

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Original Application No.180/00277/2014

Friday, this the 30th day of November, 2018

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member

Manoj Yadav, S/o.Din Dayal Yadav
 Aged 43 years, Regional Provident Fund Commissioner-II
 Employees Provident Fund Organisation
 Sub Regional Office, Kollam
 Residing at 778, Saraswathi Vihar
 Gurgaon, Haryana, Pin 122 002

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Applicant

(By Advocate – Mr.M.R.Hariraj)

V e r s u s

- 1 Union of India, represented by
 Secretary to the Government of India
 Ministry of Labour, New Delhi – 110 001
2. The Chairman
 Executive Committee
 Central Board of Trustees
 Ministry of Labour
 New Delhi – 110 001
3. The Central Provident Fund Commissioner
 Employees Provident Fund Office
 14, Bhikaji Cama Place
 New Delhi- 110 069
4. Additional Central Provident Fund Commissioner (HRM)
 Employees Provident Fund Office
 14, Bhikaji Cama Place, New Delhi – 110 069

5. Regional Provident fund Commissioner-I (HRM)
Employees Provident fund Office
14, Bhikaji Cama Place, New Delhi -110 069
6. Regional Provident Fund Commissioner-I (ASD)
Employees Provident Fund Office
14, Bhikaji Cama Place,
New Delhi – 110 069
7. Regional Provident Fund Commissioner – II (HRM)
Employees Provident Fund Office
14, Bhikaji Cama Place,
New Delhi – 110 069
8. Regional Provident Fund Commissioner-II (ASD)
Employees Provident Fund Office
14, Bhikaji Cama Place
New Delhi – 110 069
9. Sh. K.K.Jalan, The Central Provident Fund Commissioner
Employees Provident Fund Office
14, Bhikaji Cama Place,
New Delhi – 110 069

..... **Respondents**

(By Advocate – Mr.Thomas Mathew Nellimoottil for R 1-2 & Mr.N.N.Sugunapalan,Sr with Mr.S.Sujin for R 3-8)

This Original Application having been heard and reserved for orders on 28.11.2018, the Tribunal on 30.11.2018 delivered the following:

ORDER

Per: MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Original Application No.180/00277/2014 is filed by Mr.Manoj Yadav, Regional Provident Fund Commissioner-II, Employees Provident Fund Organisation, Sub Regional Office, Kollam aggrieved by the order directing

recovery of leave salary for the period of study leave and the orders converting the study leave granted as Earned Leave and Half Pay Leave leading to deduction of leave due to the applicant. He seeks the following reliefs:

- “i) To quash Annexure A1, A2 and A3
- ii) To direct the respondents to restore the Earned Leaves and Half Pay Leaves deducted from the leave account and its credit of the applicant based on the impugned orders and to grant the consequential benefits and entitlements to the applicant;
- iii) Direct the respondents not to make any recovery from the pay of the applicant based on the impugned orders and to refund the amounts recovered if any with interest @12% per annum from the date of recovery till date of actual repayment;
- iv) Grant any other further relief or exemplary costs or order as this Tribunal may deem fit and proper to meet the ends of justice;
- v) Grant the costs of this Original Application. ”

2. The applicant, while working as Regional Provident Fund Commissioner-II at Gurgaon was granted study leave for pursuing higher studies in Masters of Professional Studies – Geographic Information System at University of Maryland, Baltimore, USA as per Order dated 9.3.2010 of the 3rd respondent (Annexure A-4). While engaged in the study in U.S.A, he was put to great distress on account of the fact that no study allowance had been granted to him and since no information having been given to the Indian Embassy, he could not

get any financial support from that source either. As laid down in Rule 53 (3) of the Central Civil Service (Leave) Rules, the authority sanctioning the leave ought to inform the fact to the Head of the Mission concerned. This was not done and as a result even when the applicant faced serious mental stress, no assistance could be obtained from the Indian Mission. The severe financial constraints caused great stress to the applicant and he was forced to withdraw from the course. A copy of the certificate issued on his request for withdrawal from course by the University concerned is seen at Annexure A-5.

