

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A.No.187/96.

Dated: 31-07-96

Shri Shivaji Gendeo Poul Petitioner

Shri S.P.Kulkarni Advocate for the Petitioner.

v/s.

Union of India & Anr. Respondents

Shri S.S.Karkera for Advocate for the Respondents
Shri P.M.Pradhan.

CORAM :

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

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to other
Benches of the Tribunal? X

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

abp.

In the Central Administrative Tribunal
'GULESTAN' BLDG.NO.6, PRESCOT RD, 4TH FLOOR,
MUMBAI BENCH

ORIGINAL APPLICATION NO.187/96.

DATED THE 31st DAY OF July 1996.

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

Shivaji Gendeo Poul,
Postal Assistant,
Vairag Post Office.
Permanent residing at :
Patel Chawl, Opp.Taljapur Naka,
At P.O.Barsi, Solapur,
District - Solapur - 413 401.
By Advocate Shri S.P.Kulkarni.

... Applicant

v/s.

Union of India,
Through :
Senior Superintendent of Post Offices,
Solapur Division,
Solapur - 413 001.

Post Master General,
Pune Region,
Pune - 411 001.

... Respondents

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan..

ORDER

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

The applicant is a postal assistant who was working at Barsi Post Office up to June,95 and at present stands transferred to Vairag Post Office which is 21 Kms from Barsi. The applicant was given permission vide letter dated 15/2/93 to take admission to Evening Law College subject to certain conditions. However, the applicant actually enrolled for the year 95-96 due to certain constraints. The applicant applied for 24 months¹ study leave from 1/1/96 vide Rule No.50 of CCS(Leave)Rules to complete LL.B. course at Barsi vide application dated 25/9/95 at page-17.

2. The applicant was informed vide Superintendent of Post Offices letter dated 31/10/95 at page-15 that the study leave is not admissible for ^{the} course of LLB in accordance with rule 50 of CCS(Leave)Rules 1972 as this is not having

a direct and close connection with the sphere of his duty. The applicant made a representation on 6/11/95 which states particularly that the rule-50 may be read as a whole and/rule 50(2) (iii).

The applicant was informed vide letter dated 15/11/95, that in view of /the rule quoted by him, he is not entitled to study leave.

The applicant then made further representation on 29/11/95 at page-18, again quoting verbatim, the rule in question. This representation was addressed to the Director of Postal Services, Pune. He was informed vide letter dated 18/12/95 at page-13 that there is no provision to grant study leave for the purpose of education and the representation is filed. It is this reply from Post Master General, Pune Region which has been impugned by the applicant. He has prayed for quashing of the decision dated 18/12/95 as arbitrary and autocratic and direct the respondents to consider and grant study leave in accordance with Rule 50(2) (iii) of CCS Leave Rules.

3. The respondents have opposed the OA. According to the respondents permission was granted to the applicant for taking admission to Evening Law College and 5 conditions were laid down:-

- (1) The department does not accept any liability/responsibility on this account.
- (2) You should not neglect your duties in any way, for the sake of studies.
- (3) You should not resort to produce M.C. on account of Study/examination and remain absent from duties.
- (4) The permission granted to you does not constitute any promise that you would be given concession of certain hours in duty.
- (5) The permission is likely to be withdrawn at any time without giving any reasons in the interest of public.

In terms of these conditions, the applicant is not entitled to grant of study leave. He has merely been given permission to pursue studies outside office hours without any concession and grant of study leave ^{is} a concession which has been specifically barred by the conditions read as above.

Moreover, the permission was in respect of the year 1993,

whereas the applicant has actually enrolled in the year 1995-96. The applicant never intimated to the respondent No.1, the date of his admission to the said college.

4. In order to appreciate the issue involved, the relevant rule may be noticed :

RULE 50. Conditions for grant of study leave

(1) Subject to conditions specified in this Chapter, study leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialised training in a professional or a technical subject having a direct and close connection with sphere of his duty.

(2) Study leave may also be granted-.....

(2) (iii) for the studies which may not be closely or directly connected with the work of a Government 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.

NOTE - Application for study leave in cases falling under clause (iii) shall be considered on merits of each case in consultation with the Department of Expenditure of the Ministry of Finance.

