

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2868/2017

Reserved on:08.12.2017

Pronounced on:11.01.2018

Hon'ble Ms. Praveen Mahajan, Member (A)

Babita Sahoo

Age 44 years

W/o Mr. Haraprasad Sahoo

R/o B/-155, A.V.Nagar

New Delhi

.... Applicant

(Working as Tutor in Nursing, Group 'A')

(By Advocate:Shri Piyush Gaur)

Versus

1. All India Institute of Medical Science
Through its Director
Ansari Nagar
New Delhi – 110 029.

2. Principal
College of Nursing
AIIMS, Ansari Nagar
New Delhi.

3. Medicial Council of India
Pocket-14, Sector 8
Dwarka, Phase-1
New Delhi – 110 077.

.....Respondents

(By Advocate:Shri Hanu Bhaskar)

ORDER

The applicant is working as a Nursing Teacher in College of Nursing, AIIMS and has completed more than 11 years of continuous service.

2. On 27.06.2017, the Applicant sought NOC from the respondents for applying for M.Sc Entrance at Jamia Hamdard, New Delhi. Being eligible for study leave, the applicant appeared for, and passed the entrance examination for admission to MSc. Nursing at Jamia Hamdard, New Delhi.

The applicant states that she worked hard to get through the entrance examination. On 18.07.2017, she even deposited the fee of Rs.83,000/- for the said course, being confident that she would not be stopped from pursuing the PG diploma since one of her counterparts was permitted to join M.Sc. Nursing at a Private College in U.P. and another colleague was permitted to join at AIIMS itself. However, vide letter dated 31.07.2017 the Respondents rejected her request for grant of Study Leave of two years for pursuing M.Sc Nursing Course without assigning any reason.

3. Aggrieved by the impugned order of the respondents dated 31.07.2017, the applicant has filed the current OA, seeking the following reliefs :-

- "a. The respondents may be directed to allow the applicant to proceed for higher studies at Jamia Millia Islamia to pursue her MSc nursing for a period of 2 years.**
- b. The respondent may be directed not to take any adverse action disciplinary action against the applicant for having attempted to seek study leave for higher studies at Jamia Millia Islamia which has been done through proper channel.**
- c. Pass such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case."**

4. In the counter to the OA, the respondents submit that guidelines for providing study leave for staff Nurses working at AIIMS, for pursuing higher studies, have been issued vide Circular & Corrigendum dated 02.03.2017, wherein it has been clarified that the study leave for Nurses of the Institute will be considered only in Institutes of National Importance. Jamia Hamdard is not included in the list of such Institutes.

5. The respondents further state that no other nurse has been granted study leave to pursue M.Sc from any other Institute other than those

covered under the policy. All requests for study leave by Nurses after 02.03.2017, have been processed as per the prevalent policy. In the case of one Nurse, namely, Ms. Aishwarya R.L.Gupta, permission for study leave was granted inadvertently. However, when the same came to notice of the Competent Authority, the said permission was immediately withdrawn. In another case, where study leave permission was granted to another colleague of the applicant the case was within the prescribed norms.

6. The averment of the applicant, that the policy guidelines for study leave are only applicable to nursing staff and not to nursing tutors, is incorrect. The nursing Tutors are engaged in training of student nurses. If nurses, who are not in active academics, are expected to persue higher studies only in Institutes of National Importanc, how can the Nursing Tutors, who are teaching them, be allowed to avail study leave from an organization of a lesser stature?

7. The Respondents further contend that the permission for study leave can only be granted in accordance with the Policy provisions as enunciated in the meeting held on 24.11.2016 & confirmed vide Circular and OM dated 02.03.2017. The policy being squarely applicable to the applicant, her case has been rightly rejected.

8. During the course of hearing, the learned counsel for the applicant, Shri Piyush Gaur vehemently argued the issues already raised in the OA. At the outset, he submitted that the said policy for staff nurses, which is the purported cause for rejection of applicants' request, is not relevant to the applicant, who is a nursing tutor & not a staff nurse.

9. He relied upon the judgment dated 06.06.2014 in OA No.541/2013 of CAT, upheld by the Hon'ble High Court in WPCT No.145/2014 observing that:-

".....the authority was not justified in rejecting the respondent's prayer for no objection certificate, working experience certificate and study leave. It, however, said that for the authority's failure to appoint sufficient Staff Nurse, the respondent seeking to take a course closely related to her job she was doing in the hospital could not be deprived of the opportunity of taking the course.

