

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.283/2002

Thursday this the 29th day of May, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Dr.M.Syed Mohammed Koya
S/o Late C.N.Muthukoya
Senior Ayurvedic Physician
Community Health Centre, Androth
Union Territory of Lakshadweep.

Applicant.

(By advocate Mr.P.V.Mohanan)

Versus

1. The Administrator
Union territory of Lakshadweep
Kavarathi.
2. Director of Medical and Health Services
Directorate of Medical and Health
Services, Kavarathi.
3. Union of India represented by
Secretary to Government
Ministry of Health and Family Welfare
Nirman Bhavan
New Delhi.

Respondents.

(By advocate Mr.S.Radhakrishnan R1-2)

The application having been heard on 29th May 2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Applicant, while working as Ayurvedic Physician with a bachelor's degree in Ayurveda in the Directorate of Medical and Health Services in Union Territory of Lakshadweep, applied for study leave for undergoing Masters Degree in 'Kayachikilsa' with effect from 1.10.1990. Initially the study leave was granted from 1.10.1990 to 30.9.92. The course of study was spread over a period of 2 years. However, on completion of the course on 30.10.1993 as no examination was held immediately and because the date of the examination was uncertain, the applicant sought permission to rejoin duty and having been granted permission to rejoin duty on 30.10.93, he submitted a representation for

regularizing the study leave period from 1.10.90 to 30.10.93.. The representation for regularization of the leave was forwarded by the first respondent to the 3rd respondent but no order on that has been issued so far. The applicant could submit his thesis only in 2001 as, according to him, he was in a disturbed state of mind on account of litigations pending before this Tribunal regarding his seniority. After submission of his thesis, the applicant applied for the examination for M.D. course held in May 2002. The present grievance of the applicant is that he has been served with A-3 notice dated 2.1.2002 calling upon him to refund an amount of Rs.1,33,243/- being the leave salary, NPA and DA drawn by him during the period of study leave from 21.10.90 to 30.9.92. on the ground that he failed to submit his certificate of pass in the examination on completion of the study leave and that his representation against the decision to recover the amount was rejected by A-5 order dated 18.4.2002 compelling him to refund Rs.1,33,243/- in 22 monthly instalment of Rs.6000/- and 23rd instalment of Rs.1240/-. The applicant has alleged that the applicant having submitted the course completion certificate on rejoining duty, submitted his thesis in 2001 and passed the M.D. course on 13.5.2002 and produced the certificate issued on 25.6.94, he is not liable to refund the amount. The applicant has, therefore, filed this application seeking to set aside A-3 & A-5 and for a declaration that he is entitled to get salary and allowance for the period of study leave from 2.10.90 to 29.10.93 without any deduction and recovery.

2. Respondents in their reply statement contend that a person who is granted study leave is obliged, in terms of the provision under Sub Rule (5) of Rule 53 of the CCS Leave Rules, to furnish

the certificate of examination passed and in accordance with the provision contained in Rule 63 of the CCS Leave Rules, to refund the pay and allowances drawn during the leave period in case of failure to produce the certificate of pass in the examination. The applicant who has failed to do so has no option but to refund the amount, contend the respondents.

3. I have carefully gone through the pleadings and material placed on record as also the relevant provisions of Rule 53 and 63 of the CCS Leave Rules. From the material placed on record, it is evident that the applicant has produced R-1 certificate of course completion. On acceptance of that the applicant was permitted to rejoin duty on 30.10.93. It is also evident that the applicant submitted a representation for regularization of his leave from 1.10.90 to 29.10.93 on which no order has been issued by the competent authority though it had been forwarded by the first respondent. It is also a fact beyond dispute that the examination for the M.D.course was held in the year 1994 which the applicant did not take and the applicant took the examination only in the year 2002. There is, therefore, a delay of about 8 years on the part of the applicant to submit his thesis and appear in the examination for the course for which he had been granted leave. In this case, it would not have been possible for the applicant to produce the certificate of pass in the examination immediately on completion of the course, for, undisputedly the examination was held only in the year 1994. According to the applicant, as he was in a disturbed state of mind due to pending litigations, he could not submit his thesis immediately and appear in the examination. It is up to the competent authority to consider the circumstances of the case and

to take a decision on the claim of the applicant for condonation of delay in taking the examination and producing the certificate. The learned counsel of the applicant pleaded that the application could be disposed of permitting the applicant to make a representation to the 3rd respondent against the impugned order, seeking regularization of the entire leave period and exempting him from refunding the amount mentioned in A-3 & A-5 and directing the 3rd respondent to consider the representation and to give an appropriate reply to the applicant keeping in abeyance the operation of the impugned orders A-3 & A-5. The learned counsel for the respondents has no objection in disposing of the application in such a manner.

4. In the light of the facts and circumstances mentioned above, this application is disposed of permitting the applicant to make a representation to the 3rd respondent, seeking regularization of the entire period of his leave and claiming exemption from refunding the amount, explaining the special circumstances for his delayed appearance and pass in the examination, and directing the 3rd respondent to consider the representation in the light of facts, circumstances, rules and instructions and also the fact that the applicant having acquired the qualifications for which he was granted the study leave is left with more than 14 years of service yet to render and to give the applicant an appropriate reply within a reasonable time. I also direct that till such an order on the representation of the applicant is passed by the 3rd respondent, no recovery be made from the pay and allowance of the applicant on the basis of the impugned orders. No order as to costs.

Dated 29th May, 2003.



A.V.HARIDASAN
VICE CHAIRMAN

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