

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 594/2000

Date of Decision : 11th Dec., 2001

Dr.M.K.Ramkrishnan Applicant

Shri G.K.Masand Advocate for the
Applicant.

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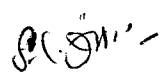
Union of India & Ors. Respondents

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library yes


(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.594/2000

Dated this the 11th day of Dec., 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Dr.M.K.Ramkrishnan,
Divisional Medical Officer,
under Chief Medical Supdt.,
Divisional Railway Hospital,
Central Railway,
Bhusawal.

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India through
The General Manager,
Central Railway,
C.S.T., Mumbai.
2. Chairman,
Railway Board,
Rail Bhavan,
New Delhi.
3. Chief Medical Director,
Central Railway,
C.S.T., Mumbai.
4. Chief Medical Supdt.,
Divisional Railway Hospital,
Central Railway,
Bhusawal.

...Respondents

PSH

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the declaration that once the applicant was sanctioned three years study leave by competent authority and granted 'No objection' to register for Post Graduate Course in M.S. (General Surgery) with M.K.C.G. Medical College, Berhanpur of three years duration, the respondents are not entitled to curtail applicant's study leave by 12 months, a direction is sought to the respondents for non-payment of the salary and allowances for the said period to the applicant and to adjust it against applicant's leave account and extraordinary leave, applicant is entitled to 3 years study leave from 10.10.1995, the directions to the applicant to apply for his own leave for four months earned leave and balance eight months as extraordinary leave is arbitrary, unjustified, illegal and discriminatory and liable to be interfered by the Tribunal, to quash and set aside the impugned order dated -- August, 1999 (Ex. 'A') with a direction to treat the period as deputation period/on duty as has been done in cases of Dr.Nazmi and Dr.Samanta of South Eastern Railway with further direction to release the salary of the applicant for the said period.

2. The applicant was sanctioned study leave vide order Exhibit-'B' dated 6.11.1995 which is as below :-

P.Y.

..3/-

" General Manager has accorded sanction to the grant of Study Leave to Dr.M.K.Ramkrishna, DMO SUR for a period of 3 years from 10.10.95 for General Surgery in M.K.C.G. Medical College, Berhanpur (Orissa) subject to the condition as stipulated in Appendix V to R.I. (Fifth Edition 1985) and Board's letter No.F(E)III-99-LB 1/5 dt.19.2.90. Accordingly, Dr.M.K.Ramkrishna is required to execute Bond in 'A'. However, Dr.Ramkrishna has already submitted bond to this Railway."

3. Thereafter, while the applicant was in Medical College at Behrampur, he learnt that the Railway Administration had changed its earlier decision and had decided to restrict study leave which was earlier sanctioned for 36 months to 24 months and had arbitrarily decided to adjust the balance period of 12 months towards applicant's earned leave and other forms of leave. The applicant represented his case by his letter dated 20.1.1997 to the Director General of Health Services, Railway Board, New Delhi (Ex-'D'). Vide his reminder dated 27.8.1997 addressed to the Director General, Health Services, Railway Board, New Delhi, the applicant once again requested the authorities to consider his case sympathetically and on par with other Doctors whose cases were considered as 'deputation/on duty' (Ex.'E'). No reply was given to the said letter dated 27.8.1997 nor the period of 12 months was regularised as 'deputation' or 'on duty' to enable the applicant to receive his salary for the said period with the result applicant had to face great hardship and financial difficulties in completing his Post Graduate Course. On his return in August, 1998, the applicant was posted at Divisional

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Railway Hospital, Central Railway, Bhusawal and since then he is working there. The applicant submitted his fresh appeal dated 25.5.1999 to Director General (R.M.S.), Ministry of Railways, New Delhi requesting the authorities to consider his case, the same was disposed of by Chief Personnel Officer, C.S.T., Mumbai vide letter dated -- August, 1999 (Ex. 'A'). Hence, this OA. for the above reliefs.

4. The claim is resisted by the respondents.

5. The grievance of the applicant is that as the P.G. Course was of three years, respondents have sanctioned the leave for three years, are now not entitled to contend otherwise, i.e. study leave cannot be sanctioned for more than 24 months as they are estopped for the same. It is further contended that others have been sanctioned deputation for one year, which be sanctioned to the applicant.

6. The respondents resisted the claim on the ground that there is no estoppel against law and the case of the applicant is not similar to the persons who have been sanctioned deputation for one year.

7. On perusal of Exhibit-'B', it is clear that leave is sanctioned for three years but is subject to the stipulation as mentioned therein. It is not disputed during the course of the arguments that 'study leave' cannot be sanctioned for 3 years as per the existing rules at the relevant time.

P.S.N.