The real issue before the Tribunal was whether the authority was justified in rejecting the respondent's three prayers citing "acute shortage of Nursing Staff" in the hospital. Hence we are of the opinion that it was not necessary for the Tribunal to make any comment on the authority's action or inaction concerning recruitment and connected matters."

10. The learned counsel then referred to the letter dated 16.08.2017 on Policy for providing study leave for Nurses working at AIIMS for pursuing higher studies, reproduced below :-

"In continuation of letter of even no. Dated 02.03.2017, in reference to decision made in the meeting held on 24.11.2016 office, on the subject noted above.

In this meeting it was decided that within the existing infrastructure, a proposal to increase the number of seat from current existing 25 to 40 with 20 seats for AIIMS candidates may be prepared by College of Nursing. College of Nursing may include the number of lectures and other infrastructure required for this augmentation in the proposal.

Accordingly, you are requested to prepare a proposal to increase the number of seat from current existing 25 to 40 seats for AIIMS candidates including the number of lectures and other infrastructure required for this augmentation.

Sd.
Medical Superintendent"

He argued that having acknowledged the importance of augmentation of knowledge, and accordingly, having increased the number of seats for this

purpose, the rejection of the applicant's leave is contrary to the spirit of the newly formulated policy.

11. Mr. Gaur emphasised that it is the Fundamental Right of the applicant to improve her scientific knowledge, in the interest of her own growth as well as to enable her to contribute better to the knowledge of student nurses whom she teaches/trains. Right to Education is not only guaranteed as one of the fundamental rights by the Constitution of India but is also one of the Directive Principles of State.

12. He again cited the example of three other cases where similarly placed employees were granted study leave to pursue higher studies whereas the applicant has been meted out a discriminatory treatment by denial of this benefit.

13. The learned counsel for the respondents, Shri Hanu Bhaskar rebutted these averments forcefully. Reiterating that Nursing staff can only be allowed to pursue higher studies at Institutes of National Importance, he hammered home the principle, that the permission to grant, or deny leave, is the prerogative of an employer, which cannot be claimed as a matter of right by an employee. He submitted that all such requests for study leave by Nursing Staff at AIIMS have been processed as per the existing policy and no one has been granted study leave to pursue M.Sc. from other Institutes other than those covered by the prevalent policy.

14. Drawing my attention to the facts of the three cases cited by Shri Piyush Gaur as precedents, Shri Bhaskar explained that in the case of Ms. Aishwarya R.L.Gupta, Nursing Officer, study leave was erroneously granted on 22.08.2017 by the Respondents. However, it was withdrawn on 22.09.2017 after it came to notice that she was to pursue MSc. from Jamia

Hamdard University which, though an institute of repute, has not been listed as an Institute of National Importance. The contents of the rejection letter read as under :-

"In supersession to Memorandum of even no. Dated 22.08.2017, whereby study leave for 2 years were granted to Ms. Aishwarya R.L.Gupta, Nursing Officer, Dr. BRAIRCH for pursuing M.Sc. from Jamia Hamdard University and in further supersession another memorandum of even no. Dated 23.8.2017 issued for her relieving from this Institute w.e.f.23.8.2017, the undersigned is directed to say that the matter of grant of study leave in favour of Ms. Aishwarya R.L.Gupta, Nursing Officer has been reviewed by the Competent Authority in light of a policy decision taken in this institute vide circular No.58/UN(Pt.)/2016-Estt.-(H), dated 02.03.2017, wherein it has been decided that the study leave for Nurses of the Institute for higher studies will be considered in selective Institutions only and Jamia Hamdard is not included in the list of those institutions.

Keeping in view of the above, the permission granted to Ms. Aishwarya R.L.Gupta, Nursing Officer for 2 years study leave from 19.8.2017 to 18.8.2019 is hereby withdrawn with immediate effect by the Competent Authority.

Ms. Aishwarya R.L.Gupta, Nursing Officer is hereby directed to report back for her duties to Dy. Nursing Superintendent, Dr. BRAIRCH with immediate effect.

This Issues with the approval of Director, AIIMS, New Delhi."

The second case, where permission was granted for study leave, he averred is in conformity with the policy of the Institute on study leave. The third case where permission was granted for study leave to Ms. Shashi Mawar for doing PHD course from IGNOU was under the earlier policy i.e. prior to the guidelines and Corrigendum dated 02.03.2017, came into effect.

