

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 2117/2016

Reserved on:29.07.2016
Pronounced on:03.08.2016

Hon'ble Shri K.N. Shrivastava, Member (A)

Dr. Rakesh Kumar,(Age 34 years)
S/o Shri Kamal Singh,
R/o WZ-122, Gali No.3,
Near Ram Chowk, Sadh Nagar-I,
Palam,
New Delhi-110045. Applicant

(By Advocate: Shri S.N.Kaul with Shri Sagar Saxena)

Versus

Ministry of Health & Family Welfare,
Government of India
Through its Secretary,
Nirman Bhawan,
New Delhi. Respondent

(By Advocate: Shri S.M.Zulfiqar Alam)

ORDER

By Hon'ble Shri K.N.Shrivastava

This is second round of litigation between the parties. The brief facts of the case are as under:

The applicant was appointed as a Medical Officer in Govt. of Haryana vide appointment letter dated 17.12.2010. He was to be on probation for a period of two years (page 86-87 of paper book). On successful completion of his probation and rendering satisfactory

service, he was confirmed in the service of the State Govt. Pursuant to the Union Public Service Commission (UPSC) notification in the year 2013 inviting applications for the posts of General Duty Medical Officer (GDMO) under Central Health Service (CHS), he applied. He was selected and offered the letter of appointment dated 14.11.2014 to the post of Medical Officer in the GDMO sub-cadre of CHS (page 130-133 of the paper book). The terms and conditions of appointment, *inter alia*, stipulated as under:-

" The post is temporary and you will be appointed on an officiating basis only. You will be on probation for a period of two years from the date of appointment which may be extended at the discretion of the competent authority. The confirmation will be after successful completion of probationary period. During the period of probation, you will be required to undergo such training as Government may prescribe. Failure to complete the period of probation to the satisfaction of the competent authority will render you liable to be discharged from service. "

The offer of appointment letter has been signed by Under Secretary to Govt. of India, Ministry of Health & Family Welfare.

2. Pursuant to the offer of appointment letter dated 14.11.2014, the applicant was relieved by State govt. vide order dated 07.02.1995 (page 134 of paper book). The relieving letter also contained an endorsement from the Directorate General of Health Service, Haryana as under:-

"Directorate General of Health Service, Haryana

Endst.No.78/R()SE2-2015/465

Dated:07.07.15

A copy is endorsed to Principal Medical Officer, General Hospital, Gurgaon with the directions that service book of Dr.Rakesh Kumar, Medical Officer, General Hospital, Gurgaon,

after its completion, may be forwarded to Director, Central Government Health Scheme, Govt. of India, Ministry of Health & Family Welfare, Maulana Azad Road, Nirman Bhawan, New Delhi-110011 so that after joining at new place he may avail the benefit of past service."

3. Taking into consideration the period of service rendered in the State Govt. of Haryana by the applicant, vide office order dated 17.07.2015, pay protection was granted by the Central Govt. (page 146 of the paper book).

4. The applicant applied and was selected for Post Graduate course in Psychiatry at Guru Govind Medical College, Faridkot (page 105 of the paper book). He applied for sanction of study leave to the respondent for joining the said PG course but the same was declined by the respondent on the ground that in terms of CSS (Leave) Rules, 1972, he is not eligible for the grant of study leave. Aggrieved by denial of study leave, the applicant approached this Tribunal in OA-3711/2015 which was dismissed on 29.04.2016.

The operative part of the said order is reproduced below:-

" I have heard both sides and have perused the material on record. During the course of the arguments learned counsel for the applicant admitted that the applicant had applied for study leave for pursuing course commencing from July, 2015. From the records, it is clear that the applicant had joined Government of Haryana only on 29.12.2010. Thus, even if his entire service from that date is counted, he would not have completed 05 years required for grant of study leave/extra ordinary leave till July, 2015. As such, I do not find any infirmity in the impugned order of the respondents rejecting the case for grant of study leave/extra ordinary leave.

During the course of arguments, learned counsel on instructions from the applicant stated that the applicant had sought extension from Guru Govind Singh Medical College, Faridkot (Punjab) to join the MD (Psychiatry) programme commencing on 01.05.2016 with the next batch. He argued that the applicant completed 05 years of service in December, 2015 counting from his initial date of

appointment in the Government of Haryana and has, therefore, become eligible for grant of study leave/extra leave. However, he fairly admitted that the applicant was yet to apply for the same. Under these circumstances, it would be pre-mature for me to give any directions regarding sanctioning study leave to the applicant for the course commencing in May, 2016. I however, have no doubt that in case the applicant applies for the same, the respondents shall consider his application in the light of the Government instructions mentioned above in the judgment and pass appropriate orders. OA is accordingly disposed of. No costs."

