

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.550 OF 2004

.....~~THURSDAY~~.....THIS THE 7th DAY OF JULY, 2005

CORAM

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.Karunakaran, S/o late Krishnan,
aged 59, Junior Deck-Hand,
Integrated Fisheries Project,
Kochi.16 residing at 3/303, Illikkal House,
Prasanth Nagar Road,
Maradu PO, Ernakulam District.Applicant

(By Advocate Mr.P.A.Kumaran)

V.

1.Union of India, represented by its Secretary,
Ministry of Agriculture, Department of Animal
Husbandary and Dairying,
Krishi Bhavan, New Delhi.1.

2.The Director, Integrated Fisheries Project,
Kochi.16.

3.Accounts Officer, O/o the Director,
Integrated Fisheries Project,
Kochi.16.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 22.6.2005 the Tribunal
on 7..7.2005 delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this OA was working as a Junior Deck-Hand in
the Integrated Fisheries Project at Kochi and is aggrieved by the

Memo dated 25.6.04 issued by the second respondent directing the refund of study leave salary drawn by him with interest. He seeks the following reliefs:

(a) Quash Annexure.A.1, Annexure.A.10 and Annexure.A.21.

(b) To declare that the applicant has completed the special course of study during the period of study leave granted to him from 26.12.1994 to 24.6.1996.

(c) To direct the respondents not to recovery any amount as Study Leave Salary from the salary/pensionary benefits of the applicant.

(d) To direct the respondents to refund the amount already recovered as Study Leave Salary.

(e) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and

(f) Grant the costs of this Original Application.

According to the applicant, he applied for Study Leave for preparing himself to appear for Mate (Fishing Vessel) Certificate Examination conducted by the Mercantile Marine Department under the Ministry of Surface Transport and the study leave was granted by the first respondent for 18 months from 26.12.94 to 24.6.96 by order dated 26.12.94. In the order, the applicant was required to furnish a certificate of the examination passed or the special course of study undertaken indicating the date of commencement and completion, (Annexure.A.2). The applicant executed a bond in form No.7 as per Rule 53(4) of CCS (Leave) Rules and a copy of the bond is produced as Annexure.A3. According to the applicant neither in the order sanctioning the study leave or in the bond executed there was any

stipulation that he had to produce a pass certificate at the end of the leave period. It is submitted by the applicant that he prosecuted the studies in a private institution and also attended a refresher course in CIFNET, Cochin and that he had appeared in the examination and passed Parts B and C but could not pass Part A. Since the applicant was only a 7th standard pass he had to exert himself to study various subjects under different instructors and there was no regular course leading to the Mate Certificate Examination and the regular employees are not admitted to this course. Therefore, according to the applicant he had evinced lot of interest and put in effort to go through the examination. He has produced the certificates of the studies undertaken. Respondents could not therefore insist that a pass in the examination as nowhere in the rules such a stipulation has been made. Therefore according to the applicant he has satisfied the respondents under Rule 53(5) and no action can be taken against him under Rule 63(1) of the Leave Rules.

2. The respondents in the reply statement had denied the averments of the applicant. They have stated that the Study leave was granted in accordance with the provisions of Rule 53(5) (a) of the CCS (Leave) Rules and he had executed a bond as prescribed in Rule 53(4)(a). Though he rejoined duty after the expiry of the leave he failed to submit the certificates. Several communications were issued to him directing to furnish the prescribed certificates and each time he informed that he would appear in the forthcoming

examination and produce the certificates. Several opportunities were given during period from 1996 and 2000 and in spite of several attempts the applicant failed to pass the examination and produce the certificates. Hence it was decided to recover the Leave Salary with interest. Recovery, however was deferred till April, 2000 as he produced certificates of Parts B and C and stated that he would appear the examination again in August, 2000 for passing Part A. On his request, the recovery was deferred till April, 2001 and the matter was referred to the competent authority for consideration of his representation regarding waiver of recovery. The competent authority after due examination of the case decided to recover the amount as per Rule 63(1) of the CCS (Leave) Rules. The respondents are, therefore of the view that they had given the applicant sufficient opportunities and since he was unable to succeed in the prescribed course of study, the recovery had to be resorted to and they have acted in accordance with the relevant rules.

3. The applicant filed a rejoinder reiterating the same facts averred in the application.

4. The respondents have also filed additional reply statement enclosing copies of the certificates produced by the applicant as well as the correspondence with the Government of India.

5. We heard the learned counsel of the applicant and the Senior Central Government Standing Counsel on behalf of the respondents.

