

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 515 OF 2007

Dated the 24th September, 2008

CORAM:-

HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

Dr. KP Hamza Koya,
S/o late KI Muhammed Koya,
Kunhiplapada House, Kalpeni,
Chief Medical Officer (NFSG),
PHC Kiltan, Trainee in DNB
(Family Medicine) Medical Trust Hospital,
MG Road, Kochi-682 016.

.. Applicant


[By Advocate: Mr TM Kochunni]

-Versus-

1. Union of India,
Represented by Secretary,
Ministry of Health & Family Welfare,
New Delhi.
2. The Administrator,
Union Territory of Lakshadweep,
Kavarathi.
3. The Director of Medical & Health Services,
Union of Territory of Lakshadweep,
Kavarathi.

...Respondents

[By Advocates: Mr MM Saidu Muhammed, ACGSC (R)
Mr S Radhakrishnan for R-2 & 3]

 This application having been heard on 3rd September, 2008
the Tribunal delivered the following -

ORDER

The applicant was working as Chief Medical Officer at Primary Health Centre at Kiltan in the Union Territory of Lakshadweep. He proceeded on Earned Leave on medical ground wef 12.3.2006 to 09.06.2006. Thereafter, he sought extension of leave by another 21 days. When he was on leave he sent a request vide his letter dated 03.6.2006 to the Administrator for permission to study the Post Graduate Course in Diplomate of National Board (DNB) in Family Medicine at Medical Trust Hospital, Kochi. Subsequently he submitted a formal application for study leave for 3 years with effect from 01.7.2006 vide his letter dated 01.7.2006. However without waiting for grant of study leave from the Competent Authority he joined the course on the same day i.e. 1st July, 2006. The application for study leave was forwarded by the respondent No.3 to the Respondent No.1 vide letter dated 17.10.06. Subsequent clarification was also furnished by the respondent No. 3 to the Respondent No.1. However, the study leave was not approved by the respondent No.1 and the applicant was directed to join duties immediately vide Annexure-A8 communication dated 23.3.2007. In response to the aforesaid direction, the applicant took 15 days leave from the Medical Trust Hospital, Kochi and joined duty at PHC, Kiltan on 16.4.2007. Three days later the applicant got himself relieved from the post of Medical Officer-in-charge of PHC Kiltan and rejoined his course at Medical Trust Hospital at Kochi, without getting the study leave granted. The request for study leave was

rejected by the Respondent No.1 and it was communicated through Respondent No. 3 vide letter dated 13th July, 2007 (Annexure-A/13). The applicant has filed this OA aggrieved by the rejection of his request for study leave from 20.4.2007 to 30.6.2009. He has sought the following relief in this Original application.

- a] to call for the records leading to Annexures A1 to A14;
- b] to issue appropriate orders directing the respondents to consider the study leave application submitted by the applicant vide Annexure A2 and grant the study leave;
- c] to stay the operation of Annexure A12 order issued by the 3rd respondent;
- d] to issue necessary direction to the respondents that, not to take any disciplinary action against the applicant, since he has availed his eligible leave;
- e] to declare that the course D.N.B. (Family Medicine) conducted by the National Board of Examinations functioning under the 1st respondent is a recognized course by Medical Council of India;
- f] to issue any appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice."

2] The respondents have contested the OA and filed reply statement. It is contended by the respondents that the applicant has joined the course of DNB at Medical Trust Hospital, Kochi on 01.7.2006 without proper permission. The applicant cannot leave the place of his work without permission and join the training course at his own volition. The action on the part of the applicant calls for disciplinary action. Further, the course for which the applicant has enrolled himself is not a recognized course by the Medical Council of India. The applicant absented himself in the


past also without permission. When he was posted at Amini Island 1999 he left his headquarters without permission and remained absent unauthorisedly for which '*dies non*' was awarded to him. This order of treating unauthorized absence was challenged by filing OA No.129/2001 and it was dismissed by the Tribunal on 24.4.2002(Annexure-R2(f)). On his transfer from Kalpeni to Kiltan in July 2005 he took 70 days medical leave. It has been further stated that the application requesting for study leave was forwarded to the Ministry of Family Health and Welfare, who advised that the applicant should be directed to report for duty. Accordingly, he was advised by the letter dated 23.3.07 (Annexure-R2(h)) to join his duty at Kiltan PHC. Though the applicant reported for duty at Kiltan on 16.4.2007 he did not take charge of Drawing and Disbursing Officer (DDO) of PHC, Kiltan and left his Headquarters without permission on 19.4.2007 after submitting an application for regularization his absence from 1.7.2006 to 15.4.2007. On account of non-assumption of the charges of DDO, payment of Electricity bill, telephone bills etc. of PHC Kiltan could not be paid in time causing considerable loss to the Government. The Medical Officer of PHC, Kiltan had no authority to relieve him as was done on 19.4.2007. The request for leave was rejected by the Respondent No.1 vide letter dated 18.6.07 (Annexure-R2(i)). Sanction of study leave in respect Dr. KK Anwar Salih, Medical Officer, Androth was granted in accordance with the provisions of the Rules. He never deserted his official duty and did not go without permission of the Government to join

the course, whereas the applicant has submitted his application for study leave after joining the course at Medical Trust Hospital, Kochi without permission from the authority concerned.

