

Central Administrative Tribunal
Lucknow Bench

OA No. 283 of 2009

238 of 2009

This 7th day of July, 2010.

18.8.10

HON'BLE MR.M.KANTHAIAH, MEMBER(J)
HON'BLE DR. A.K. MISHRA, MEMBER(A)

Amitabh Thakur,
aged about 41 years,
S/o Sri Tapeswar Narayan Thakur
R/o 5/426 Viram Khand Gomti Nagar,
Lucknow.
(presently posted and working as
Superintendent of Police,
Intelligence,
Faizabad.

.... Applicant

By Advocate: party-In-person

..VS..

Union of India through the
1. Secretary
Ministry of Home Affairs
Central Secretariat
New Delhi

2. State of UP through the
Principal Secretary(Home)
Civil Secretariat
Lucknow

3. Director General of Police,
Uttar Pradesh,
DGP Head quarters,
Lucknow.

..... Respondents.

By Advocate: Shri A.K. Chaturvedi

Order:Pronounced by the Hon'ble Mr. M. Kanthaiah, Judicial Member.

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The applicant has filed this OA seeking the following relief:

(a) to issue direction to the concerned authorities to grant the applicant the desired Study leave from 9.6.2009 by rescinding the Government's order dated 22.5.2009 as he has been asked to report to IIM Lucknow on that date.

(a)(i) to issue direction to the authorities to set aside the extraordinary leave granted to the applicant through its office Memo vide Annexure MA-1 dated 8.1.2009, once study leave is finally granted to him.

(b) any other order or direction as this Tribunal may deem fit and proper.

The applicant has challenged the impugned order dated 22.5.2009 (Annexure A-2) mainly on the ground that the respondents have rejected the Study Leave/Extra ordinary Leave on flimsy, wrong and improper way and the reasons furnished by them also shows discrimination against him and thus the act on the part of the respondent is unfair and arbitrary and thus violative of Art. 14 and 16 of the Constitution of India.

2. The respondents have filed counter affidavit denying the claim of the applicant stating that the impugned order dated 22.5.2009(Annexure A-2) is just and proper and in accordance with law and whereas in respect of the grant of extraordinary leave vide order dated 8.5.2009 Annexure MA-1 as per the directions of the Tribunal dated 3.6.2009, the applicant has submitted application for grant of 2 years Extra ordinary leave which was considered and granted by the authorities which the applicant availed and in such circumstances, he is not entitled to challenge the same in view of the principles of waiver and estoppel.

3. Heard both sides.

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
4. The point for consideration is whether the applicant is entitled for the relief as prayed for.

5. Before going into the facts of the case, it is required to discuss the detailed pleadings placed by both the parties.

6. The applicant has filed this OA on 29.5.2009 with a prayer to issue direction to the authorities for grant of desired Study Leave and also questioning the validity of the Government Order dated 22.5.2009 (Annexure A-1). The applicant also sought for interim relief to issue direction to the authorities to grant the applicant Extra ordinary leave for 2 years starting from 9.6.2009 under Rule 15 of the All India Service(Leave) Rules 1955 in case of study leave not granted as requested by the applicant in his letter dated 23.5.2009(Annexure A-4). After hearing both sides, this Tribunal passed order on 03.06.2009 in respect of the claim of the applicant with certain directions.

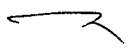
7. The respondents have filed reply dated 1.9.09 for dismissal of the OA. Thereafter, the respondents filed a detailed counter affidavit dated 16.11.2009 for dismissal of OA. The applicant filed rejoinder to the counter affidavit on 18.11.2009 But in the meantime after disposal of the claim for grant of interim relief, the applicant filed MA 1949/2009 on 07.09.2009 seeking for amendment of OA, adding additional prayer as 8(1)(a) to set aside the EOL granted to him vide order dated 8.6.2009, once study leave is finally granted to him for which the respondents filed objections on 23.10.2009. After hearing both sides, the MA was allowed on 14.12.2009, thereafter the applicant carried out amendment and filed fair copy on 23.12.2009. Thereafter the respondents filed supplementary counter on 11.03.2010 for which the applicant filed rejoinder on 5.4.2010. The respondents also filed supplementary counter affidavit to the said rejoinder dated 5.4.2010 on 15.4.2010.

