

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 399 OF 2003

Thursday, this the 8th day of December, 2005.

CORAM:

HON'BLE Mr. K.V.SACHIDANANDAN, JUDICIAL MEMBER

HON'BLE Mr. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.Narayana Kurup

Principal Scientist

Indian Institute of Spices Research, Calicut

Residing at: No.M.26/A-70, Kerala State

Housing Board Colony

Malaparamba, Calicut - 9

Applicant

(By Advocate Mr T.C.Govindaswamy)

Vs.

1. The Indian Council of Agricultural Research
Krishi Bhawan, New Delhi through its Secretary

2. The Director
Indian Institute of Spices Research
Marikunnu P.O., Calicut - 12

3. The Director
Central Marine Fisheries Research Institute
Kochi - 14

Respondents

(By Advocate Mr. P.Jacob Varghese)

The application having been heard on 23.11.2005, the Tribunal on 08.12.2005, delivered the following:

ORDER

HON'BLE Mr. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant joined the service of ICAR in the Central Marine Fisheries Research Institute at Kochi in 1967. On 03.03.1992, he availed study leave to acquire Ph. D Degree for a period of two years which was extended by one more year. In 2001, he was transferred to the Indian Institute of Spices Research. In 2002, he has submitted his finalised thesis to Kanpur University. On 13.01.2003, the 3rd respondent recommended for

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condonation of delay in submission of the thesis. But to his surprise, as per direction of the Deputy Secretary (P), New Delhi vide letter dated 06.05.2003, the applicant was served with an office order dated 08.05.2003 (Annexure A-2) directing recovery of an amount of Rs.1,23,520/- (in 13 instalments at Rs. 8,825/- and an additional instalment of Rs. 8,795/-) which was granted to him as salary during study leave. The applicant, a Principal Scientist in the Indian Institute of Spices Research is aggrieved by the impugned orders Annexure A-1 and A-2 order of recovery of the amount has filed this O.A seeking the following main reliefs:-

- a, Call for the records leading to the issue of Annexures A1 and A2 and quash the same and direct the respondents to grant the consequential benefits thereof;
- b, Award costs of and incidental to this application;
- c, Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The respondents have filed a detailed reply statement contending that the applicant while functioning as Senior Scientist was granted study leave to obtain Ph.D as per provisions of the Agricultural Research Service Rules. The period of study leave as per the said provisions is three years. Where a Scientist is not able to complete his Ph.D within a period of three years, he can avail extra ordinary leave without pay for a maximum period of six months in combination of the study leave. The contention of the applicant that he could not complete his Ph.D due to excess pressure of work is not tenable. Any course for obtaining a Ph.D Degree is invariably pursuing a special line of study or research with a detailed plan of work within a given time frame. The period starts in obtaining Ph.D commences from the date of commencement of the study leave and extends upto the date of declaration of result of viva-voce. The applicant was initially sanctioned leave for two years which was subsequently extended by one more year. Had the applicant been serious and realistic about his Ph.D he should have sought another extension of six months of EOL and should have completed his Ph.D formalities. He had availed study leave from

30.03.1992 to 29.03.1995 and submitted his papers after 7 years and 8 months. As per the general circular issued by the Council (Annexure R-1), the applicant should have completed the study within three years. The Council has initiated necessary action for recoveries from all such similarly placed Scientists and the applicant is not the isolated one. This is an administrative action strictly as per provisions of the Study Leave Rules and non-adherence to this provision could lead to audit objections later. Accordingly, the Council has initiated necessary action as per Rule 6 of the ARS Study Leave Rules which stipulates that the applicant is liable to refund the actual amount of leave salary, study leave allowance, cost of fees and other expenses since he did not complete his Ph.D formalities within the stipulated period of time. There is no provision for condonation of delay as per the rules. The applicant has not completed the necessary formalities in obtaining the Ph.D in the stipulated time and submitted his thesis after a gap of 7 years and 8 months and therefore, the OA is devoid of any merit.