(3) 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 interests;

(ii) it is for prosecution of studies in subjects other than academic or literary subject:

5. The main contention of the applicant is that in the subject which he is studying/neither academic nor does literary and therefore his application/~~is~~ not come under rule 50(3)(ii). The said course is capable of widening his mind, in a manner likely to improve his ability as a civil servant (i.e. Assistant to Sub-Post Master Vairag when Sub-postmaster is off duty, has to deal with authorities of other Departments like police, School, Telephones, Revenue, Health, water supply etc.) and at times he is required to give opinion on

Indian Post Office Act and Post Office Rules and

Savings Bank Act etc.

6. Respondents contend that Law ^rcou~~se~~ is not closely and directly connected with his work as Postal Assistant ^{official} doing only clerical work. In his/capacity, he is not required to have any dealing with ^{the}police, school, telephone, revenue, health, water supply etc. The applicant is not required to give opinion on Indian Post Offices Rules, Savings Bank Act etc and therefore the request of the applicant for grant of study leave was rightly rejected.

7. The applicant contended that as per Note under Rule 50(2)(iii), application for study leave in cases falling under classe (iii) shall be considered on merits of each case in consultation with the Department of Expenditure of the Ministry of Finance and there is no evidence of any such consultation having taken place.

8. Respondents state that since the department has formed a view that the application is not required to be processed, the question of referring the matter to Ministry of Finance did not arise. The Counsel for the respondent also pointed out that ^{under}rule 50(3) Study leave shall not be granted unless 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 and that the competent authority was not in a position to give such a certificate.

9. The Counsel for the applicant at the arguments stage stated that the grievance is that the order dated 18/12/95, says in so many words that there is no provision to grant studyleave for the purpose of education and that such a stand of the department is definitely arbitrary. According to him, the department ought to have applied its mind to the contention of the applicant that the course is capable of the widening

xx 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.

10. No doubt the communication dated 18/12/95 does not make a very happy reading, it makes a sweeping statement that there is no provision for grant of study leave for the purpose of education. Such a sweeping statement is not borne out by a perusal of the rules 50 and 51 of the CCS(Leave)Rules. However, the reply dated 18/12/95 must be read conjointly with earlier replies viz. reply dated 31/10/95 and the reply dated 15/11/95. So read, it can be gathered that the competent authority had applied its mind and formed a view that for a postal assistant, a study leave for LLB course is not permissible in terms of CCS (Leave) rules 50 and 51.

11. Certainly, the law is a liberal profession and for a proper mastery of the same, great pains and efforts are required to be put in. There are various pronouncements of Hon'ble Supreme Court regarding the role and value of law as a profession vide Justice V.R.Krishna Iyer's observations in Bar Council of Maharashtra v/s. M.V.Dabholkar, AIR 1975 SC 2092 at pages 2103 and 2104. This was a judgement of the constitution Bench consisting of 7 judges. The same by Justice D.A.Desai was referred to and relied upon in M.Veerabhadra Rao v/s. Tekchand 1982 Scale 608. The Bar Council of India Rules 1975 refers to an advocate as a member of the legal profession, who an officer of the Court, a privileged member of the community and a gentleman. In the present times, law impinges on all spheres of work including Government departments and it is not unnatural for the Government employees at various levels including those holding clerical positions to try to become legally literate and to enrich their knowledge. Such an aspiration is legitimate and the applicant has been given the necessary permission. However, in practical terms a Government servant acquiring a law degree cannot immediately

join the profession while he is working as such, unless he can claim to be a law officer working in law and judiciary department of the State or Central Government. The Learned Counsel for applicant tries to distinguish between 2 year LLB course leading to Bachelor of General Law (BGL) and the 3 year LLB course which leads to an entry to the profession. However, for entry to the profession enrolment as an advocate is a pre-condition. Recently, Supreme Court in a judgement relating to a Medical Doctor who simultaneously wanted to practise law has observed that Law is a full time profession and a medical doctor cannot simultaneously practise as an advocate. The relevant regulations of the Bar Council of India precluding simultaneous practice of such profession was held to be valid. In the circumstances, it is to be held that a Government employee seeking to acquire an LLB degree is really prosecuting study in academic/ educational subject.

12. I am therefore of the view that considering the provisions of rule 50(2)(iii) and also the rule 50(3), the application of the applicant for grant of study leave was rightly rejected by the respondents and this Tribunal is not in a position to grant relief as prayed for. The therefore OA is dismissed with no orders as to costs.

abp.


(M. R. KOLHATKAR)
MEMBER (A)