15. Shri Bhaskar cited the judgment of the Hon'ble Apex Court in case of **P.U.Joshi Vs. The Accountant General, Ahmedabbad** wherein it was held that :-

"Question relating the Constitution, pattern nomenclature of posts, cadres, categories their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain

to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenue of promotion or impose itself by substituting its view for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and after or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the state of claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purpose and except for ensuring for safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

The said decision upheld the principle and right of the employer to make policy in its best administrative interest which cannot be questioned by its employee.

16. I have gone through the facts of the case carefully and given my thoughtful consideration to rival contentions of both sides. The facts not in dispute are that the applicant applied for NOC to apply for M.Sc entrance at Jamia Hamdard University, New Delhi on 27.06.2017. She appeared for, and passed the said entrance Exam of M.Sc Nursing Course. The respondents however rejected her request for grant of study leave for pursuing M.Sc Nursing Course (on regular basis) vide the impugned order dated 31.07.2017, on the ground that she could only take leave to pursue studies from an Institute of National Importance.

17. The learned counsel for the applicant Shri Gaur has tried to distinguish between the functions of Nurses and Nurse Tutors stating that the Policy relied upon by AIIMS administration is only for the staff nurses and has been wrongly applied in the case of the applicant. Since the applicant is working as a Nursing Tutor, she does not come within the ambit of the policy. He also cited three cases, where study leave was granted by the respondents to (reportedly) similarly situated colleagues of the applicant. Learned counsel for the Respondents Shri Hanu Bhaskar, however, has succinctly-explained the facts of each case – leaving no doubt that there has been no discrimination or violation of policy in either in those cases, or qua the applicant.

18. The respondents have justified their stand primarily on the ground that post the decision taken by the Institute on 24.11.2016 and issue of circular and corrigendum dated 02.03.2017 the Institute has been strictly following the policy of granting study leave only for courses to be studied in Institutes of National Importance.

19. Both sides could not produce any notification or OM of Government of India showing the list of Institutes of National importance. On a pointed query, the learned counsel for respondents stated that these notifications, are issued by the Government of India, and names of the Institutes get added/deleted at different points of time as per their performance and laid down parameters. The learned counsel for the applicant however kept insisting that Jamia Hamdard is an Institute of national importance, though he too could not produce any notification or other supporting document to support this contention. On perusal of the list of Institutes of National

Importance, as provided on Wikipedia, I observe that Jamia Hamdard does not figure in the same.

20. I feel that the principle enunciated in the Judgment relied upon by the Applicant (para 10 above) does not apply to the facts of the current case. In the case cited by the applicant, the competent authority had rejected the petitioner's case for grant of NOC and other benefits, citing "acute shortage of Nursing Staff" in the Hospital, as the reason. In the present OA, the ground of rejection is that the M.Sc Nursing course is to be pursued only in institutes of National Importance, as per the policy guidelines. The two issues being totally distinct, the ratio of the judgment relied upon by the applicant does not come to the aid of the applicant.

21. I am in agreement with the contention of the respondents that the policy decision taken regarding study leave to be granted to nurses working at AIIMS, is equally applicable to the current applicant in the OA, who is reportedly a nursing tutor. The corrigendum dated 02.03.2017 stipulates that "In this regard, AIIMS Nurses Union made a request to change centre for Excellence to Institute of National Importance, in the aforementioned minutes of the meeting. The Medical Superintendent AIIMS has agreed to amend the minutes and the amendment may be read as follow : Centre for Excellence may be read as Institute of National Importance". Thus, it was on the specific request of, the AIIMS Nurses Union that it was decided to change "Centre for Excellence" to "Institutes of National Importance", for pursuing higher studies, in the Minutes of the said meeting. Thus, study leave, mandatorily, has to be granted only to pursue higher studies from "Institutes of National Importance". The case of Ms. Aishwarya R.L.Gupta, cited by the applicant as a precedent in her favour actually strengthens the

case of the Respondents, where the study leave order, was recalled, holding that Jamia Hamdard University is not covered under definition of 'Institutes of National Importance.'

22. Though the scheme of granting study leave has been provided by the Government to enable the employees to improve their academic acumen, but it is the prerogative of the employee institute to lay down the parameters within which the employee must pursue his or her higher studies so that the knowledge acquired by the employee can be used as an asset by the respondent organisation.

23. The allegations of the applicant that she has been discriminated against is not supported from facts on record. There is no presumption in law that once a request is made, the same stands automatically allowed. The applicant ought to have waited for a decision on her request before depositing her fee.

24. In view of the facts and circumstances of the case the OA is dismissed as being devoid of merit leaving no scope for interference by the Tribunal. No cost.

(Praveen Mahajan)
Member (A)

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