3. The applicant returned to India and was allowed to join his duties at the Head Office with effect from 31.10.2011. The order issued on 11.11.2011 by the 5th respondent is produced at Annexure A-6 and the said order while allowing him to re-join duties, further mentioned that orders relating to his period of absence from 21.3.2011 to 30.10.2011 shall be dealt with as per Rules separately. In February 2013 a circular was issued mentioning that the applicant's Service Book had been lost (Annexure A-7) and a complaint relating to the missing Service Book was filed before the Police as per Annexure A7(A). The applicant was thereafter transferred to the present station at Kollam on 31.10.2013 and joined there on 4.11.2013. The applicant alleges that the transfer had been against his will and due to *malafide* on the part of certain officers. While at Kollam, the letter at Annexure A-2 dated 17.12.2013 was

issued enclosing a U.O Note dated 21.11.2011 informing him of recovery of leave salary for the period of study leave. The applicant contends in the Original Application that he came to know about Annexure A-1 only when he received Annexure A-2 communication issued more than two years afterwards. Soon thereafter, the respondents issued Annexure A-3 letter which informed him that as the officer had returned from study leave without completing the course of study, the period of absence from 21.3.2011 to 30.10.2011 has been regularized by deducting 83 days EL and 141 days HPL standing at his credit. It further instructed that the amount of leave salary for the period of his leave is to be recovered.

4. It appears that the Service Book of the applicant was later recovered and he came across an entry dated 1.1.2014 by which the leave as mentioned was to be deducted from the leave account. The applicant protested against the decision of the respondents, but it was to no avail. He was forced to discontinue his study owing to his ill-health caused by the fact that he had no financial support by way of study allowance granted to him. He did not abandon his studies for any flimsy reason and had been forced to discontinue on account of heightened stress and ill-health. Now he finds himself in a situation where all his leave has been deducted.

5. As grounds applicant mentions that the recovery and deduction initiated under Rule 63 is not mandated under the said Rules. He contends that the Rule will apply only if the government servant had resigned or retired or otherwise quit service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus unable to furnish the certificate as required under sub Rule (5) of CCS (Leave) Rule 53. In the present case, the applicant had returned and immediately was allowed to re-join. The reasons for his non-completion of his course were clearly beyond the control of the applicant. Rule 63 will apply only if the Rule 53 is violated, he maintains.

6. It is further submitted that Rule 63 to serving government employee, if taken to mean as one enabling recovery of leave salary in all cases of discontinuance of course without reference to reasons or circumstances of discontinuance, will be illegal and discriminatory and violative of Article 14 and 16 of the Constitution of India. Treating his case along with those where the discontinuance or failure is fully attributable to the employee amounts to treating unequals as equals and would violate the principles of equality before law and equal protection before law. Any payment made in the name of salary is for the purpose of livelihood and survival of employee's family during that particular month. Recovery of the same, years later, will be to the great

disadvantage of the employee.

7. Study leave cannot be debited against leave account of any government servant as per Rule 54(1) of CCS (Leave) Rules. Treating or converting the study leave granted as Earned Leave and as Half Pay Leave without the consent of the employee is illegal and against the provisions of law.

8. It is further stated that the impugned orders are beyond the competence and authority of the Regional Provident Fund Commissioner-II (ASD-I) who issued the same after a lapse of two years. There has been no delegation of such powers by the competent authority concerned and the action taken by the Regional Provident Fund Commissioner II is beyond his mandate. The impugned order now issued has resulted in multiple adverse consequences for the applicant. On the one hand there is demand for the actual amount of leave salary with interest and on the other hand, the period of sanctioned leave is now being adjusted from leave at his credit..

9 He also mentions that there has been *malafide* on the part of the authorities concerned in taking the impugned action. He submits that it has happened on account of his caste status and senior officers including the 9th respondent are ill disposed towards him on account of this fact. The failure of the authorities to inform the Embassy of India and the subsequent misplacing of

his Service Book are all patterns of this harassment.