Since the whole question revolves around applicability of the CCS (Leave) Rules, the Rule position is reproduced below:

Rule 50: Conditions for grant of study leave.

"(1) Subject to conditions specified in the 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 a direct and close connection with the sphere of his duty"

Rule 53(4)(a) deals with the conditions for sanction of Study Leave. Sub Rule 4(a) of Rule 53 is as under:

"(4)(a) Every Government servant in permanent employ who has been granted study leave or extension of such study leave shall be required to execute a bond in Form 7 or Form 8, as the case may be, before the study leave or extension of such study leave granted to him."

The applicant was granted leave vide Annexure.A2 order, which states as follows:

"On completion of the course of study, Shri Karunakaran shall submit to the authority who granted him the study leave, the certificate of examination passed or special course 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.

Certified that necessary Bond in Form No.7 (See Rule 53(A) has been obtained from Shri K.Karunakaran, Junior Deck-Hand."

The applicant had executed a bond accordingly in Form No.7 as prescribed in Rule 53(4)(a), relevant portion of the bond executed is extracted below:

"NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS THAT in the event of my failing to resume

duty, or resigning or retiring from service or otherwise quitting service without returning to duty after the expiry or termination of the period of study leave or failing to complete the course or study or at any time within a period of three years after my return to duty, I shall forthwith pay to the Government or as may be directed by the Government, on demand the said sum of Rs.....(Rupees.....)together with interest thereon from the date of demand at Government rates for the time being in force on Government loans."

It is obvious from the above rule position and the order sanctioning the study leave to the applicant that he was to submit a certificate of examination passed or a certificate of the special course of study undertaken by him indicating the date of commencement and termination of the course. In the bond executed by him there is no stipulation regarding production of any certificate of pass in examination. Only failure to complete the course or study or failure to resume duty or in the event of resignation or retirement within a period of three years after returning to duty, would entail refund of the bond amount with interest. Thus we do not find that the demand made by the respondents to produce a pass certificate on completion of the course of study is borne out by any stipulation either in the order sanctioning the study leave or in the bond executed by the Government servant which is a legal covenant binding on both parties. The respondents further rely on Rule 63 of the CCS (Leave) Rules which is extracted hereunder:

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 Governments, 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."

Here also we do not find any stipulation that the Government servant has to produce a pass certificate of the course of study attended. The wordings used are "either resigns or retires or otherwise quit service or fails to complete the course of study". Therefore the rules as relied on by the respondents are not found binding on the applicant to produce a pass certificate. The applicant has furnished sufficient evidence to prove that he did join the refresher course at CIFNET, Cochin and also attended a one month refresher training there and a three months refresher course at CIFNET, Chennai as evidenced by Annexure.22(a) and (b). He also produced certificates of the private studies undertaken by him under private instructors. It is also stated that there is no separate course of study offered for this examination for employees who are not matriculates like the

applicant. This aspect should have been looked into by the respondents while sanctioning the study leave and there was no stipulation in the order sanctioning the study leave that it is for undergoing any special course of study in any particular institution. The applicant wanted to enhance his promotional prospects as he was not eligible for any further promotions without possessing this certificate of Mate Examination held by the MMD. It was towards this objective that the applicant applied for study leave and went through various courses and his intentions are proved by the fact that he did appear for the examination even belatedly in the year 2000 and passed two parts of the examination. Therefore, we are of the view that he has undergone the course of study required for passing the examination at various institutions which have been duly certified by the concerned authorities and on expiry of the study leave he had rejoined the department and he has neither resigned or quit service. It is, however, unfortunate that he could not pass the examination in full shape. His failure to pass the examination would only debar the applicant from getting further promotions. But on that ground that he has not passed the examination, the respondents cannot deny him the benefit of study leave and recover the leave salary paid to him. We find that the respondents have misinterpreted the rules. As long as there is no specific stipulation in the rules requiring him to produce a pass certificate, it cannot be insisted upon from the applicant. Further it is also seen that Rule 63 Sub Rule (3) also confers the

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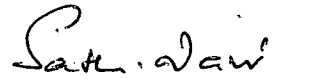
power of relaxation on the Government having regard to the circumstances of the case. We are therefore of the view that the applicant has made out a case for the grant of the reliefs.

6. Accordingly we quash the impugned orders at Annexures.A1,A10 and A21. The respondents are directed not to recover any amount as study leave salary from the salary/pensionary benefits of the applicant and to refund the amount, if any, already recovered. No costs.

Dated this the 7th day of July, 2005



K.V.SACHIDANANDAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

s.