3] Rejoinder has been filed by the applicant. He has refuted the stand taken by the respondents that DNB (Family Medicines) is not a recognized Course and has produced a copy of the notification dated 19th September, 1983 issued by the Ministry of Health and Family Welfare, Department of Health (Annexure-A18). The said notification states that Diplomate National Bard (Family Medicine) shall be recognized medical qualification when granted on or after 30th August, 1982.

4] We have heard learned counsel for the applicant Mr TM Kochunni and learned counsel for respondents 2 and 3 Mr. S Radhakrishnan. We have also perused the record carefully including the additional reply and rejoinder.

5] Granting or non-granting of leave requested by the employee is well within the discretionary power of the employer. Rule 7 (1) of the CCS Leave Rules states that 'Leave cannot be claimed as of right.' It is further stipulated in Rule 7(2) that 'when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it..' Rule 50 of the CCS Leave Rules deals with conditions for grant of study leave. The extracts of Rule 50 are reproduced below: -



"50(1) Subject to conditions specified in this Chapter, study leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialized training in a professional or a technical subject having direct and close connection with the sphere of his duty.

(2) Study leave may also be granted-

(i) for a course of training or study tour in which a Government servant may not attend a regular academic or semi academic course if the course of training or the study tour is certified to be of definite advantage to Government from the point of view of public interest and is related to sphere of duties of the Government servant; and

(ii) for the purpose of studies connected with the framework or background or public administration subject to the conditions that -

(a) the particular study or study tour should be approved by the authority competent to grant leave; and

(b) The Government servant should be required to submit, on his return, a full report on the work done by him while on study leave;

(iii) for the studies which may not be closely or directly connected with the work of a Government servant, but which are capable of widening his mind in a manner likely to improve his abilities as a civil servant and to equip him better to collaborate with those employed in other branches of the public service.

Note- Application for study leave in cases falling under clause (iii) shall be considered on merits of each case in consultation with the Department of Expenditure of the Ministry of Finance.

(3) Study leave shall not be granted unless-

(i) it is certified by the authority competent to grant leave that the proposed course of study or training shall be of definite advantage from the point of view of public interests;

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Provided further that Medical Officer may be granted study leave for prosecuting a course of post-graduate study in Medical Sciences if the Director-General of health Services certified to the effect that such study shall be valuable in increasing the efficiency of such medical officer in the performance of his duties.



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xxx ... "



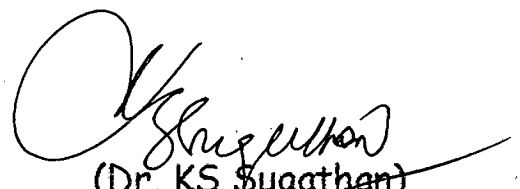
6] It is absolutely clear from the Rule extracted above that the authorities are competent to grant or not to grant study leave to its employees after considering the exigencies of public service and the utility of the course of study. The question of judicial review of a decision to refuse the study leave arises only if the decision shows arbitrariness or an element of discrimination or when the grounds are unreasonable.

7] In the present case, it is very clear that the applicant took the calculated risk of joining the training course without waiting for prior approval from the competent authority. The letter dated 03.6.2006 (Annexure-A1) addressed by the applicant to the 2nd respondent talk about only granting of permission for undergoing the DNB Training in Family Medicine at the Medical Trust Hospital, Kochi. There is no mention of any study leave or duration of study leave. Subsequently, the request for study leave was submitted on 01.7.2006, the day on which the applicant joined the course. Therefore, the applicant did not give any time to the Competent Authorities to process his application. He took it for granted that the study leave will be approved. The respondents have given two reasons for rejecting the application for study leave. The first reason is that prior permission was not taken for undergoing the training course. The records clearly indicate that the said reason is absolutely valid. The second reason cited by the respondent is that the course of study for which the applicant joined is not recognized by the Medical Council of India. In the



rejoinder filed by the applicant he has produced certain documents to show that it is a recognized course. However that itself cannot absolve the applicant from his duty to obtain prior permission before proceeding on leave and joining the course of study. The respondents could not have also ignored the conduct of the applicant. In the communication sent to the applicant on 23.3.2007 the applicant was asked to report for duty at PHC, Kiltan failing which disciplinary action would be taken. In response to the communication the applicant reported for duty on 16.4.2007 but got himself relieved on 19.4.07 to rejoin his studies at Kochi without getting any approval from the competent authority. In view of the above facts, we do not consider that the rejection of the applicant's request for study leave is unreasonable, arbitrary or discriminatory.

8] For the reasons stated above, there is no reason for this Tribunal to interfere with the decision of the respondents to reject the request for grant of study leave. The OA is, therefore, dismissed. No costs.


(Dr. KS Sugathan)
Member (Administrative)