10 In the reply statement furnished by respondent nos.3-8, the contentions of the applicant have been opposed. Relying strongly on the provisions of CCS (Leave) Rules 1972, the respondents have put together the picture of an employee who had unauthorizedly terminated his programme of study for reasons which he did not disclose to the authorities at that time. Rule 53 of the said Rules and following provisions discussed the modalities for grant of study leave in detail. Being a government servant who was permanently borne on the cadre of the department, he was granted study leave for studies in a subject which was related to his field of work. He did not seek any allowance for undertaking the study for the course for which he had applied directly. He also did not provide the details of any scholarship or stipend or remuneration that he was likely to get in the U.S.A. The applicant violated the condition of study leave as stipulated in Sub Rule 5 of Rule 53. Rule 53 reads as follows:

“53.Sanction of study leave

(1) A report regarding the admissibility of the study leave shall be obtained from the Audit Officer:

Provided that the study leave, if any, already availed of by the Government servant shall be included in the report.

(2) Where a Government servant borne permanently on the cadre of one department or establishment is serving temporarily in another department or establishment, the grant of study leave to him shall be subject to the condition that the concurrence of the department or the establishment to which he is permanently attached is obtained before the

leave is granted.

(3) Where the study leave is granted for prosecution of studies abroad, the Head of the Mission concerned shall be informed of the fact by the authority granting the leave, provided that where such leave has been granted by an Administrator, the intimation shall be sent through the Ministry concerned.

NOTE :- The Head of the Mission shall be contacted by the Government servant for issue of any letters of introduction or for other similar facilities that may be required.

(4) (a) Every Government servant in permanent employ who has been granted study leave or extension of such study leave shall be required to execute a Bond in Form 7 or Form 8, as the case may be, before the study leave or extension of such study leave granted to him commences.

(b) Every Government servant not in permanent employ who has been granted study leave or extension of such study leave shall be required to execute a bond in Form 9 or Form 10 as the case may be, before the study leave or extension of such study leave granted to him commences.

(c) The Authority competent to grant leave shall send to the Audit Officer a certificate to the effect that the Government servant referred to in Clause (a) or Clause (b) has executed the requisite bond.

5 (a) On completion of the course of study, the Government servant shall submit to the authority which granted him the 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.

(b) If the study is undertaken in a country outside India where there is an Indian Mission, the certificates shall be submitted through the Head of the Mission concerned. ” (Emphasis supplied)

11. Thus, due to his failure to comply with the provisions above, action under

Rule 63 had to be resorted to. He submits that he was forced to discontinue his studies due to mental stress and financial difficulties. These according to the respondents are mere afterthoughts to save himself from action initiated against him. Also while it is true that his Service Book had been unavailable for some time, these are mere red herrings that the applicant is bringing to play. The applicant had never applied for any fee/cost other than the study leave salary. Also as the officer had not informed about any financial stringency, the urgency to invoke Rule 53(3) and inform the Indian Mission had not occurred to the authorities. In any case, in a matter involving a study undertaken by the employee, at his own will, none can expect the Indian Mission to rush to his aid with financial support. The transfer to Kollam was on administrative ground and in public interest and the allegation that he was being picked on for reasons of caste prejudice is preposterous and is denied. In any case, the Regional Provident Fund Commissioner-II has all India transfer liability.

12. Heard Shri.M.R.Hariraj, learned counsel for the applicant and Mr.S.Sujin representing Mr.N.N.Sugunapalan,Sr., learned counsel for respondent nos.3-8 and Mr.Thomas Mathew Nellimoottil, learned counsel for respondent nos.1-2.

13. Shri.M.R.Hariraj based his argument on the entitlements of the employee concerned under Rule 60 of the CCS (Leave Rules), 1972. The applicant had been entitled to a study allowance as the foreign study had been authorised by

the respondent organisation. There are clearly defined conditions for grant of study leave and under Rule 50 of the said Rules stipulates that the field of study ought to be related to the employee's work sphere. When the applicant applied for study leave, the competent authority was fully convinced that this was a programme which was “of definite advantage to Government from the point of view of public interest and is related to sphere of duties of the Government servant” (Rule 50 (2)(i)). Accordingly the officer was allowed the study leave as per orders at Annexure A-4. The department failed to intimate the Head of Mission as required under Rule 53(3) and this deprived the applicant of any assistance, financial and otherwise, when he was afflicted by ill-health. It was due to the lack of concern on the part of the respondents that he finally had to discontinue his programme and return.

