

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.354 OF 1992
Cuttack, this the 9th day of July, 1998

RadheShyam K.Hatwar

Applicant

Vrs.

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Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

← 9-7-98
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
9-7-98

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.354 OF 1992
Cuttack, this the 9th day of July, 1998
CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Radheshyam K. Hatwar,
aged about 49 years
s/o Kawadoo Hatwar
Vill/PO-Kamptee,
Dist.Nagpur (Maharashtra)
at present working as Agricultural Officer,
Central Cattle Breeding Farm,
At/PO-Chiplima,
Via-.Godbhaga,
Dist.Sambalpur, Orissa
Pin-768 111

Applicant

By the Advocates - M/s R.B.Mohapatra
&
N.J.Singh.

Vrs.

1. Union of India, represented by the Secretary to Government of India, Department of Animal Husbandry & Dairy, Ministry of Agriculture, Krisi Bhawan, New Delhi-110 001.
2. The Animal Husbandry Commissioner, Department of Animal Husbandry & Dairy, Ministry of Agriculture, Krisi Bhawan, New Delhi-110 001.
3. Director, Central Cattle Breeding Farm, At/PO-Alamadhi, Via-Red Hills, Madras-600 052
4. Director, Central Cattle Breeding Farm, At-Chiplima, P.O-Basantpur, Via-Godbhaga, Dist.Sambalpur, Orissa, Pin- 768 111

Respondents

By the Advocate - Mr.Ashok Mohanty
Sr.C.G.S.C.

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to respondent no.1 to grant him study leave for the period from 1.8.1984 to 25.5.1986. It is also prayed that the Earned Leave granted for the same period in the order at Annexure-10 should be credited to his leave account.

2. The short facts of this case are that while the applicant was working as Agricultural Officer in Central Cattle Breeding Farm, Alamadhi, Madras, he applied for admission in 2-year course of M.Sc.(Dairying) in National Dairy Research Institute, Karnal and sought for permission from Secretary, Department of Animal Husbandry and Dairy, Government of India (respondent no.1). The prayer was made through Director, Central Cattle Breeding Farm, Alamadhi (respondent no.3) for permission to join the Course and also for grant of study leave. In anticipation of grant of study leave and permission, the applicant, after he was admitted to the above course, proceeded on earned leave from 1.8.1984 to 30.9.1984 and joined the Course at Karnal. Subsequently, he made another application from Karnal for grant of study leave along with the necessary Bond and other documents. This application is at Annexure-A/1. According to the applicant, respondent no.3 strongly recommended the application of the petitioner to respondent no.1. The applicant further states that the above Course would be beneficial to the institution. Thereafter the Director, Central

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Cattle Breeding Farm, Almadhi (respondent No.3) sent a series of reminders. Ultimately, in order dated 4.10.1985 (Annexure-A/2) the Ministry issued orders to respondent no.3 indicating that the petitioner is allowed to continue his study at National Dairy Research Institute and the entire period of absence should be regularised by granting him leave of the kind due to the applicant. On 11.6.1985 respondent no.3 wrote to the Ministry indicating that the leave has to be sanctioned by the Ministry. It was also pointed out in this letter that he had applied for study leave and this was recommended in letter dated 29.8.1984. Respondent no.3 sought for orders of the Ministry on this ground. At Annexure-4 is a letter dated 11.10.1985 from respondent no.3 to the applicant stating that the Ministry had conveyed the decision that the study leave could not be granted to him and the period has to be regularised by sanctioning him leave of the kind due to him. The petitioner sent a series of representations to the Ministry at Annexures A/5 and A/6, but no orders were passed. The applicant states that he completed the Course of M.Sc. (Dairying) in May 1986 and passed the examination in First Division and he joined his former post under respondent no.3. Thereafter on 2.8.1986 and 30.10.1987 he made representations to respondent no.1 to grant him study leave pointing out that one B.S. Singh, Veterinary Officer, Central Cattle Breeding Farm, Chiplima, had been sanctioned study leave just after completion of two years of service in the Department, whereas his case has not been considered even after completion of eight years of service. At this stage, because of a vigilance enquiry against him, the

