

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 698/99

Jabalpur this the 23<sup>rd</sup> day of May 2003.

Hon'ble Mr. R.K. Upadhyaya - Administrative Member  
Hon'ble Mr. A.K. Bhatnagar - Judicial Member

Mrs. Pratibha Kulshreshtha,  
W/o Shri Shashikant Kulshreshtha,  
aged 51 years, Occupation Service,  
Trained Graduate Teacher (English)  
Kendriya Vidyalaya, Mhow,  
R/o : 191, Clock House, Saket Nagar,  
INDORE (MP)

(By Advocate - Shri C.B. Patne)

APPLICANT

VERSUS

1. Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shahid Jestsingh Marg,  
New Delhi- 110 016,  
through its Commissioner.
2. The Asstt Commissioner,  
Kendriya Vidyalaya Sangathan,  
M.P. Region, Opp. Maida Mill,  
Bhopal (MP).
3. The Principal,  
Kendriya Vidyalaya No. 1,  
Residency Area, Indore (MP)

RESPONDENTS.

(By Advocate - Shri Vivek Saran)

ORDER

By A.K. Bhatnagar, Judicial Member :-

This application has been filed under Section 19 of the Administrative Tribunals Act praying for a direction to the respondents to treat the period from 12/04/1998 to 16/06/1998 as study leave and to make payment of salaries to the applicant for this period, with a further direction to the respondents to grant annual increments treating the study leave period as regular service and to make payment of all the arrears to the applicant.

2. The brief facts giving rise to this original

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application as per the applicant are that the applicant is working as a Trained Graduate Teacher (English) in Kendriya Vidyalaya, Mhow, District Indore. She had applied for grant of two years study leave for doing M.A. in English and further claimed that she was granted study leave of 2 years from 01/07/1996 to 30/06/1998 as prescribed under the Rule 53 of CCS (Leave) Rules, 1972. It is also stated by the applicant that she prosecuted her studies for M.A. English and the last question paper was on 11/04/1998. The summer vacation of the school was from 03/05/1998 to 21/06/1998. The applicant joined her duties on 17/06/1998 after completing the course. It is also stated that meanwhile respondent No. 3, i.e., the Principal, Kendriya Vidyalaya No. 1, Residency Area, Indore (MP) issued an order dated 31/03/1998 (Annexure A/4) directing the applicant to furnish the date sheet of examination and to report for duty immediately next day of the last paper. The applicant submitted her reply dated 08/04/1998 (Annexure A/5). When the applicant was not paid her salary for the month of May 1998 and she was not granted her regular increments during the study leave period, she submitted representations dated 29/06/1998 and 04/07/1998 (Annexure A/6 and Annexure A/7 respectively), to respondent No. 3 but nothing was done in the matter. The applicant submitted application dated 23/05/1999 (Annexure A/9) and representation dated 28/07/1999 (Annexure A/10) to respondent No. 3 and respondent No. 1 respectively but these too did not bear any result. It is also stated that the salary of the applicant for the period from 12/04/1998 to 30/04/1998 and from 01/06/1998 to 16/06/1998 was directed to be recovered as per audit objection vide letter dated 31/07/1999 (Annexure A/11) and accordingly this salary was illegally recovered from her. Aggrieved by this, the applicant submitted a detailed representation to respondent No. 1

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on 04/10/1999 (Annexure A/12) but no action was taken by the respondents. Hence the applicant filed this original application.

3. The learned counsel for the applicant submitted that the applicant was granted/study leave from 01/07/1996 to 30/06/1998. So the applicant is not supposed to join duties before the completion of the leave period as per Rule 24 of the CCS/Rules and she rightly joined on 17/06/1998, although it is admitted that her course was completed on 11/04/1998. It is also contended that due to summer vacation from 03/05/1998 to 21/06/1998, she is entitled to get the benefit of summer vacation from 03/05/1998 to 16/06/1998 as she joined her duties on 17/06/1998, during the currency of the summer vacation. But her salary was not paid for the period from 12/04/1998 to 30/04/1998 and from 01/06/1998 to 16/06/1998, which was illegally and arbitrarily recovered. It is further submitted that the letter issued by respondent No. 3 on 31/03/1998 was without any authority of law and is in violation of Rule 24 of the CCS (Leave) Rules, 1972. The increments of the applicant were illegally withheld during the study leave period, which is contrary to Rules. It is further contended that the results of MA (English) was not declared on 11/04/1998 and therefore she was entitled to avail study leave for the stipulated period i.e. upto 30/06/1998. The counsel for the applicant also challenged the audit objection as illegal and arbitrary.