3. Mr.T.C.Govindaswamy, learned counsel appeared for the applicant and Mr. P. Jacob Varghese & Ms. Varsha learned counsel appeared for the respondents. The learned counsel for applicant submitted that the applicant has completed the research work and due to pressure of work he could not submit the thesis for the final award of the degree of Ph.D. The 3rd respondent also recommended condonation of the delay in the submission of the thesis. As per Rules, there is no stipulation that degree should be obtained within that period. But the Rule stipulates that completion of course means the completion of requisite period of work. He also submitted that subsequently he has submitted the thesis and obtained the Ph.D on 29.01.2004, a copy of the provisional certificate submitted by the applicant has been taken on record.

4. The learned counsel for respondents on the other hand persuasively argued that as per the Rules and instructions of the Council the period means " period spent in obtaining Ph.D " The period commences from the

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date of commencement of the study leave and extends upto the date of declaration of result of viva-voce. Since the applicant has not obtained the Ph.D within the stipulated time frame, the recovery that has been ordered is justified.

5. We have given due consideration to the arguments advanced by the learned counsel on both sides and perused the materials and evidence placed on record. It is an admitted fact that the applicant has availed study leave and leave salary for a period from 30.03.1992 to 29.03.1995 duly sanctioned by the respondents. But he submitted his papers after 7 years and 8 months and obtained Ph.D on a subsequent date. The question before us is whether obtaining of Ph.D Degree belatedly will dis-entitle the applicant of the leave salary. Annexure A-3 is the Rule governing the study leave that has to be granted to such applicants. Annexure A-3 Rules which is called as "Agricultural Research Service Study Leave Regulations, 1991" gives the definition of 'competent authority' as :

- (a) Director of the Institute in the case of a Scientist posted in an Institute and the Director General of the Council in the case of a Scientist posted at the Council's Headquarters or any other authority declared as such by the Director General of the Council."

Further, the eligibility criteria for grant of study leave has been stipulated in Clause

3 (1) : Study leave may be granted to a permanent whole time Scientist (Viz. Scientist/Scientists (Senior scale)/Senior Scientist ; Scientist (Selection Grade) with not less than 2 years continuous service to pursue a special line of study or research, including a course for Ph.D Degree directly related to his work in the Organisation. Principal Scientists and above are not eligible for Study Leave. "

Duration means :

" 4. (1) Study leave shall be granted by the competent authority on receiving the full plan of work, for a duration as may be considered necessary. The period of study leave shall be three years for Ph.D purpose. However, study leave sanctioned for purpose of prosecuting courses other than Ph.D shall not exceed two years."

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" 4 (4) When a Scientist is not able to complete his Ph.D work within a period of three years of study leave, he can avail of Extra ordinary leave without pay for a maximum period of six months in combination with the study leave."

" 4 (7) A Scientist availing of study leave shall undertake that he shall serve the organisation continuously for double the period of study leave subject to a minimum of three years (in case of candidates availing of study leave for Ph.D degree) from the date of his resuming duties after expiry of the study leave."

In the said Rules, the other conditions incorporated read as follows:-

" Other conditions: A Scientist -

- (a) Who is unable to complete his studies within the period of study leave granted to him, or
- (b) who fails to rejoin the service of the organisation on the expiry of his study leave, or
- (c) who rejoins the service of the organisation but leaves the service without completing the prescribed period of service after rejoining the service, or
- (d) who within the said period is dismissed or removed from the service by the organisation

shall be liable to refund to the organisation, the amount of leave salary and allowances and other expenses, incurred on the Scientist or paid to him or on his behalf in connection with the course of study.

Explanation one reads as follows:-

" If a Scientist asks for extension of study leave and is not granted the extension but does not rejoin duty on the expiry of the leave originally sanctioned, he will be deemed to have failed to rejoin the service on the expiry of his leave for the purpose of recovery of dues under these rules."