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applicant was compulsorily retired from service with effect from 20.11.1987 in order dated 16.12.1987 which is at Annexure-A/7. The applicant apparently filed a revision and the order of the revisional authority is at Annexure-D of the counter. In this order, which is dated 26.10.1987, in paragraph 4 it is mentioned that the penalty of compulsory retirement is imposed on the applicant. Again in the last paragraph it is mentioned that the President of India for good and sufficient reasons dismissed the revision petition of the applicant and confirmed the penalty of compulsory retirement. This order is dated 26.10.1987 whereas the order of compulsory retirement with effect from 20.11.1987 which is at Annexure-A/7 is dated 16.12.1987. There seems to be some mix-up about the dates of these two orders which, however, need not concern us because against the order of compulsory retirement the applicant filed OA No.501/88 before the Madras Bench of the Tribunal which in order dated 8.1.1990 set aside the order of compulsory retirement and the applicant was acquitted of the charges against him in the enquiry. Thereafter in order dated 26.4.1990 (Annexure-A/11) the order of compulsory retirement of the applicant was set aside. The applicant thereafter joined his duties and kept on applying for grant of study leave. During this period, in order dated 14.1.1988 his probationary period was cleared with effect from 6.1.1976. This order is at Annexure-A/8. Again in order dated 14.1.1988 at Annexure-A/9 he was allowed to cross his two E.Bs. with effect from 1.1.1980 and 1.1.1985. Ultimately, in order dated 21.3.1988 (Annexure-A/10) he was allowed Earned Leave, Half Pay Leave and Extraordinary Leave for undergoing the Course. for different periods of his absence/ In the context of

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the above facts, the petitioner has come up with the prayers referred to earlier.

3. The respondents in their counter have taken the stand that the petitioner applied for admission in the Course of M.Sc. (Dairying) on his own and after being selected, applied for one month's E.L. on domestic ground and joined the Course. Thereafter, he applied for Study Leave for 20 months from 1.10.1984 to 31.5.1986. According to the respondents, the applicant could not be sanctioned study leave because at that time his probationary period was not cleared. It is also stated that M.Sc. (Dairying) Degree has no relevance with the nature of duties of Agricultural Officer, the post which the applicant was holding and this Course did not have any definite advantage from the point of view of public interest. The third ground taken is that a vigilance enquiry was going on against the applicant and his physical presence at the headquarters was very much necessary to complete the enquiry. It is also stated that the petitioner applied for Earned Leave for one month and joined the Course without permission of the competent authority and in violation of the rules and procedure and as such study leave could not be sanctioned to him. In reply to the petitioner's averment that in cases of two similarly situated persons, Study Leave had been sanctioned in the past, the respondents have stated in the counter that in those cases Study Leave was sanctioned because the requirement of sanctioning study leave was fulfilled and they had joined the Course after getting formal approval of the competent authority which is the normal practice. On the above grounds, the respondents have opposed the prayers of the applicant.

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4. We have heard Shri R.B.Mohapatra, the learned lawyer for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing on behalf of the respondents. Learned lawyer for the petitioner has also filed a written note of submission which has been taken note of.

5. Learned Senior Standing Counsel for the respondents has raised a preliminary objection with regard to limitation. The point made by him is that the impugned order sanctioning leave to the applicant as due was issued on 21.3.1988 and therefore, the application is plainly beyond the period of limitation. We are unable to accept this contention because the petitioner was compulsorily retired from service with effect from 20.11.1987 and only after his compulsory retirement, this order sanctioning him leave for the period of absence was passed. Obviously, while the petitioner was not in service, he could not have agitated about sanctioning him study leave. The order of compulsory retirement was set aside in order dated 26.4.1990 (Annexure-A/11). Thereafter, the petitioner filed representation dated 16.9.1991 which is at Annexure-A/12, but no orders were passed on this representation and that is how he has come up in July 1992 with this application. Under the circumstances of this case, we feel that there has not been any undue laches on the part of the petitioner to pursue his case. His representation dated 16.9.1991 having remained unanswered for more than six months, the petitioner has come up within one year thereafter in July 1992 and filed this Application. Therefore, it is held that the application is within the period of limitation.

6. The respondents have stated that the Study Leave could not have been sanctioned to the applicant because the petitioner had not by then satisfactorily completed his probationary period. This contention is without any basis and must be rejected because in order dated 14.1.1988 which is at Annexure-A/8, the Department had declared that the petitioner has satisfactorily completed his probationary period with effect from 6.1.1976, i.e., 12 years ago. In other words, the departmental authorities have delayed issuing of the order declaring that the applicant has satisfactorily completed his probation by 12 years and therefore, on that ground the sanction of Study Leave would not have been legally denied.

