

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1467/96

Date of Order: 29.7.97

BETWEEN :

Dr.G.Vijaya Bhaskar

.. Applicant.

AND

1. The Secretary, Govt. of India,
Ministry of Health and Family
Welfare, Nirman Bhavan,
New Delhi.

2. The Director General of
Health Services, Nirman Bhavan,
New Delhi.

3. The Director (CGHS),
Nirman Bhavan, New Delhi.

4. The Additional Director,
Central Govt. Health Scheme,
Kendriya Swasthya Bhavan,
Prajkash Nagar, Begumpet,
Hyderabad.

.. Respondents.

Counsel for the Applicant .. Mr.N.P.Vittal

Counsel for the Respondents .. Mr.V.Rajeswara Rao

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

JUDGEMENT

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) X

Heard Mr.N.P.Vittal, for the applicant and
Mr.V.Rajeswara Rao, for the respondents.

The applicant in this OA joined Central Health Services
as Medical Officer on 28.1.82. He ~~ascended in the~~ ^{clader of} his
career and he was promoted as Chief Medical Officer. While
he was working in the S.V.P.National Police Academy, Hyderabad, he ~~had~~ ^{had}
had submitted his application through proper channel for
appearing in the entrance test for admission to the Post Graduate
Medical Course for the year 1994-95 conducted by the University
of Health Services, Andhra Pradesh. He was selected for admission

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to M.D. (VD) Course in Kurnool Medical College and joined the course on 10.3.95. On selection the applicant had applied for grant of 24 months study leave under Rule 50 of Central Health Services (Leave Rules). It is stated that the application was duly forwarded to the D.G. Health Services, New Delhi (R-2) by R-4. That application was rejected by R-4 by impugned order No. A.12025/33/94-CGHS/PF/5063, dt. 13.12.96 (page-56) and the applicant was advised to apply for leave due and admissible to him ~~and~~ if he so desires by that letter.

2. This OA is filed praying for a direction to the respondents to immediately sanction the study leave for a period of 24 months and also consider the question of granting study leave for a further period of 12 months as requested by the applicant vide his application dt. 22.10.96 (Page-49), as duration of the course is 3 years in view of the Apex Court order vide judgement dt. 25.9.87 in CMP No. 7667/87 and SLP Nos. 348 and 352/85 (Dr. Dinesh Kumar Vs. Motilal Nehru Medical College, Allahabad) and not 2 years as envisaged earlier.

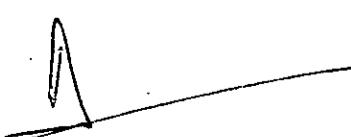
3. The main point for consideration is whether the applicant is entitled to get any study leave at all for prosecuting the MD course in discipline of "Venereal Disease". The respondents in their reply have stated that the applicant is not entitled to get study leave as the course which he is undergoing namely "Venereal Disease" is not a recognised course by the Medical Council of India and hence grant of study leave to him is not permissible. This is the main and sole contention of the respondents for rejecting his request for grant of study leave.

4. In order to ascertain whether the contentions taken as above by the respondents is in order or not we have asked the learned counsel for the respondents to produce the necessary documents in this connection wherein it has been stated that



the course in VD is not a recognised one by the order of this Bench dt. 3.7.97. The learned counsel for the respondents today produced the first schedule (Section II) wherein recognised medical qualification granted by the University or Medical Institutions in India upto August 1996 recognised by the Government of India Medical Council. The courses which are recognised in A.P. University of Health Sciences, Vijayawada is at page-4 of that schedule. In this schedule the MD in VD is not included. Hence the submission of the respondents that since the course which the applicant is undergoing is not a recognised one he cannot get the study leave as requested by him is in accordance with the rules. If so it is not clear why his request for grant of study leave was forwarded to R-2 by R-4. In this connection we have perused the office memorandum No. C.18011/56/89-CHS.V issued by Government of India, Ministry of Health and Family Welfare dt. 24.9.92. In this letter it is stated that "while forwarding the applications for sanction of study leave of doctors, all the participating units of central health services may also kindly ensure that the courses of study are recognised by the Medical Council of India".

5. From the above directions of the Ministry of Health and Family Welfare in their memorandum dt. 24.9.92 it is the duty of the forwarding authority to ensure that the request for grant of study leave is forwarded only if the course which the doctor in CGHS is wanting to pursue is recognised by the Medical Council of India. The forwarding authority in this case is R-4. Hence R-4 should have checked the admissibility of the leave on the basis of the recognition of that course by the Medical Council of India and only if he is satisfied that VD course is recognised by the Medical Council of India the request of the applicant should have been forwarded to R-2. But it appears that R-4 had forwarded



it without checking the details as per the O.M. dt. 24.9.92. If R-4 is not aware that the course VD is not recognised by Medical Council of India then he should have informed the applicant or taken an undertaking from the applicant to the effect that the study leave application of the applicant is forwarded subject to the verification of the fact that the course is recognised by the Medical Council of India. In that undertaking it should have been also added that in case the course is not recognised the applicant cannot get the study leave and should prosecute the course after obtaining the necessary leave in accordance with the law which is debitable to him. But no such undertaking was taken. But I find that an undertaking was taken from the applicant which reads as below :-

"I hereby undertake that I will abide by the guidelines contained in O.M.No.A.22012/120/80-CHS-II, dated 21st March, 1990".

