

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00500/2017

Thursday, this the 1st day of March, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Aswas S.S., aged 35 years,
S/o. Sasidharan K.,
Deputy Chief Ticket Inspector,
Southern Railway, Shornur,
Residing at : Remya Bhavan,
Eloor East, Udyogamandal PO,
Ernakulam-682 501. **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India,
represented by the General Manager,
Southern Railway,
Head Quarters Office,
Park Town PO,
Chennai – 600 003.
2. The Secretary,
The Railway Sports Promotion Board,
Southern Railway, Head Quarters Office,
Park Town PO, Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palakkad Division, Palakkad – 678 002.
4. The Railway Sports Promotion Board, Rail Board,
Ministry of Railways, New Delhi – 110 001,
represented by its Secretary.
5. The Director, Sports Authority of India,
Nethaji Subhas Southern Centre,
Bengaluru – 560 056.

6. The Divisional Railway Manager,
Southern Railway,
Palakkad Division,
Palakkad – 678 002.

7. The Senior Divisional Commercial Manager,
Southern Railway,
Palakkad Division,
Palakkad – 678 002. **Respondents**

**[By Advocates : Mrs. Sumathi Dandapani, Sr. along with
Mr. Millu Dandapani (R1-4, 6&7) and
Mr. Govindh K. Bharathan (R5)]**

This application having been heard on 21.02.2018, the Tribunal on 01.03.2018 delivered the following:

O R D E R

Per Hon'ble Mr. U. Sarathchandran, Judicial Member –

The applicant is a Deputy Chief Ticket Inspector posted at Shornur in the Palakkad Division of Southern Railway. He was initially appointed as a Clerk in the sports quota in 1999 in the Western Railway. Thereafter he was transferred to the Palakkad Division. He has filed this OA being aggrieved by Annexure A1 communication dated 24.5.2017 informing the rejection of his leave application by the competent authority i.e. Divisional Railway Manager, Palakkad Division. The leave application was indeed an application for granting leave for undertaking studies for the “Diploma in Sports Coaching” conducted by the Nethaji Subhash National Institute of sports (for short NIS) Bengaluru under the Sports Authority of India for the year 2017-2018. According to him he had applied for the said course through proper channel vide Annexure A8 covering letter addressed to respondent No. 6. He states that since the application form had to reach NIS at Bengaluru before the due date on 30.5.2018 he had sent a copy of the

application in advance to respondent No. 5 who is Director of the NIS which conducts the course. But the applicant received Annexure A1 communication informing him that leave cannot be sanctioned. Subsequently he has received Annexure A10 communication from respondent No. 5 inviting him to participate in the selection process to begin on 28.6.2017 and further directing him to obtain no objection certificate from the employer. The applicant states that in the light of Annexure A2 Railway Board instruction though Indian Railway sports persons who are not considered for sponsorship but are selected by the Netaji Subhas National Institute of Sports, Patiala and undergo the course at their own cost shall be eligible for grant of study leave. According to him in the light of Annexure A2 Railway board instruction the respondents ought to have granted study leave. He alleges that respondent railway officials have adopted a discriminatory treatment towards him vis-a-vis Shri Joseph Abraham working in the Trivandrum Division in the ticket checking category, who was considered for sponsorship for the aforesaid NIS course at Railway expenses. Therefore he alleges that Annexure A1 is arbitrary, discriminatory, not based on relevant consideration and unconstitutional. He seeks relief as under:

“(i) Call for the records leading to the issue of Annexure A1 and quash the same;

(ii) Declare that the applicant is entitled to be granted with a 'No Objection Certificate' to undertake the course of study of Diploma in Sports Coaching in the National Institute of Sports at Bengaluru for the year 2017-18 and declare further that the applicant is also entitled to be granted the study leave, if selected, as provided for in A2 order of the Railway Board.

(iii) Direct the respondents to grant the applicant a 'No Objection Certificate' to undertake the course of study of Diploma in Sports Coaching in the National Institute of Sports at Bengaluru for the year 2017-18 and also to grant the study leave, if selected, as provided for in A2 order of the Railway Board.

- (iv) Award cost of and incidental to this application.
- (v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. It is stated by the applicant that, earlier he had applied for Diploma in Sports Coaching course for the year 2016-17 organised by NIS at Bengaluru through respondent No. 2. According to him as per the information he received from Shri Joseph Abraham the authority dealing with the sports being respondent No. 2 the application need to be routed through respondent No. 2 only and hence he had not forwarded the application at that time through the Divisional Personnel Officer. As respondent No. 2 did not take any action to forward his application he approached this Tribunal by filing OA No. 496 of 2016. During the pendency of that OA he took part in the selection process and joined the course hoping that the authority would grant him the no objection certificate. However, OA No. 496 of 2016 was finally decided by this Tribunal vide Annexure A3 order dated 21.07.2016 directing the applicant to submit an application for sanction of study leave as per the IREM provision through the competent authority i.e. Senior Divisional Commercial Manager. The applicant was also asked to tender an unconditional apology for bye-passing the competent authority. Though the applicant in terms of Annexure A3 order submitted Annexure A4 representation addressed to the DRM, respondent No. 3 informed vide Annexure A5 dated 5.8.2016 that the competent authority has decided not to sanction the study leave. He therefore, filed OA No. 762/2016 for directing the respondents to consider Annexure A4 representation afresh. As this Tribunal rejected the interim prayer in OA No. 762 of 2016 he approached