8. The brief facts of the case are that the applicant is the officer of the Indian Police Service of the 1992 Batch (UP cadre), who submitted representation dated 30.4.2008 (Annexure A-1) to the respondents seeking 2 years study



leave on the ground that he got letter from IIM Lucknow confirming his selection for 4 years fellow programme in Management(FPM) course in the area of Human Resources Management. On his request, the IIM authorities assured of extension/admission in the next academic session commenced from June 2009 because of non disposal of his earlier representation by the authorities. Thereafter, the applicant again made representation dated 28.8.08 (Annexure A-3) seeking study leave for admission in the next academic session and thereafter on 23.5.2009 (Annexure A-4) he sought for Extra ordinary leave in case study leave is not granted and when there was no response from the authorities, the applicant filed OA 154 of 09 with a prayer to issue direction to the respondents to grant the applicant desired study leave. After hearing both sides, the said OA was disposed of on 28.4.09 with a direction to the respondent No.2 to consider and decide the pending application and letters of the applicant in respect of his study leave as per rules within 2 weeks from the date of receipt of the order. Annexure A-5 is the copy of order passed in OA 154/09. Thereafter the applicant also preferred WP 713/09 on the file of Hon'ble High Court and on 19.5.09 the WP was disposed of with a direction to the State government to take decision in the matter within a period of one week. The applicant also filed Contempt Petition CCP 50/09 for non compliance of the orders of the Tribunal in OA 154/09 dated 28.4.09. Thereafter the respondents have considered the representation of the applicant and also passed order dated 22.5.2009 (Annexure A-1) rejecting the claim of the applicant for grant of study leave and extra ordinary leave.

9. Aggrieved with such rejection order in respect of grant of study leave/extra ordinary leave the applicant filed the present OA challenging the impugned rejection order dated 22.5.2009. By way of interim relief, the applicant also has sought direction to the respondents authorities to grant Extra ordinary leave for 2 years from 9.6.2009 under Rule 15 of All India



Service Leave Rules 1955 (in short Rules 1955) in case of Study Leave not granted to him. After hearing both sides, this Tribunal passed the following order in respect of such claim of interim relief:

"11. In view of the above circumstances, we direct the applicant to make a representation confining his request for grant of two years EOL under Rule 15(i)(b) of the Rules of 1955 and also an undertaking not to seek any extension beyond that period and further in respect of his replies on two other grounds taken by the respondents in rejection order, ie in respect of prior permission not required under Rules and also in respect of many officer having been sent on deputation during the pendency of his application by showing discrimination, along with a copy of this order to the respondents oNO.2, who shall consider and dispose of the same by passing a reasoned and speaking order within a period of three days from the date of receipt of such representation."

10. In pursuance of the orders of the Tribunal dated 3.6.09, the applicant submitted his application dated 4.6.09 for grant of Extraordinary leave for a period of 2 years and also gave an undertaking not to take any further extension beyond two years of EOL and after considering the said representation of the applicant, the respondents granted EOL for a period of 2 years through office order dated 8.6.09 (Annexure MA-1) and the said order was accepted by the applicant as the applicant proceeded on EOL in pursuance thereof with effect from 12.6.2009. Thereafter the applicant filed MA 1949/09 for amendment of OA to set aside the grant of 2 years EOL granted to him vide office order dated 8.6.09, once study leave is finally granted to him and the said claim of the applicant for amendment of OA was opposed by the respondents by filing their objections and after hearing both sides, this Tribunal allowed the same and thereafter the applicant has carried out amendment and filed fair copy of OA.