4. The learned counsel for the respondents contested the case by filing the counter reply. The learned counsel for the respondents contended that the applicant was granted study leave for the period of 2 years commencing from 01/07/1996 to 30/06/1998 for the completion of MA (English) course and for that purpose a

bond was also executed by the applicant under Rule 53 of the CCS (Leave) Rules, 1972, wherein it is mentioned that "in the event the course for which the study leave had been granted, falls short then in that situation the official (applicant) should resume his duties on conclusion of the course or the excess period may be treated as an ordinary leave with the prior approval of the sanctioning authority." The learned counsel for the respondents further submitted that admittedly the final examination of the applicant was over on 11/04/1998, thus the applicant should have resumed her duty on 12/04/1998. The applicant was <sup>so</sup> informed by respondent No. 3 vide letter No. KVI/98/270, dated 31/03/1998 (Annexure A/4). He further submitted that the case <sup>of</sup> the applicant is not governed by the Rule 24 of the CCS(Leave) Rules, 1972 because the Rule 24 is applic-able <sup>only</sup> when an application for leave is submitted in Form 1 as per Rule 14 of the CCS (Leave) Rules, 1972. The applicant was granted study leave which is not of the aforesaid type of leave because for the Study Leave the applicant had to submit her application in Form 7 as specified in Rule 53 of the CCS (Leave) Rules, 1972. The Rule 24 (Annexure A/3) filed by the applicant relates to the regular leave of other nature which the employee has earned and not the study leave. Thus Rule 24 is not applicable in the applicant's case. It is contended by the learned counsel for the respondents that the applicant is not entitled for the salary for the vacation period because of the admitted reasons by the applicant for joining the duties in the summer vacations. In the present case Rule 24 does not apply but Rule 55 of the CCS (Leave) Rules, 1972 is applicable which is stated as under :

"When the course of study falls short of study leave granted to a Government servant, he shall resume duty on the conclusion of the course of study, unless the previous sanction of the

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authority competent to grant leave has been obtained to treat the period of shortfall as ordinary leave".

The respondent No. 3 was well within jurisdiction to issue an order dated 31/03/1998 (Annexure A/4) as the leaves of all the staff working under respondent No. 3 are sanctioned by respondent No. 3. He further contended that as the applicant was absent from <sup>her</sup> duty from 12/04/1998 without applying for any other kind of leave due to her credit, it was not possible for the respondents to pay the salary to the applicant as claimed by her in Annexure A/9. As per Rule 55 of the CCS (Leave) Rules, 1972 the applicant should have joined her duties on 12/04/1998 as informed by respondent No. 3 vide letter dated 31/03/1998 (Annexure A/4). The applicant also did not take any previous sanction from the competent authority as required under Rule 55 of CCS (Leave) Rules, 1972. It is also submitted that the claim of the applicant for salary of period of absence is not permissible under the rules, hence recovery is legal and not arbitrary. It is also contended by the learned counsel of the respondents that the applicant have already been paid her arrears, due fixation of the pay scale and other benefits for which she was legally entitled. It is further contended on behalf of the respondents that they have <sup>already</sup> allowed her increments during the study leave as per rules on her resumption of duties, as <sup>the</sup> employee gets only the leave salary and not the duty pay as per Fundamental Rule 26. It is further contended that the pay fixation of the applicant was done as per the rules duly approved by the appropriate authority and further submitted that the claim of the applicant is not in accordance with the rules. Hence the applicant is not entitled for the reliefs claimed and her claims deserves to be rejected as per rules.

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5. We have heard the learned counsel for the parties and have perused the records available before us carefully.

6. The admitted fact is that the applicant was granted study leave for two years with effect from 01/07/1996 to 30/06/1998, in which she had also executed a bond under Rule 53 of the CCS (Leave) Rules, 1972. The Principal of Kendriya Vidyalaya No. 1, Residency Area, Indore vide his letter dated 31/03/1998 (Annexure A/4) had communicated the following office order to the applicant :

"With reference to the study leave sanctioned by the Kendriya Vidyalaya Sangathan to Smt. P. Kulshrestha, TGT (English) for doing MA which she is availing is hereby directed to furnish the date sheet of the examination and she is directed to furnish the date sheet of the examination and she is directed to report for duty immediately next date of the last paper is over."

In response to this letter the applicant asked for certain clarifications from the respondent No. 3 by her letter dated 08/04/1998 (Annexure A/5) which is as under :

"You will appreciate that the leave granted to me was by Kendriya Vidyalaya Sangathan, New Delhi, and it would, therefore, be necessary that permission, required by the said rule is obtained from the competent authority to enable me to return to duty before expiry of the leave.

On receiving intimation about the permission to return to duty before expiry of the leave granted to me, I shall take necessary steps to join my duties."