Clause 7 (1) for execution of bond stipulates that :


" After the leave has been sanctioned, the Scientist shall, before availing of the leave, execute a bond in favour of the organisation in the prescribed form undertaking to serve the organisation for not less than double the period of study leave sanctioned to him on full, half or no pay subject to a maximum period of three years."

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The relevant portion of the bond (Annexure A-4) executed by the applicant to the respondents 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 of study or at any time within a period of three years after my return to duty, or otherwise not resuming duty or continuing duty by operation of law or any Court order or otherwise I shall forthwith pay to the Council or as may be directed by the Council, on demand the said sum of Rs.1,69,320/- (Rupees One Lakh Sixty nine thousand three hundred and twenty only) together with interest thereon from the date of demand at Government rates for the time being in force on Council loans."

6. On going through these documents, we find that the Rules governing the grant of leave and sanction of leave salary is specifically stipulated as per the conditions referred above. The applicant has also executed a bond in the said form. Based on the said Rule position and the orders sanctioning the study leave to the applicant he has 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. But 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. We do not find any reason that the demand of the respondents to produce a pass certificate on completion of the course study is borne out by any stipulation either in the order sanctioning the study leave or in the bond executed by the Government employee which is a legal covenant binding on both parties.



7. The respondents have no case that the applicant has not completed the course. To support his completion of course, the applicant has produced Annexure A-5 certificate issued by his Guide, a retired Deen of the Faculty of Agricultural Sciences, CSJM Kanpur University, Kanpur certifying that the applicant has worked under his guidance and supervision and the thesis on the subject " Marine Fisheries and its impact on the economic development of fishermen of Kerala State " is his genuine work. It is true that in the certificate the Guide has not specified the period with which he has worked. But it is quite obvious that it is during the leave period that he has undertaken the studies. Annexure A-6 is the receipt issued by the Kanpur University for acceptance of fee for registration of Ph.D. It appears that the applicant has forwarded his thesis in 2002 itself to the Registrar, Kanpur University. Further, the applicant admits that there was some delay in submitting the thesis for the reason that he had some pressure of work since he had been engaged in the official duties. The Sr.AO of the CMFRI vide Annexure A-7 letter dated 13.01.2003 requested the Deputy Director(P), Indian Council of Agricultural Research for condonation of delay in completion of the course of study of the applicant. The respondents argued that there is no provision for condonation of delay. It is equally important to note that there is no provision of the period with which the applicant should obtain the Ph.D Degree. It is too much to imagine that a Scientist who has completed three years of study should obtain the Ph.D within three years and in the absence of any stipulation that the Ph.D should be obtained and produced before the authorities within a stipulated period, we cannot appreciate the arguments of the respondents in this regard. The Rules relied on by the parties is very clear that there is no binding force on the applicant to produce the certificate within such period. The applicant has sufficient evidence to prove that he has completed the course and submitted the thesis on a belated date and obtained Ph.D thereafter. The respondents have no case that the applicant had not submitted the thesis but he has submitted the thesis on a belated date.

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8. In the circumstances, we are unable to accept the arguments of the respondents that the period spent in obtaining the Ph.D commences "from the date of commencement of the study leave and extends upto the date of declaration of result of viva-voce". Had it been so, the respondents could have made such conditions/stipulations in the Annexures A-3 and A-4 and the intention from the reading of the said Rules is to encourage Statistics in pursuing such studies for the betterment and enrichment of the Institution in the pursuit of scientific research. Therefore, we are of the considered view that the applicant has made out a case for the grant of the reliefs.

9. In the conspectus of facts and circumstances, we quash Annexures A-1 and A-2 and direct the respondents to grant all consequential benefits. The amount, if any, already recovered in pursuance of Annexure A-1 and A-2 orders shall be refunded to the applicant forthwith, say within four months from the date of receipt of the copy of this order.

10. The O.A is allowed accordingly. In the circumstances, no order as to costs,

Dated, the 8th December, 2005.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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