A)

Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)