The claim of the applicant is that inspite of this query raised by the applicant, no reply was received by her and with a view to avoid any problems, she joined her duties on 17/06/1998 even though she was sanctioned study leave upto 30/06/1998. The respondents, on the other hand, have stated that as per provision contained in Rule 53(5)(a) "On completion of the course of study, the Government servant shall submit to the authority which granted him the

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study leave, the certificates of examinations passed or special courses of study undertaken, indicating the date of commencement and termination of the course with the remarks, if any, of the authority in charge of the course of study." Rule 55 provides that "when the course of study fall short of study leave granted to a Government servant, he shall resume duty on the conclusion of the course of study, unless the previous sanction of the authority competent to grant leave has been obtained to treat the period of shortfall as ordinary leave". The claim of the respondents is that the applicant should have joined immediately on completion of her course on 11/04/1998. Having not done so, she has violated the sanction of study leave. In our opinion, the contention of the respondents cannot be accepted on the peculiar facts of this case. The applicant had placed reliance on provisions of Rule 24 of CCS (Leave) Rules which provides for provisions regarding return from leave. May be that the applicant had taken <sup>wrong</sup> advise, but the applicant being decent enough to seek instructions as per letter dated 08/04/1998 (Annexure A/5). The respondents having not advised her in time are also to be blamed. In the peculiar facts of the case, we are of the view that the respondents should exercise their powers as provided for under Rule 55 of CCS (Leave) Rules, 1972 by sanctioning leave due to the applicant as ordinary leave. This direction is given because of the failure of the respondents to inform the applicant in time.

6.1. The respondents have placed reliance on the audit objection dated 31/07/1999 (Annexure A/10) which states as follows :

"Smt. Kulshrestha TGT has been granted study leave by K.V.S. for 2 years w.e.f. 30/07/1996 to 27/07/1998. After availing study leave, she

joined her duties on 17/06/1998. The course was completed on 11/04/1998.

As per point No. 7, page No. 498 of Accounts code she should have joined her duties on 12/04/1998 i.e. after completion of her course. The Vidyalaya has drawn salary for full month during for April 1998 and June 1998 (May 1998 not drawn).

Now, Leave of kind due for 66 days may be sanctioned subject to admissibility or salary to the tune of Rs. 10000/- (Rs. 5510 + Rs. 4490 (i.e. 19 days during April 1998 and 16 days for June 1998) be recovered."

In our opinion, there is nothing wrong with the audit objection as the same is in-confirmation with the rules. ordinary  
The leave due to the applicant be granted as observed in the preceding sub paragraph instead of making any recovery on the applicant if leave of any kind is otherwise due to the applicant. The applicant is <sup>to be on</sup> paid leave salary for the period from 12/04/1998 to 16/06/1998 if she has no ordinary leave.

6.2. So far as the claim of the applicant regarding allowing her the benefit of vacation is concerned, the same cannot be allowed to her because she was not on duty on the last working day before vacation. Therefore she can claim the benefit of vacation only after she joined duty on 17/06/1998.

6.3. The applicant has also asked for grant of increments during the period <sup>of</sup> her study leave. The respondents in their reply has stated as under :

"It is submitted that during Study Leave or any other kind of Leave, an employee gets the Leave salary only and not duty pay. As per the Govt. of India's Fundamental Rule 26 (FR 26), an employee during leave, draws leave salary and not duty pay. An increment accruing during leave cannot, therefore, be drawn during leave. The increments in such cases will be drawn from the date of resumption of duty on return from leave. Thus, increments falling due, in between the leave period, is drawn but its financial benefits is allowed on resumption of duties. Accordingly the applicant's arrears were drawn and paid to her on her receipt of option (for pay fixation in fifth pay commission scale due from 01/01/1996) alongwith the

undertaking to refund the amount of over payment if any (as required per rules)."

We find that the stand taken by the respondents in this connection is in conformity with the rules. The clarifications issued by Government of India, Ministry of Finance OM No. F.1(22)-E, III (A)/73, dated 24/08/1974 and No. F.1(22)-E, III (A)/74, dated 15/11/1974 is as follows :

"Point of doubt :

How the increment will be regulated if the employee happens to be on leave on the first of the month?

Clarification :

An employee during leave draws leave salary and not duty pay. An increment accruing during leave cannot, therefore, be drawn during leave. The increment in such cases will be drawn from the date of resumption of duty on return from leave."

Therefore the grievance made by the applicant regarding grant of increments being misconceived cannot be allowed as claimed by the applicant.

7. In view of our directions and observations in the preceding paragraph, this original application is partly allowed without any order as to costs.

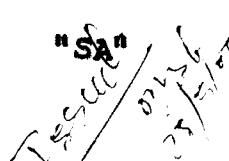
  
(A.K. BHATNAGAR)  
JUDICIAL MEMBER

  
(R.K. UPADHYAYA)  
ADMINISTRATIVE MEMBER

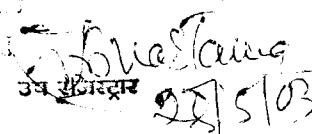
पृष्ठांकम से ओ/व्या.....जबलपुर, दि.....

प्रतिक्रिया तात्त्विकता:-

- (1) राजिया, विवाहित वह उपायी द्वारा जबलपुर
- (2) अपेक्षित विवाहित वह उपायी को काउंसल 23 Palwar, Adh.
- (3) दूसरी श्रेणी के विवाहित वह उपायी को काउंसल N, Saran, Adh.
- (4) विवाहित वह उपायी को काउंसल 23 Palwar, Adh.

  
"SA"  
Special Officer

सूत्राना एवं अवश्यक वर्णनाः

  
Officer  
उचित विवाहित वह उपायी  
22/5/03