11. The applicant filed this OA challenging the G.O. dated 22.5.2009 under which the respondent authorities rejected the claim of the applicant for grant of study leave/extra ordinary leave on the ground that he has not obtained prior permission before admission and there was shortage of IPS officers in the cadre of SP in the State of UP and further when the course of the applicant was for 4 years how 2 years leave would serve the purpose of



the applicant. After grant of extra ordinary leave vide office order dated 8.6.09, the applicant sought direction to set aside the same on the ground once his claim for study leave is granted there is no necessity of extraordinary leave. The respondents filed reply stating that the authorities have passed office order dated 22.5.09 in accordance with law and stated once the applicant's claim for grant of EOL was granted by the authorities vide office order dated 8.9.09 the OA is liable for dismissal. They further taken ground that after accepting extraordinary leave, the applicant also ceases his right of claiming for study leave and principle of waiver and estoppel operates against the applicant. In view of the above rival contentions, the following points have been framed for discussion.

1. Whether the applicant is entitled for setting aside the order of rejection of study leave/EOL vide G.O. dated 22.05.09 and he is entitled for study leave as claimed for.

2. Whether the principle of waiver and estoppel operates against the applicant, and OA is liable for dismissal after grant of EOL for 2 years vide office order dated 8.6.09, as per the request of the applicant?

3. To what relief

Point no 2: — 

12.  The applicant filed the Original Application with the prayer to issue direction to the authorities for grant of required study leave to the applicant by rescinding the G.O. Dated 22.5.09(A1). By way of interim relief, he sought to issue direction to the authorities for grant of EOL for 2 years from 9.6.09 as requested by the applicant in his letter dated 25.03.09(A4), in view of the urgency since the last date for admission in the given course expires by 9.6.09. Admittedly, when there was no response for his representation dated 28.8.08 (A3) for grant of study leave from June 2009, he made another representation dated 25.3.09(A4) for grant of EOL in case study leave is not granted. Thereafter, the respondent authorities passed G.O. dated 22.05.09(A1), 

rejecting the claim of the applicant for grant of study leave/EOL. Immediately he filed OA on 29.05.2009, and in view of urgency in the matter he sought interim relief for grant of EOL and after considering rival contentions, this Tribunal passed order dated 3.6.09 with a direction to the applicant to make representation for his claim for EOL for 2 years and also undertaking not to seek further extension beyond 2 years, which the authorities shall consider and pass order as per rules within three days from the date of receipt of such representation.

13 In pursuance of such direction, the applicant submitted his application on the next day ie. dated 4.6.09 and after considering the same, the authorities granted 2 years EOL to the applicant vide office order dated 8.6.09 w.e.f. 12.06.09, which the applicant accepted and proceeded on EOL.

14 It is the case of the respondent that the claim of the applicant for grant of 2 years EOL and undertaking not to take any further extension beyond 2 years period is not without prejudice to the claim of the original application. Further the applicant once accepted the office order dated 8.6.09 and EOL w.e.f. 12.6.09, without any protest, he is not entitled to challenge the office order dated 8.6.09 and the principle of waiver and estoppel operates against the applicant.

15 Admittedly, the claim of the applicant for grant of EOL for 2 years is only by way of interim relief, whereas his claim for study leave is the main claim in OA and the relief in respect of rejection of EOL is also part and parcel of main relief and in such circumstances of the matter and in view of urgency involved in the matter, this Tribunal interfered and gave direction to both the parties vide order dated 3.6.09 in respect of the claim of the applicant for EOL only. When such order dated 03.06.2009 is only by way of interim relief, and when the main relief involved in the OA is study leave, operating such order of interim relief dated 3.6.09 as estoppel and waiver is not at all correct. Further, separate undertaking accepting such EOL with protest or without prejudice to

the claim in OA is also not required, when his main relief in the OA is still subsisting for decision and when the order passed by the Tribunal dated 3.6.09 is only by way of interim arrangement. From the beginning, it is the stand of the applicant for grant of EOL in case study leave is not granted and his representation dated 25.3.09(A4) also reveals the same and he never given up his main claim for grant of study leave. In view of such circumstances of the matter, the argument of the respondents that after accepting EOL for 2 years and after office order dated 8.6.09, it operates as waiver and estoppel against the applicant and also OA for the claim of study leave is liable for dismissal, without any consideration is not at all maintainable and justified. Hence this point is decided against the respondents.