7. The second ground urged by the learned Senior Standing Counsel is that M.Sc.(Dairying) Degree has no relevance with the nature of duties of the Agricultural Officer, the post which the applicant was holding. Normally, this is a matter which is for the departmental authorities to adjudge and the Tribunal not having the technical expertise cannot usually take a view from what the departmental authorities have taken on this point. But it has been urged by the learned lawyer for the petitioner that after reinstatement of the applicant, for some time he worked as Director-in-charge of the Farm where he was posted and therefore, it cannot be said that his knowledge of M.Sc.(Dairying) is of no relevance to his work as Agricultural Officer. In the Cattle Breeding Farm, Agricultural Officer generally looks after the fodder requirement of the Farm. The common sense point of

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view is that consumption of fodder would have a direct relation to the yield of milk and therefore, it is difficult to hold that M.Sc.(Dairying)Degree has no relevance to the work of an Agricultural Officer who presumably is in charge of fodder development and requirement of a Cattle Breeding Farm. Moreover, we find from the order dated 4.10.1985 which is at Annexure-A/2 that the Ministry had taken a view to allow the applicant to continue his study at National Dairy Research Institute, Karnal. This itself would show that the Ministry considered that pursuit of this Course of study by the applicant would be beneficial for his work. Otherwise it was always open for the Ministry to recall the applicant from the Course which has not been done in this case. In consideration of above, we are unable to accept this contention of the respondents.

8. The third contention of the respondents is that at the relevant time a vigilance enquiry was going on against the applicant and his presence at the Farm was necessary for completion of the vigilance enquiry. From the order of the Tribunal in OA No.501 of 1988 which was produced by the learned lawyer for the petitioner at the time of hearing, we see that the charge against the applicant did not relate to his work in the Farm. The charge was about submission of a false T.A.Bill and a forged Truck receipt in respect of a transfer T.A.Bill of the applicant. As this enquiry had nothing to do with the work of the Farm, we do not see how his presence at the Farm was necessary for completion of the enquiry. In any case, if his presence was really necessary, then the respondents would have directed him to report back at

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the Farm cutting short his Course, but that has not been done. In view of this, this contention of the respondents cannot be accepted.

9. The last contention of the respondents is that the petitioner did not take prior permission for joining the Course. In paragraph 8 of the counter the respondents have stated that the other persons to whom Study Leave had been sanctioned had joined the Course only after getting the formal approval of the competent authority, which is the normal practice. The petitioner has mentioned in his representation dated 16.9.1991, which is at Annexure-A/12, that he applied for admission to M.Sc.(Dairying) course and the Ministry was informed about his application through the Director of the Farm at Alamadhi, but no objection at that time was raised. The petitioner appeared at a written test for admission at Bangalore. For this purpose, he applied for leave from respondent no.3 by stating this purpose and the leave was also sanctioned. The fact that the petitioner had been admitted to the Course was intimated to him by telegraphically National Dairy Research Institute, Karnal / and according to the petitioner, this telegram was shown to respondent no.3 and with his knowledge he joined M.Sc.(Dairying) Course on 7.8.1984 by taking E.L. for one month and after getting relieved from 1.8.1984. On the basis of all this, it has been submitted by the learned counsel for the petitioner that the fact that the petitioner had applied for admission to the above Course was known to the Ministry and the Ministry later on permitted him to continue in that Course and, therefore, the irregularity, if any, in not taking

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prior permission of the Ministry should be condoned. We think that in the circumstances of this case, when the Ministry had permitted him to continue in that Course, it must be taken that the Ministry had accorded ex post facto permission to the applicant to continue in that Course. This contention, therefore, must be rejected.

10. In consideration of the above, we hold that none of the grounds for refusing Study Leave to the applicant is acceptable.

11. It is also to be noted that in order dated 21.3.1988 Earned Leave, Half Pay Leave and Extraordinary Leave for different periods were sanctioned to the applicant from 1.8.1984 to 25.5.1986. This order was issued on 21.3.1988 at which point of time the petitioner stood compulsorily retired from service and prior to his reinstatement in service consequent on quashing of the order of compulsory retirement and exoneration of the petitioner from the charge against him. Obviously, the Ministry could not have sanctioned Study Leave to a person who had been compulsorily retired and that is how in order dated 21.3.1988 leave for different periods had been sanctioned. Now that the petitioner has been reinstated in service, we think that it is a fit case where the Ministry should sanction Study Leave to him according to Rules in terms of the discussions made above. It is to be noted that the petitioner is a Scientist and in case of such Government employees, Government always encourage them to acquire higher academic qualifications in order to increase their expertise in their own field or in the

related fields. The other aspect of the matter is that in this Application, the petitioner has asked for grant of Study Leave from 1.8.1984 to 25.5.1986. But we find that initially he had applied for Earned Leave from 1.8.1984 to 30.9.1984. In view of this, we feel that in fairness the respondents should consider sanctioning him Study Leave only from 1.10.1984 and not before that period because the petitioner himself had applied for Earned Leave for the months of August and September 1984. It is ordered that the sanction of Study Leave to the petitioner should be considered and decided by the respondents within a period of 90 (ninety) days from the date of receipt of copy of this order.

12. In the result, therefore, the Application is allowed in part, but, under the circumstances, without any order as to costs.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
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