6. The applicant had agreed that he will abide by the guidelines contained in O.M.No.A.22012/120/88-CHS-II, dated 21.3.90. But that O.M. dt. 21.3.90 in no way permits R-4 to forward the application for study leave without checking whether the course for which the applicant wants study leave is a recognised one. Hence that undertaking cannot be quoted against the applicant for nongrant of study leave. The applicant was informed by letter dt. 2.3.95 (A-4, page-43) granting him 90 days E.L. from 6.3.95 subject to the adjustment with the study leave. That means the applicant had initially been granted the leave which will be adjusted ^{against} to study leave when it ~~will~~ be granted by R-2 at a later date. The applicant was relieved on 6.3.95 and joined the course on 10.3.95. By the order of R-2 dt. 17.6.96 it was informed that the Ministry of Health and Family Welfare New Delhi had considered the case of the applicant for grant of study leave and it was rejected as it was found unfeasible to



accede the same as the course undertaken by the applicant is not recognised by the Medical Council of India schedule. That letter of the Ministry of Health and Family Welfare, New Delhi dt. 17.6.96 was sent by registered post by letter No.A.12025/ 33/94-CGHS/PF/5063, dt. 13.12.96 (Page-56). Thus the applicant was informed that he is not eligible to get study leave only on 13.12.96 and by that letter he was advised to apply for leave of kind due admissible if he so desires.

7. This OA was filed on 12.12.96 and was admitted on 19.12.96. Thus the applicant was/somehow in regard to the refusal to the sanction of study leave by the letter dt. 13.12.96 earlier to 19.12.96. He has challenged the letter also by filing an M.A. No.132/97 in this OA. Thus from the above analysis it may be safely concluded that the applicant was not aware of the non-sanction of study leave for him till it was informed to him by the letter dt. 13.12.96.

8. From the above analysis it is clear that R-4 had forwarded his application without checking the admissibility of the study leave for the course for which he applied. The fault squarely lies on R-4 in not ascertaining the facts before forwarding his application for study leave. Hence the applicant cannot be held responsible for presuming that he was eligible for study leave to prosecute the course in VD. Because of the bonafide belief the applicant joined the MD course. Hence the applicant cannot be allowed to suffer by taking his own leave till it was refused by the letter dt. 13.12.96. In that view I am of the opinion that the applicant should be granted study leave till 13.12.96 when that letter was issued to him. The refusal of study leave was known to him only on 19.12.96 on receipt of that letter submits the learned counsel for the applicant. Hence the learned counsel for the applicant further submits that he should be granted study leave till it was produced in the court i.e. till 19.12.96. I do not subscribe to that view. The applicant

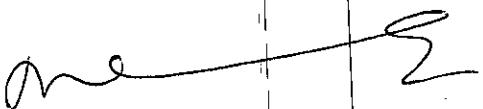


knows this fact even earlier to 19.12.96 or otherwise he would not have filed the application on 12.12.96. Hence I am of the opinion that he should be granted study leave till 13.12.96, and beyond that period till he completes the course he should make necessary arrangement for getting leave admissible to him in accordance with the law by the appropriate authority.

9. In the result the following direction is given:-

The applicant should be granted study leave from the date of his relief i.e. 6.3.95 to join the course in the discipline of V.D. till 13.12.96. Beyond that period the applicant should approach the competent authorities for granting him leave as admissible to him in accordance with the law.

10. The OA is ordered accordingly. No costs.

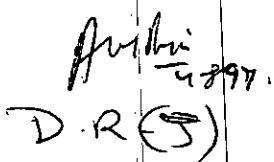


(R. RANGARAJAN)
Member (Admn.)

Dated : 29th July, 1997

(Dictated in Open Court)

sd


D.R. (S)

Copy to:

1. The Secretary, Min. of Health and Family Welfare, Nirman Bhavan, New Delhi.
2. Director General of Health Services, Nirman Bhavan, New Delhi.
3. The Director (CGHS), Nirman Bhavan, New Delhi.
4. The Additional Director, Central Govt. Health Scheme, Kendriya Swasthya Bhavan, Prakashnagar, Hyderabad.
5. One copy to Mr. N. P. Vittal, Advocate, CAT, Hyderabad.
6. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
7. One copy to D.R(A), CAT, Hyderabad.
8. One duplicate copy.

YLKR

88/8/8/8/8
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR:M
(J)

DATED: 29/7/97

ORDER/JUDGEMENT

M.A./R.A/C.A. NO.

in

O.A.NO. 1467/96

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

YLKR

II Court.