5. The applicant approached the respondent availing the liberty granted to him by the Tribunal for the sanction of study leave vide letter dated 02.05.2016. The respondents vide impugned Annexure P-1 OM dated 26.05.2016 have declined the grant of study leave to the applicant on the following grounds:

- "(i) There is no provision in the CCS(Leave) Rules, 1972 for counting of past service rendered in a sate Government while ascertaining the eligibility of an officer for granting of study leave.*
- (ii) You have not completed probation in the CHS cadre.*
- (iii) Hon'ble CAT vide its order dated 29-04-2016 has itself stated that you are not eligible for study leave for the course commencing from July, 2015."*

6. Aggrieved by the impugned Annexure R-1 the instant OA has been filed.

7. Pursuant to the notice issued, the respondent entered appearance and filed its reply. On the completion of pleadings, the case was taken up for hearing the arguments of the parties on 28-29, July, 2016. Shri S.N. Kaul with Shri Sagar Saxena, learned counsel for the applicant and Shri S.M. Zulfiqar Alam learned counsel for the respondent argued the case.

8. Learned counsel for the applicant submitted that the applicant was appointed as a Medical Officer on 29.12.2010 in Haryana Government and after completion of two years of probation successfully he was confirmed on 28.12.2012 and that pursuant to his selection by UPSC for the post of Medical Officer in CHS, he technically resigned from the Govt. of Haryana retaining his lien with the Haryana Govt. He further said that in terms of DOPT OM dated 26.12.2013(page 124 of the paper Book), the applicant is deemed to have completed his probation period in CHS. In this regard, learned counsel drew my attention to para 6 of the OM which reads as under:

"when a government servant has joined a department/office where he may, in exceptional cases, be permitted to retain the lien the lien in the parent department/office for one more year. While granting such permissions, a fresh undertaking similar to the one indicated above may be taken from the employee."

9. The learned counsel also brought to my notice the DOPT OM dated 21.07.2014 (page 128 of the paper book) to say that the applicant is entitled to leave as a permanent Government servant. In this regard, he drew my attention to para 18 of the said OM which reads as under:-

"Leave to Probationer, A Person On Probation"

18. A person appointed to a post on probation shall be entitled to leave under the rules as a temporary or a permanent Government servant according as his appointment is against temporary or a permanent post. Where such person already holds lien on a permanent post before such appointment, he shall be entitled to leave as a permanent Government servant."

10. He emphatically argued that the applicant being lien holder is entitled to be treated as a permanent Government servant and

hence he is entitled for sanction of study leave in terms of CCS (Leave) Rules, 1972. Concluding his arguments, learned counsel for the applicant prayed for quashing the impugned Annexure P-1 order and for grant the reliefs as prayed in the OA.

11. Per contra, learned counsel for the respondents submitted that the applicant has not completed two years of probation as contemplated in appointment letter dated 14.11.2014 issued by the respondent. The learned counsel further stated that in terms of CCS(Leave) Rules,1972, study leave may be granted to a government servant only after he has satisfactorily completed the period of probation and rendered not less than 5 years regular service including the period of probation under the Government. He drew my attention to Rule 5 of CCS(Leave) Rules,1972 in this regard. Concluding his arguments, learned counsel for the respondents stated that the reliefs sought by the applicant in this OA are liable to be rejected.

12. I have considered the arguments put forth by learned counsel for the parties and also perused the pleadings and documents annexed thereto. Admittedly, the applicant has joined under respondent availing the offer of appointment dated 14.11.2014. The terms of appointment, *inter alia*, stipulated that the applicant would be on a probation for a period of two years and would be confirmed in service only after the completion of probation period successfully. He has not completed the probation period as yet. The arguments of learned counsel for the applicant that in

terms of DOPT, OM dated 21.07.2014 referred to herein above, he has to be treated as a permanent Government servant cannot be accepted. A close reading of para 18 of the said OM, would indicate that the previous appointment referred, relates to appointment in Govt. of India. Similarly, the consolidated instructions on technical resignation and lien as contained in OM dated 26.12.2013 of DOPT referred to herein above, again relate to Central Government servant only. The CCS (Leave) Rules, 1972 clearly stipulates that a Govt.servant can be sanctioned study leave only after he has sucessfully completed his probation period and rendered not less than 5 years regular service including the period of probation under the Government. Here the Government obviously means Central Government. The respondent has already considered the past service of the applicant in the Haryana State Government and given him the pay protection vide their OM dated 17.07.2015. His past service is also going to be considered by the respondent for granting him pensionary benefits. But as per extant rules, he has to remain on probation for a period of two years in terms of his appointment letter. He has not completed the probation period as yet. As such I have no doubt in my mind that in terms of CCS(Leave) Rules,1972 he cannot be granted study leave at this stage.

13. Learned counsel for the applicant also relied upon the F.R.91 which states that the term "probationer" does not cover a Government servant who holds substantively a permanent post in a cadre and is appointed 'on probation' to another post. The contention of the learned counsel for the applicant is that as per FR 91, the applicant should not be treated as a probationer. This

argument cannot be accepted. FR 91 talks of a Central Government servant who has held a permanent post in the Central Govt, and subsequently appointed to another post in the Central Government whereas the applicant was serving in the Haryana State Government and later joined the Central Government. As such FR 91 would not apply to him.

14. In view of the above discussions in the foregoing paras, I do not find any merit in the OA. The OA is accordingly dismissed. No costs.

(K.N. Shrivastava)
Member(A)

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