..5/-

8. The learned counsel for the applicant relied on Civil Misc. Petition No.7667 of 1987 in Writ Petition No.348-352 of 1985 - Dr.Dinesh Kumar & Ors. vs. Motilal Nehru College, Allahabad & Ors. decided by the Apex Court on 25.9.1987 and argued that in view of the said authority, respondents ought to have amended the Study Leave Rules and the learned counsel for the respondents rightly contended that the matter ~~was~~[✓] regarding duration of P.G.Courses and not for study leave, to which I agree.

9. It is true that in view of the duration of courses which is three years, the respondents ought to have amended the study rules which was not done till 21.1.1998.

10. The Tribunal has to apply the law as it exists and the applicant cannot be permitted to be governed by the law which came in force on 21.1.1998 retrospectively, which does not apply retrospectively.

11. The leave sanction order which is reproduced above in para 2 of this order though a bit defective, i.e. mentioning of 3 years which gives clear indication to the applicant what the respondents intend. The principle of estoppel does not operate against law as held in (1991) 16 ATC 320 (Delhi) Jagdish Chander Sharma vs. Union of India.

SM

..6/-

12. It is true and in addition to it, consideration of the 'deputation' was never a subject matter before the respondents. The Tribunal cannot sanction the leave which is not applied for or is not the sanctioning or competent authority to sanction deputation, hence no finding can be recorded regarding discrimination but the matter is left to the competent authority/sanctioning authority to consider the case of the applicant for deputation, if applied for, ignoring the fact that he has not applied well in advance.

13. The learned counsel for the respondents relied on 1999 SCC (L&S) 1171, State of Punjab & Ors. vs. Dr. Rajeev Sarwal and argued that relaxation cannot be read into a provision of the nature where the rule itself mandates. The maximum period to be 24 months for the entire service. It is true that the said proposition of law was laid down in para 6 of the judgement but I cannot lose sight of para 7 of the said judgement which is as under :-

" However, in this case the respondent has already received the benefit and it would not be appropriate to recover any arrears of money if already paid. Subject to what is stated above, the appeal is allowed."

14. Keeping in view the ratio of the said authority, the respondents are directed to consider the application/applications of the applicant for leave/deputation.

P.S.

..7/-

15. In the result, OA. is allowed. The respondents are directed to consider the application of the applicant for leave/deputation. The applicant may apply for deputation for such period, which is short, to cover the period of 3 years within one month of the receipt of the copy of the order. The respondents to decide the same as per the extent rules within a period of 3 months from the date of receipt of copy of the order or application which is later in time, ignoring the fact that he has not applied well in advance, keeping in view the deputation sanction to Dr.S.A.Nazmiar, Dr.P.K.Sharma and 1999 SCC (L&S) 1171 State of Punjab and Ors. vs. Dr.Rajeev Sarwal.

16. No order as to costs.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

dt. 11/12/01
order/Judgment despatched
to Appellant Respondent (s)
on 22/11/02

MS
24/11/02

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CP No.93/2002
in OA No.594/2000

29th Nov, 2002

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Smt.Shanta Shastry, Member(A)

Dr.M.K.Ramkrishna,
working as Sr.Divisional Medical Officer,
under Chief Medical Superintendent,
Divisional Railway Hospital, Bhusawal,
Central Railway and
residing at D-301, filter House Road,
Railway Officers Colony,
Bhusawal.

... Petitioner

By Advocate Shri G.K.Masand

V/s.

1. Union of India, through
The General Manager,
Central Railway,
Chatrapati Shivaji Terminus,
Mumbai.
2. Chairman, Railway Board,
Rail Bhavan, New Delhi
3. Chief Medical Director,
Central Railway,
Chatrapati Shivaji Terminus,
Mumbai.
4. Chief Medical Superintendent,
Divisional Railway Hospital,
Central Railway, Bhusawal.

... Respondents

And

1. Shri I.I.M.S.Rana,
Chairman, Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi.
2. Shri S.P.S.Jain,
General Manager,
Central Railway,
Chatrapati Shivaji Terminus,
Mumbai.

... Opponents/
Contemners

By Advocate Ms.Supriya Daware proxy
counsel for Shri Suresh Kumar.

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ORAL ORDER

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

Learned proxy counsel for the respondents submits that in the writ petition filed by the respondents against Tribunal's order in OA No.594/2000, the Hon'ble High Court has been pleased to dismiss the writ petition. They have, however, granted the respondents two months to implement Tribunal's order. These facts are not disputed by the learned counsel for the petitioner.

2. In view of the above facts and the submissions of the learned counsel, we do not find it necessary to continue with the Contempt Petition. In the circumstances, CP-93/2002 is disposed of. Notices to the alleged contemnors are discharged. File to be consigned to the record room.

Shanta Shastri

(SMT.SHANTA SHASTRY)
MEMBER(A)

Lakshmi Swaminathan

(SMT.LAKSHMI SWAMINATHAN)
VICE CHAIRMAN

abp