

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 685 of 1998.

Dated this Tuesday, the 23rd day of April, 2002.

Mrs. Jhealum Ashok Joshi, Applicant.

Shri M. N. Niphadkar, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for the
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

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

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

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

Mrs. Jhealum Ashok Joshi,
Technical Assistant 'A'
in Research & Development Estt.
(Engrs), Dighi,
Pune - 411 015.

...

Applicant

(By Advocate Shri M.N.Niphadkar).

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
New Delhi.
2. The Scientific Adviser to
the Raksha Mantri and the
Director General Research
and Development and the
Secretary to the Department
of Defence Research and
Development Organisation,
Sena Bhavan, New Delhi.
3. The Director,
Research & Development Estt
(Engrs.), Dighi,
Pune - 411 015.

..... Respondents.

(By Advocate Shri R. K. Shetty).

O R D E R (ORAL)

PER : Shri S. L. Jain, Member (J).

This is an application under Section 19 of the Administrative Tribunals Act, 1985, seeking the relief, as extracted below, in para 8 (a) and (b) of the O.A.

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"(a) This Hon'ble Tribunal be pleased to issue necessary and appropriate orders to regularise the period from 5 Aug 96 to 10 May 97 spent for the purpose of undertaking Study of B. Lib. & I.Sc. Degree Course by the applicant by grant of Study Leave as per the provisions contained in CCS (Leave) Rules.

(b) This Hon'ble Tribunal be further pleased to issue necessary and appropriate orders requiring Respondent to make payment of balance of arrears an account implementation of Pay Commission which is withheld."

2. The applicant was working as U.D.C. She acquired higher qualification i.e. Bachelor of Library and Information Science (B.Lib) while serving as U.D.C. She applied for grant of permission for higher studies and study leave vide her application dated 26.04.1996. Respondents also certified that if admitted, she will be granted Study Leave with pay and allowance for the duration of the course. This certificate is part and parcel of the application form which was submitted by the applicant to the Pune University. Thereafter, the applicant submitted the Bond which was accepted by Mr. M. R. Joshi, Director, R & DE (Engrs.). In the said Bond it is mentioned that "Whereas I Mrs. Jhealum Ashok Joshi am granted Study Leave by Government." Thereafter, the Applicant was relieved for the course which commenced from 05.08.1996 and concluded on 10.05.1997. After her return from the said course she was taken on duty and on a search being made about her leave application, she came across with an order dated 07.03.1997 which was a correspondence between the Officers but not communicated to her. She represented against the same vide her representation dated 19.05.1998. In the said representation she has mentioned her earlier application dated 26.06.1997 which is not filed by the applicant before the Tribunal. Thereafter the Applicant filed this O.A. on 17.06.1998 before this Tribunal. The facts which

P.C. Joshi

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cannot be disputed at this stage are that the Respondents certified that if admitted, she will be granted Study Leave with pay and allowances for the duration of the course from 01.07.1996 and forwarded her leave application dated 26.04.1996, accepted the Bond on 31.07.1996 wherein it is mentioned that the applicant has been granted Study Leave by the Government.

3. During the course of argument, the Learned Counsel for Applicant stated that the Applicant was paid the due salary during the course of studies at Pune University. Learned Counsel for the Respondents stated that he is not aware of the said fact. In the circumstances, we hold that in case salary has not been paid, the applicant would not be entitled to salary and we proceed on the basis that the Applicant was paid the due salary.

4. The conduct of the Respondents is worth mentioning that they have not communicated to the applicant the rejection of her application for proceeding on Study Leave. Learned Counsel for the Respondents argued that the acceptance of the Bond and the issuance of certificate is by incompetent authority. There was ample time for the competent authority to reject the prayer of the Applicant as the applicant has applied on 26.04.1996 while the course commenced on 05.08.1996. The Respondents failed to take due action in time. Even the Respondents failed to communicate the rejection during the period of the studies or even after her return from completion of the course.

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5. Learned Counsel for the Applicant relied on 1981 (2) SCC 674 (Lakhi Ram V/s. State of Haryana & Others) which deals with the principle of promisory estoppel. We are of the considered opinion that it is a case where the principle of promisory estoppel do apply for the reason that inaction of the Respondents lead to the applicant to go for studies and complete the ^{same.} ~~studies.~~

6. Learned Counsel for Respondents relied on 1999 SCC (L&S) 828 [Union of India & Others V/s. NO 664950 IM Havildar/Clerk SC Bagari]. On perusal of the same we find that only principle contained under Article 14 and 16 of the Constitution of India has been discussed, as such the said authority does not help the Respondents.

7. Learned Counsel for the Respondents relied on Rule 50 sub-clause 3, of the C.C.S. (Leave) Rules, which is extracted below for ready reference.

"(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 of training shall be of definite advantage from the point of view of public interest ;
- (ii) It is for prosecution of studies in subjects other than academic or literary subject :

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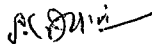
8. We are entirely in agreement with the Respondents that Study Leave shall not be granted unless it is certified by the authority competent to grant leave that the proposed course of study or training shall be of definite advantage from the point of view of public interest. The Applicant was U.D.C. working as Technical Assistant. The Course of Library Science is certainly helpful to her in discharge of her duties as the Respondents themselves have certified. Now the Respondents cannot take 'U' turn and say that this was not a useful course for the organisation.

9. Learned Counsel for the Respondents brought to our notice para 1 and 10 of the Written Statement. We have carefully perused the same. It is suffice to say that the said Written Statement is also signed by Shri M. R. Joshi, who has issued the certificate enclosed alongwith the form of Pune University and accepted the Bond. On perusal of letter dated 07.03.1997 by which the Respondents have stated that the case of Study Leave granted to Smt. Sarita P. Gosain, L.D.C., cannot be taken as a precedent. They have further stated that the case of the Applicant is to be taken to regularise the absence of the individual. Thereafter, no further action have been taken.

In the facts and the circumstances of the present case which are brought on record, we decide that the case of the applicant is entirely covered by the principles of promisory estoppel. We are not laying down any policy decision in respect of grant of Study Leave.

P.C.M. -

10. In the result, the O.A. is allowed. The Respondents are allowed to regularise the period from 05.08.1996 to 10.05.1997 as Study Leave. Those consequential benefits not provided so far and due as per rules may be provided. The above exercise shall be carried out within a period of three months from the date of receipt of a copy of this order. No order as to costs.



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



(B. N. BAHADUR)
MEMBER (A).

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