

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

.....

O.A. No. 309 of 1995.

Friday this the 31st day of March, 1995.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

A.V. Pushkaran,
Engine Driver Class-I,
Integrated Fisheries Project,
Cochin-16. .. Applicant
(By Advocate Shri MR Rajendran Nair)

Vs.

1. The Director,
Integrated Fisheries Project,
Kochi-16.
2. Union of India, represented
by Secretary to Government,
Ministry of Agriculture,
Deptt. of Agriculture and
Co-operation,
Krishi Bhavan, New Delhi. .. Respondents.

(By Advocate Shri S. Radhakrishnan, ACGSC)

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant who was working as Engine Driver Class-I, Integrated Fisheries Project, was granted study leave in order to attend the training at Central Institute of Fisheries Nautical and Engineering Training (CIFNET for short) in order to enable him to appear for the Fishing Engineers Examination. Instead of going to CIFNET, applicant undertook training under a private qualified person. This was not recognised by the respondents and orders were passed by respondents in A-1 dated 6.3.93, for recovery of his leave salary with interest. Applicant filed O.A. 583/93 and the Tribunal after considering the issue in detail stated:

....2/-

"We are of the view that if the applicant is given further chance to complete the course and pass the examination by making a bonafide effort in that behalf, it would be beneficial to him....Under these circumstances, it would be fair and proper to grant him further leave so as to enable him to complete the course, in case applicant produces certificate for having attended the full course during the period covered by the order already passed granting study leave, so as to satisfy the authorities that he has not misused the leave for a purpose other than attending the course. If the applicant produces such a certificate, his request for further extension of the leave should be considered by the first respondent in accordance with law...."

2. Applicant produced such certificate A-4. Despite that, respondents passed A-5 order dated 26.7.94 stating that applicant has misused the study leave for a purpose other than attending the prescribed course and confirming the recovery of leave salary. Applicant again filed OA-1176/94. The Tribunal noticed that according to applicant, even if respondents take the view that the course undertaken was not the approved course, the period should have been adjusted against leave available for the period and converted into earned leave. The Tribunal directed 2nd respondent to take a final decision on a representation by applicant within 4 months. As a result, the impugned orders A-7 and A-8 have been passed, in which, without stating any reasons the request of the applicant for regularising the study leave and for grant of further study leave were rejected and recovery of leave salary paid to applicant was restored.

3. We notice that in the representation filed by the applicant in pursuance of the direction in OA-1176/94, applicant has specifically stated as follows:

"I submit that the leave availed by me from 2.5.1990 to 31.10.1990 can be treated as earned leave and thereby the study leave allowable to me can be restored."

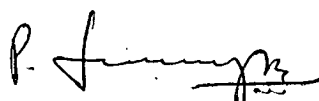
It is seen that, this request of the applicant has not been considered by the respondents and dealt with in the impugned orders. The Tribunal in OA-583/93 suggested that if the applicant produces a certificate for having attended the full course, his request for further extension of leave be considered. Though the applicant has produced such a certificate the request of the applicant for further study leave, has been rejected.

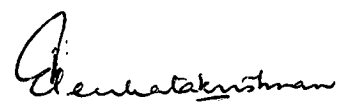
4. This is not a case where applicant has misused the study leave for purposes other than study. It is only a case where, instead of a course in CIFNET, he prosecuted his studies under a private person who has issued a certificate. This would not merit visiting the applicant with the harsh penalty of recovery of Rs.14,974/-. There is no mala-fide in the action of the applicant. We consider that respondents should examine the request of the applicant to treat the leave availed by him as earned leave or any other leave to which he is eligible. If this is done, the question of recovery of leave salary also would not arise.

5. We, therefore, direct 1st respondent to specifically examine the request of the applicant to treat the study leave granted to him as leave to which he is eligible and pass appropriate orders within one month. In order to enable him to do so, we quash impugned orders A-7 and A-8.

6. Application is disposed of accordingly. No costs.

Friday this the 31st day of March, 1995.


P SURYAPRAKASAM
JUDICIAL MEMBER


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER