

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 132/1996

Date of Decision: 28-02-97

Mrs. Smita Pramod Kand

Petitioner/s

Shri S. R. Atre

Advocate for the
Petitioner/s

V/s.

The General Manager & 4 Ors.

Respondent/s

Shri R. R. Shetty

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M. R. Kolhatkar, Member (A).

Hon'ble Shri

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

abp.

M.R.Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULISTAN BLEG. NO. 6, PRESCOT ROAD, 4TH FLR.

MUMBAI

ORIGINAL APPLICATION NO: 132/96.

DATED THIS 28th DAY OF February 1997

CORAM : Hon'ble Shri M.R. Kolhatkar, Member (A).

Mrs. Smita Pramod Kand,
Head Clerk,
Office of the Assistant Controller
of Stores (Diesel), Central Railway,
Pune.

... Applicant.

By Advocate Shri S.R. Atre.

v/s.

1. The General Manager,
Central Railway, Mumbai V.T.,
Mumbai - 400 001.

2. The Chief Personnel Officer (S&M),
Office of the General Manager,
Central Railway, Mumbai V.T.,
Mumbai.

3. The Controller of Stores (MTP),
Central Railway, Mumbai V.T.,
Mumbai - 400 001.

4. The Financial Advisor & Chief
Accounts Officer, Central Railway,
Mumbai V.T., Mumbai - 400 001.

5. The Assistant Controller of Stores (D),
Central Railway, Pune.

... Respondents.

By Advocate Shri R.R. Shetty.

O R D E R

I Per Shri M. R. Kolhatkar, Member (A) X

was

The Applicant (S) Head Clerk in the stores department
in the office of the respondent No. 3 at Bombay V.T. The
applicant had requested for transfer to Pune and the same was
considered and at present she is working in the office of the
respondent No. 5. The applicant is aggrieved by the order of
the respondents dated 5/9/95 rejecting the request for grant
of study leave in connection with a course of studies for the
period from 2/8/92 to 1/7/94. The reasons for rejection of
the request as given in this Impugned order are as below:-

"No procedure has been followed in granting the
study leave in this case. C.P.O's office has once

in July, 1993 already regretted the leave. There is no question of review of this leave on post facto basis; and the employee should regularise this period through L.W.P."

2. The above communication is from FA&CAO's office, but it is also noticed that it relies on decision earlier taken in C.P.O.'s office.

3. The applicant has challenged the Impugned Order but on several grounds. First I may refer to the rules, the same are to be seen at page-21 to 23. According to Rule

2(iii) Study leave may also be granted-
"for the studies which may not be closely or directly connected with the work of a railway servant, but which are capable of widening his mind in a manner likely to improve his abilities as a civil servant and to equip him better to collaborate with those employed in other branches of the public service." that

Rule(3) provides/ Study leave shall not be granted unless

"(i) It is certified by the authority competent to grant leave that the proposed course of study or training shall be of definite advantage from the point of view of public interest. (ii) It is for prosecution of studies other than academic or literary subjects."

Rule(5) provides that Study leave shall not ordinarily be granted to a Railway Servant

"(i) who has rendered less than five years' service under the Government.
(ii) who is due to retire, or has the option to retire, from the Government service within three years of the date on which he is expected to return to duty after the expiry of the leave."

Rule 4 provides that a report regarding the admissibility of the study leave shall be obtained from the Accounts Officer.

4. The applicant contends that the course for which she applied for study leave was the course of Master in Personnel Management, Examination of the University of Pune which she has successfully completed and the certificate is available at page-35. The competent authority in her case is Head of

Department and the applicant contends that when she applied for No Objection Certificate vide Annexure A-3, the same was granted by her Head of Department, Controller of Stores, in following terms:-

" Dated: 29/6/1992.

COS(MTP)

Is it full time or part time course.
Is study leave granted.
We have no objection to allowing her to join Mgt. Studies.