16. Point No.1: The applicant after receiving letter from IIM, Lucknow confirming his selection for given course he made representation to the authorities dated 30th April 2008 for study leave for 2 years under All India Service(Study Leave) Regulation for the year 2008 and when there was no response and in view of such postponement of admission for next academic year 2009, he made another representation dated 28.08.08 for grant of study leave from June 2009 and thereafter, he also sent another representation dated 25.3.09 for EOL in case study leave is not granted. And when the said claim was rejected vide G.O. Dated 22.5.09, he filed this OA challenging the same and also claiming study leave. From this, it is clear that the claim of the applicant is mainly for study leave and the claim of EOL is only an alternative in case of not granting study leave. But vide order dated 22.5.09(A1), the respondent authorities rejected the claim of the applicant for grant of study leave/EOL on the ground (I) that he did not take any permission from any competent authority before getting admitted in the given course, (II) great deficiency of IPS officers of Superintendent of Police rank in the State of UP and (III) that the course is 4 years but as per rules the applicant can be granted study leave of only 2 years. The applicant challenged the said rejection order

and reasons given therein as flimsy, improper, untenable and wrongful in the eyes of law.

17. Coming to the first reason for rejection of study leave/EOL, that the applicant did not take any permission from the competent authority before getting admission in the given course, it is the contention of the applicant that there is no such provision for taking any kind of permission from any of the competent authority at any stage before actual going for study leave and the service rule which governs the applicant's services i.e. All India Service(Study Leave) Regulation and also All India Service(Conduct) Rules, 1969 are also no such restrictions are imposed. Undisputedly, the given course for which the applicant made request for study leave in the area of "Human Resources Management" which is directly linked with the applicant's service.


18. The applicant has brought it to the notice of the authorities in respect of grant of study leave for some of the officers of SP rank like Shri Navaneeth Sikara to MBA course at Indian School of Business, Hyderabad, Shri Rajkumar Vishvakarma, IPS Officer who had taken such examination seeking admission without taking prior permission. The respondents admitted non-obtaining of any prior permission in the case of Shri Navaneeth Sikara stating necessary explanation is being sought from him who is presently on study leave and simply denied in the case of Rajkumar Vishvakarma. From this, it is clear that there is no such provision for prior permission before seeking admission in the given course and further when there are instances allowing such study leave without any objection on the ground of prior permission, and raising such objection in the case of the applicant is not at all proper and justified. Further, such omission on the part of the applicant is not so grave to reject the claim of study leave and invalidate the claim.

19. The respondents have given the second reason for rejection of the claim of the applicant for study leave/EOL stating that there is great deficiency of IPS Officers of SP rank in the State. But the applicant filed copy of website



in respect of UP Police(Annexure A7) which shows as on 24.5.09, 65 IPS Officers of UP cadre of different ranks(excluding 5 IPS probationers at NPE, Hyderabad) are away from the State on various deputations. It is also the specific case of the applicant that 15 officers of the SP rank are there on various deputation out of which 5 officers (Shri Sanjay Singh, Shri S.P.Sreedharan, Shri Vinod K.Singh, Shri Hajina Meera, Shri Deepak Radha) of SP rank have been granted permission to go to various deputation after the applicant having applied for study leave on 30.4.08 and 28.8.08. Further, even this year (2009) 2 IPS Officers of SP Cadre have been granted permission to deputation after 4 days after the date of the 2nd respondent's report dated 8.5.09 and Shri Vinod K.Singh was relieved by the respondents for deputation to NSG on 12.5.09. Thus, if there was any such derth of IPS officers of SP Rank, how all these officers were allowed to go away from State on various deputations. The respondents made simple denial, without specific reasons and it is the duty of the respondents to submit reply in respect of each individual which the applicant furnished details and particulars. When permitting such a number of deputations and more particular after the request of the applicant for grant of study leave itself shows in rejecting the claim of the applicant for study leave is not at all convincing on the ground of dearth of officers of SP Rank in the State.