14. The applicant was thereupon allowed to join but was soon transferred to his present station in Kerala which was far away from his native place. Simultaneously, the authorities also resorted to action under Rule 63 on the ground that he had failed to complete his course of study, warranting recovery of leave salary granted as well as conversion of the period of absence into regular leave at the applicant's credit. Shri.M.R.Hariraj pointed out that he was victimised through his transfer and further harassed by action under Rule 63. The employee had discontinued his course for valid reasons. Instead of

regularising his period as duty, the authorities concerned are deducting the EL/HPL at his credit. Leave is a precious prerogative that every employee cherished and cannot be lightly taken away by the employer. Further the counsel argue that the applicant is facing double jeopardy by being denied the leave salary and at the same time being deducted the leave at his credit. This is not warranted and is inadmissible.

15. Mr.S.Sujin representing Mr.N.N.Sugunapalan,Sr who appeared for the respondents argued that the respondents have acted strictly in accordance with the provisions of Rules. The applicant had been sanctioned study leave for two years. But without any notice or intimation, had chosen to discontinue the same and return to India. He was allowed to rejoin, but it is the duty of the authorities to take a view on the period of absence. First of all, the applicant's reasons for having discontinued the study midway are unconvincing. If he had been placed in such a stringent financial situation, he would not have chosen to proceed on a two-year study course in U.S.A without even seeking study allowance. His conduct definitely attracted action under Rule 63 and the department had proceeded with the same. The charge of harassment is merely an afterthought in order to justify his inadmissible conduct.

16. It is necessary for us to look at the central issue without being diverted by

other factors which are sought to be raised through the Original Application. The applicant had applied for and obtained study leave for pursuing a course of study lasting two years in the U.S.A. For some reason he had decided to discontinue the same and had come back to India. Other than an entry “health/stress” given as reason for the request authenticated by the University, we do not have any facts about the reasons on record. The employee came back and was allowed to rejoin. He makes much of his Service Book having been missing for some time in the Original Application. We do not view this as a relevant fact at all in the case. The respondents in view of the provision under which he was granted leave under Rule 53, proceeded to invoke action under Rule 63. The provision reads as follows:

“ **63. Resignation or retirement after study leave or non-completion of the course of study.**

(1) If a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty **or fails to complete the course of study and is thus unable to furnish the certificates as required under sub-rule (5) of Rule 53 he shall be required to refund-**

- (i) **the actual amount of leave salary, Study Allowance, cost of fees, traveling and other expenses, if any, incurred by the Government of India; and**
- (ii) **the actual amount, if any, of the cost incurred by other agencies such as foreign Government, Foundations and Trusts in connection with the course of study,**

together with interest thereon at rates for the time being in force on Government loans from the date of demand, before his resignation is accepted or permission to retire is granted or his quitting service otherwise:

Provided that except in the case of employees who fail to complete the course of study nothing in this rule shall apply-

(a) to a Government servant who, after return to duty from study leave, is permitted to retire from service on medical grounds; or

(b) to a Government servant who, after return to duty from study leave, is deputed to serve in any Statutory or Autonomous Body or Institution under the control of the Government and is subsequently permitted to resign from service under the Government with a view to his permanent absorption in the said Statutory or Autonomous body or Institution in the public interest.

(2) (a) The study leave availed of by such Government servant shall be converted into regular leave standing at his credit on the date on which the study leave commenced, any regular leave taken in continuation of study leave being suitably adjusted for the purpose and the balance of the period of study leave, if any, which cannot be so converted, treated as extraordinary leave.

(b) In addition to the amount to be refunded by the Government servant under sub-rule (1), he shall be required to refund any excess of leave salary actually drawn over the leave salary admissible on conversion of the study leave.