APO(s)
BB VT.

Sd/-
C.M.M.(C)

Through proper channel

sir,

Sub: No Objection certificate for Post Graduation studies.

Since I am interested to join college for full time course of Management studies, No Objection Certificate from this office is required.

As such, you are requested to kindly issue format for the necessary certificate along with service certificate in my favour and oblige.

Thanking you,

Yours sincerely,

Sd/-
(Mrs. Smita P. Kand)
Head Clerk
Code No. 00387848

As this is full time course. Study Leave is necessary. This may be applied.

Sd/-
COS (MTP)
30.6.1992."

5. It would appear therefore that No Objection Certificate was conveyed to her to join Management studies and she was advised to apply for the study leave. This application is communication to be seen at page-26, vide ~~application~~ dated 3/8/92. However, it appears that this application was rejected though the letter rejecting the application is not on record. The applicant therefore made a representation on 26/8/93 at

page-27 in which she has stated that she has been advised that study leave for 2 years period from 3.8.92 to 30.8.94 has been regretted by competent authority. It is clear that the course was for 2 years and the rejection was communicated in the middle of the course namely after completion of one year and the reasons for rejecting the application were not given and then the applicant made a representation. In this representation apart from mentioning that she has taken NOC from Head of Department before joining the course, she has also stated that on enquiry she found that the probable reason given for not sanctioning leave is that she had not undergone the Unit Purchase Training, and she has averred that she has infact completed the same in the year 1990 (Fourth batch). She has therefore requested the competent authority to reconsider the matter and sanction the Study Leave. On this representation, the Head of Department has observed as below:-

"She has completed one year's training, also Unit Purchase Cell Training, her leave is sanctioned as a special case. She should not be disturbed in her training programme which is useful for Railway Administration."

6. There was however, no reply to this representation. She therefore sent a further representation on 29/9/94 at page-29 in which she has referred to Rule 2(iii) which is quoted above. Thereafter she also received/communication dated 9/11/94 in which she was asked to complete certain formalities namely, execution of bond, completion certificate of the course, etc. The matter remained in correspondence for clarification. But on 23/1/95, she appears to have completed the formalities vide page-34. She made a further representation on 6/6/96 (Page-38), ~~xx~~ 7/8/95 (page-39), ~~xx~~ 29/9/95 (page-41) and 1/11/95 (page-43). From this it appears that even after completing the formalities her case was rejected and her absence is being treated as leave without pay.

7. Respondents have opposed the OA. According to the respondents, NOC was given to join the course but the study leave was not sanctioned, as a particular course is required to be followed including concurrence of the Accounts Department and the Execution of Form A and B which the employee deliberately avoided doing before proceeding on study course. Infact, the applicant was on sick leave from 1/7/92 to 30/7/92 and she was expected to join duty on 31/7/92, but she did not join duty but instead joined the course and applied for sanction of the study leave. According to the respondents, the absence of the applicant from 3/8/92 to 30/8/94 was treated as leave without pay as she has neither got her leave sanctioned prior to proceeding on leave nor followed the procedures laid down for availing study leave.

8. Since the precise reasons for not sanctioning the study leave of the applicant were not clear, I asked the counsel for respondents to produce the connected files, from which it is seen that the Head of Department under whom the applicant was working was in favour of the sanction of the study leave but initially when objection was raised that the applicant had not completed the departmental training ~~XXX~~ the applicant was refused sanction of study leave in 1993, in the midst of the study course. Subsequently, on her return from study course, when she pursued the matter, the requisite formalities of execution of bond were sought to be completed by her department but it came up against the objection of the Accounts Department according to whom the study leave was not admissible.