High Court of Kerala by filing OA (CAT) No. 270 of 2016 which was disposed of by the High Court vide Annexure A6 judgment directing the respondents to pass appropriate orders within two weeks from the date of receipt of the judgment. Annexure A6 judgment of the High Court of Kerala was complied with by the railway only on 21.12.2016 vide Annexure A7 not sanctioning his study leave for the period from 14.7.2016 to 30.6.2017. The applicant states that Annexure A7 order had frustrated the relief sought in OA No. 762 of 2016. It is in the above backdrop the applicant has approached this Tribunal with the present OA.

3. Respondent Railway filed a detailed reply statement profusely quoting from Annexure A3 order of this Tribunal and also from Annexure A6 judgment of the High Court of Kerala. The highlight of the pleadings of the respondent Railway is that applicant is a Railway servant lacking discipline. They state that on earlier occasions disciplinary actions had been initiated against him for lapses in performance of duty and he had suffered the punishment on three different occasions. Applicant had obtained the 'no objection' certificate from an incompetent and unwary official of the Railway. They point out that during the earlier occasion also he joined the NIS course at Bengaluru without obtaining 'no objection' certificate. Finally he had to discontinue his course for want of the 'no objection' certificate insisted on by respondent No. 5. According to the respondents the competent authority to grant study leave for one year and above is the Divisional Railway Manager and it is within his power to take a decision to decide whether permitting the applicant to join the course/study is in the

public interest and whether the administrative exigencies permit the Railway to grant such leave. Pointing out the errant behaviour of the applicant in joining the course with respondent No. 5 without 'no objection' certificate respondents railway officials contend that the discipline in the Railway establishment is of primordial importance to run the Railway and the applicant being in the habit of bye-passing the permission of the competent authority for joining the course, shall not be permitted to continue his studies. Respondents further state that Shri. Joseph Abraham Who has been selected for the course of study at NIS is an Olympian with a good number of credentials brought to the country and that he is beyond a comparison with the applicant who lacks in such international credentials.

4. A rejoinder was filed by the applicant refuting the contentions of the Railway and also reiterating his pleadings in the OA.

5. An additional reply statement also was filed by respondent Railways.

6. A counsel statement was filed on behalf of respondent No. 5 to the effect that that in terms of the interim order order dated 23.6.2017 of this Tribunal 'to consider the applicant provisionally for admission subject to the outcome of the OA', the 5th respondent have admitted the applicant with a condition to produce NOC within a time frame.

7. We have carefully considered the pleadings of the parties and the record produced by them. We have heard Shri T.C. Govidaswamy, learned

counsel for the applicant, Smt. Sumati Dandpani, learned Senior Advocate for the respondents Railway and Shri Madhu, advocate representing Mr. Govind Bharathan for respondent No. 5. Perused the record.

8. True, this Tribunal had given an interim direction to respondent No. 5 to consider the applicant provisionally for admission subject to the final outcome of the OA. At that time the Tribunal was persuaded by the provisions contained in Article 51A(j) of the Constitution of India which exhorts every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. At that time the entire record relating to this case was not before us. Only on hearing the matter in detail we could notice that the applicant had a history of erratic behaviour of indiscipline and bye-passing officials of the heirarchical structure of the organisation. It appears that such misadventures of the applicant was fortified with his sports background because he was initially recruited to the Railway service on sports quota. It appears that the ambition of the applicant is to obtain a Diploma in Sports Coaching so that he can be treated as a 'Dronacharya' to the sports loving youngsters of the Railway administration and those who come under the sports quota. When he applied for the diploma course conducted by NIS for the year 2016-2017 he never bothered about the routing of his application through the competent authority or through the Divisional Personnel Officer. Observing that discipline in service demands of a candidate applying for study leave should apply through proper channel, this Tribunal vide Annexure A3 order directed the applicant to

apply for sanctioning study leave for one year, as per the IREM, through competent authority and also to tender unconditional apology for bypassing the competent authority and the prescribed rules. Though the applicant submitted Annexure A4 application in terms of the Annexure A3 order of this Tribunal the respondents rejected it.

9. He filed OA No. 762 of 2016 with a prayer for reconsidering Annexure A4 representation relying on Annexure A2 RBE. Annexure A2 RBE dated 16th June, 2016 reads as follows:

“Sub: Grant of study leave for NIS Diploma course.