20. By way of rejoinder, the applicant stated that another IPS officer Shri Navaneeth Sikara, SP Rank went to MBA course at Indian Business School of Hyderabad, the State Government granted study leave and at that time the respondents have not raised the question of shortage of IPS Officers of SP Rank and thus there was discrimination against him. But the respondents have filed reply stating that the claim of study leave in respect of Navaneeth Sikara has no relevancy, since he was granted for 13 months from 1.4.2010 to 30.4.2011 and by that time, Provincial Police Service Officers were appointed to IPS (UP) Cadre through notification dated 7.12.09 (Annexure S1&S2). When



the said sanction of study leave to Shri Navaneetha Sikara is for the subsequent year i.e from 1.4.2010 to 30.4.2011, whereas the claim of the applicant is for the year 2009 and as such the same is not suitable for comparison with the applicant.

21. In respect of third reason for rejection of the claim of the applicant for grant of study leave/EOL, it is the case of the applicant that he needed the study leave only for 2 years, as a person taking the FPM course needed to stay in the IIM, Lucknow campus only for the first 2 years and in respect of 3rd and 4th year it relates to thesis work in which special arrangements are made for the working executives, hence, there is no need for study leave. His first letter dated 30th April 2008 also clearly indicates such details. As per rules, the applicant is eligible for study leave for the maximum period of 2 years only and his request is also for 2 years and for the remaining course he is not seeking any leave and intends to complete without leave. In such circumstances, raising objection how he will complete 4 years course with 2 years study leave is not at all justified reason for rejection of the claim of the applicant.

22. Admittedly, the applicant satisfied the requirement of special course of study consisting of higher studies, having a direct and close connection with the sphere of his duty provided under sub-rule 3(1)(i) of All India Services (Study Leave) Regulations, 1960. In such circumstances, rejecting the claim of the applicant for grant of study leave on the reason of non-obtaining prior permission, shortage of IPS Officers in the cadre of SP in the State of UP and how 2 years of study leave for 4 years course will serve the purpose are not at all valid and justified.

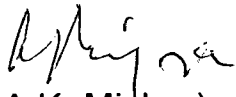
23. Though the respondents have rejected the claim of the applicant for grant of study leave/EOL vide G.O. Dated 22.5.09 with the above mentioned reasons, they have subsequently granted 2 years EOL to the applicant vide Office Order dated 8.6.09 and at that time they have not given any importance to their earlier objections which itself indicates that they are not so grave to


reject the applicant's claim for grant of study leave. If such reasons are so valid and lawful, the respondents department had not granted EOL for 2 years vide Office Order dated 8.6.09. This subsequent decision and development also indirectly fortifying the stand taken by the applicant in questioning the validity of rejection of his claim for grant of study leave vide G.O. Dated 22.5.09. In view of the above circumstances, we feel that this is a fit case for direction to the respondents to reconsider the claim of the applicant for grant of study leave as per rules and pass a reasoned order within three weeks from the date of receipt of copy of this order and thus, this point is decided accordingly.

24. Point No.3: Point No.2 is decided against the respondents, whereas Point No.1 is decided with a direction to the respondents. By way of amendment, the applicant also sought for the relief to set aside the Office Order dated 8.6.09 granting of 2 years EOL to the applicant once study leave is finally granted. When once the claim of study leave of the applicant which is the main subject matter in the OA is allowed, admittedly all earlier interlocutory orders will be merged with the main relief and in such circumstances claiming such relief by way of amended prayer is not at all required. Further, when the main claim of the applicant in respect of study leave is referred to the respondent authorities for reconsideration, passing of any orders on the amended relief in respect of Office Order dated 8.6.09 does not arise at this stage.

25. In the result, the OA is disposed of with a direction to the respondents to reconsider the claim of the applicant for grant of study leave as per rules by taking note of all subsequent developments including grant of EOL vide Office

Order dated 8.6.09, over looking earlier objections and pass a reasoned order as per rules within four weeks from the date of receipt of copy of this order. No order as to costs.


(Dr.A.K. Mishra)
Member(A)


(M.Kanthaiah)
Member(J).

MB/G