9. It appears to me that the respondents have shifted grounds for not sanctioning study leave., and the respondents have interpreted the authority of the Accounts Department to certify admissibility of the leave as the authority to refuse leave on the ground of failure to complete requisite procedure prior to proceeding on study leave. It is clear

from a plain reading of the rules that the Accounts Department does not have a veto over the power of the competent authority to sanction leave. The Accounts Department is only required to submit a report regarding admissibility of the study leave., in the sense as to whether the applicant has exhausted earlier the maximum study leave of 2 years etc. The Accounts Department is also required to see that the formalities relating to execution of bond, etc are completed.

10. In this particular case, inspite of the intention of the Head of Department to sanction study leave subject to completion of formalities., Accounts Department appears to have misconstrued the provision regarding admissibility to negate with the proposal. It is also seen from the Impugned Order that a review of the earlier order (1993 order) was not countenanced for reasons which are not very clear ^{cogent,} and without taking into account the circumstances adduced by the applicant in her successive representations.

11. Applicant has also relied on the ratio of ^{the} case decided by Patna Bench of Tribunal in Dinkar Minz v/s. ^{reported at 1990 (13) ATC 537} Union of India and Ors/ which was a case of a Medical Doctor whose application for study leave which was recommended by Director, Central Institute of Psychiatry, (CIP) was negated By Directorate General of Health Services and Family Planning, Government of India. The Tribunal allowed the OA requesting the direction to the respondents ^{by} applying the Doctrine of Promissory Estoppel. Para-5 of the judgement reads as below:-

"5. Now, applying this principle to the facts of this case we have no hesitation in holding that on the basis of the sequence of events, the applicant was justified in believing that respondent 1 held out a promise that study leave would be granted to the applicant if selected in the admission test. The issue of 'No Objection Certificate'; the recommendation of the Director of CIP saying that the course will enhance the efficiency of the applicant and will be in public interest, and his further observation that no substitute for the applicant will be necessary all led to the belief that study leave would be granted to him if he was selected on the basis of the admission test. Respondent No.2, therefore,

cannot be allowed to resile from her earlier position and to refuse leave to the applicant. No case has been made out on behalf of respondent 2 to show that after issue of 'no objection' certificate there were any compelling circumstances which might justify going back on her earlier promise to grant study leave."

12. The counsel for the respondents contends that the facts of the case of Dinkar Minz do not apply to the facts of the present case because in that case the question involved was that of cancellation of study leave already granted. I have perused the judgement and seen that that ~~it~~ is not so. In that case also the applicant was aggrieved by the rejection of sanction~~xxx~~ of study leave on administrative grounds.

13. There is also another circumstance relating to the grant of Extra Ordinary Leave. According to CCS ~~Leave~~ rules which would be para-materia with the Railway Servants ~~Leave~~ rules. Extra Ordinary Leave may be granted to Government servant when no other leave is admissible. In this particular case, the Government servant has not applied in writing for grant of Extra Ordinary Leave. Moreover there is a maximum limit for grant of Extra Ordinary Leave ~~in different circumstances~~

14. The respondents appear to have resorted to this provision but they have not obtained an application from the applicant for this purpose and they have unjustly denied the benefit of increment which otherwise would have been available to the applicant had she been on any other kind of leave (for example, Earned Leave, Sick Leave, etc). This is mentioned only to indicate the manner in which the applicant has been treated by the respondents.

15. In the light of the discussion above, I am of the view that the Impugned order dated 5/9/95 cannot be sustained. The request for ~~ex post facto~~ sanction of ~~xxxxxx~~ study leave has been unjustly rejected. The Impugned Order is therefore quashed and set aside and

the respondents are directed to consider the application of the applicant for study leave on ex-post facto basis, keeping in view the discussions above.

16. The action for sanctioning study leave subject to completion of formalities should be completed within three months of receipt of this order. Applicant should also be given all consequential benefits and in particular salary for the period and increments for the period, etc should be allowed within one month thereafter. So far as arrears if any of increments are concerned, the same should be restricted to one year prior to the date of filing of the OA. There would be no orders as to costs.

M.R.Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

abp.