(3) Notwithstanding anything contained in this rule, the President may, if it is necessary or expedient to do so, either in public interest or having regard to the peculiar circumstances of the case or class of cases, by order, waive or reduce the amount required to be refunded under sub-rule

(1) by the Government servant concerned or class of Government servant. ” (Emphasis supplied)

17. There is no dispute about the fact that the applicant had failed to complete the course of study and was unable to furnish the certificate as required under

Rule 53 sub Rule 5. The failure to do so will involve refund of the actual amount of leave salary as stipulated in the above Rules. Then under Rule 63(2) (a), the study leave period is to be converted into regular leave standing at his credit. The Rules being clear and unequivocal, there is little room for the applicant to manoeuvre in the case by putting forth various supposedly extenuating circumstances such as his health/stress situation and the matter of the missing Service Book etc. The question of double jeopardy also was examined. But the Rules are clear that an employee who fails to complete the course of study stands to lose the actual amount of leave salary disbursed as well as conversion of regular leave to make up for the period of absence. It is also relevant to note that the applicant had not chosen to challenge the Rules.

18. In so far as his contention that the authority which took action against him was incompetent is concerned, being another Regional Provident Fund Commissioner, we do not find this argument valid. A scrutiny of the impugned order at Annexure A-1 reveals that this has been issued from the Headquarters of the employee Provident Fund Organisation and the order specifically says that the same has been issued with the approval of the Central Provident Fund Commissioner.

19. Based on the above, we see no impropriety or illegality in the action taken by the official respondents. The Original Application is dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

- Annexure A1 - A true copy of UO No. HRM-I/A-10(98) 98 dated 21.11.2011 issued by the 5th respondent.
- Annexure A2 - A true copy of Order No. ASD-I/I(35)2013 dated 17.12.2013 issued by the 8th respondent.
- Annexure A3 - A true copy of Order No. ASD-I/I(35)2013/1682 dated 1.1.2014 issued by the 8th respondent.
- Annexure A17 - A true copy of Order No. ASD-I/I(35)2013/513 dated 29.10.2014.
- Annexure A4 - A true copy of Order No. HRM-I/A10(98)(98) dated 9.3.2010 issued for the 3rd respondent.
- Annexure A5 - A true copy of request for withdrawal submitted by the applicant before the University dated 20-10-2011 along with the endorsements of Graduate Program Director.
- Annexure A6 - A true copy of Order no. HRM-I/A-10/(98)98 dated 11-11-2011 issued by the 5th respondent.
- Annexure A7 - A true copy of circular no. ASDI/Misc/2010/335 dated 18.7.2013.
- Annexure A7 A - A true copy of police complaint filed by the department letter no. ASD-I/Misc./2010/830 dated 02.12.2013 by the 8th respondent.
- Annexure A8 - A true copy of KR/KLM/Adm.I/2013/20 dated 27.11.2013.
- Annexure A9 - A true copy of KR/KLM/Adm.I/2013/21 dated 09.12.2013.
- Annexure A10 - A true copy of relevant portion of the Service Book of the applicant.
- Annexure A11 - A true copy of letter no.

KR/KLM/Adm.I(3)/SB/2014/951/8352 dated 5.2.2014 issued by the Assistant PF Commissioner(Admn.)

Annexure A12 - A true copy of representation dated 20-1-2014 before the 3rd respondent.

Annexure A13 - A true copy of second representation submitted by the applicant dated 24.02.2014 before the 3rd respondent.

Annexure A14 - A true copy of letter dated 5.3.2014 to the Chief Vigilance Officer.

Annexure A15 - A true copy of representation dated 25.3.2014 to the 3rd respondent.

Annexure A16 - A true copy of circular dated 19.09.2007 issued by the department as conditions for study leave and recovery.

Annexure A18 - A true copy of the representation dated 19.12.2014.

Annexure A19 - A true copy of the representation dated 2.1.2015.

Annexure A20 - A true copy of the representation dated 6.2.2015.

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