Railway Sports Promotion Board selects a limited number of sportspersons for NIS Diploma Course in different discipline from amongst the applications received from Zonal Railways. The sponsored sportspersons' fees and other charges for the course are paid by respective Railways and their period of Diploma Course is treated as 'On Duty'.

NIS diploma is technical course having a direct and close connection with the sphere of duty of the sportspersons/coaches in Indian Railways and is definite advantage to the Government from the point of view of public interest.

In view of the above, it has now been decided that Indian Railways sportspersons, who are not considered or not found eligible for sponsorship but are selected by NIS and undergo the NIS course at their own cost, shall be eligible for grant of “Study Leave”.

These instructions issue with the approval of Board (MS).”

As no interim order was granted by this Tribunal in OA No. 762 of 2016 he approached the High Court of Kerala with OP (CAT) No. 270 of 2016 which was disposed of by the High Court vide Annexure A6 judgment observing that:

“7.There cannot be any dispute that even if a person is eligible to get leave, it cannot be claimed as a matter of right, granting of which may depend upon various factors, including availability of sufficient hands and such other circumstances; in accordance with the relevant Rules/Norms. The purpose of insisting 'NOC' is also relevant.....”

The High Court directed the respondents to consider Annexure A9 application (Annexure A4 in this OA) within two weeks. But it was again not acceded to by Annexure A7 communication. The order of the Divisional Railway Manager, Palakkad on Annexure A4 request has been extracted in Annexure A7 communication sent by the respondent No. 3 to the applicant.

It reads:

“The above OP (CAT) has been preferred by the petitioner against the interim order dated 6.10.2016 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in OA No. 762/2016 declining interim relief. The Hon'ble High Court of Kerala vide judgment dated 24.10.2016 has directed the respondents to consider Annexure A9 representation of the petitioner and pass appropriate order in accordance with the law within two weeks from the date of receipt of a copy of the order. The Hon'ble Court has held as under:

“There cannot be any dispute that even if a person is eligible to get leave, it cannot be claimed as a matter of right, granting of which may depend upon various factors including availability of sufficient hands and such other circumstances; in accordance with the relevant Rules/Norms...”

Accordingly I have considered Annexure A9 representation with reference to the relevant records and in accordance with law and dispose of the same as under:

Annexure A9 representation dated 1.8.2016 has been submitted for grant of study leave from 14.7.2016 to 30.6.2016. It is seen that:

A. The controlling officer of the employee, Sr. DCM/PGT in his remarks has stated that the leave period sought is reasonably long at present there is a shortage of 81 (Eight one) TTIs in Palakkad Division.

B. Further, conditions for granting study leave for the NIS Diploma course as detailed in RBE 74/2016 dated 16 June 2016 states in para 2 as “NIS Diploma is technical course having a direct and close connection with the sphere of duty of the sportsperson/coaches in Indian Railways and is definite advantage to the Government from the point of view of public interest”. It is the discretion of the Railway administration to decide as to whether the course to which the employee seeks admission is in definite advantage to the Government from the point of view of public interest. In this regard the letter NO. SRSA/CAT/2016, dated 13.7.2016, Sports Officer, Southern Railway has stated that after due verification of the certificates and credentials, the employee was able to secure 8 points against the required 20 points for qualification to be recommended for the NIS coaching and the employee has sought training in Athletics Discipline where at present 10 NIS qualified coaches are available. It is also seen that the petitioner has joined that course without obtaining permission from the Department and also submitting an invalid No Objection Certificate, a conduct of unbecoming of a Railway Servant.

C. In view of the fact that there is shortage of hands in the Department and there is no definite advantage to the Government from the point of view of public interest, the request by the petitioner for study leave for a period from 14.7.2016 to 30.6.2017 vide Annexure A9 representation dated

1.8.2016 is not agreed to”.”

10. A perusal of the aforequoted order in Annexure A7 indicates that respondent No. 6 Divisional Railway Manager had considered the request of the applicant for permission to grant study leave, in detail. It further reveals that he was quite mindful of RBE No. 74/2016 dated 16.6.2016 (Annexure A2) also. In the above quoted order respondent No. 6 was highlighting the shortage of 81 TTIs in Palakkad Division. It is also stated that there are 10 NIS qualified coaches available at present in the Athletics Discipline, and that granting study leave to the applicant to undertake the course would not be of much benefit to the Railway.

11. As noted earlier, the applicant has joined the course under respondent No. 5 on the strength of the interim order granted by this Tribunal. Nevertheless, on going through the detailed reply statement and the observations made in Annexure A3 order of this Tribunal and further the spirit of Annexure A6 judgment of the High Court of Kerala it is revealed that the applicant was not a really deserving candidate for the aforesaid NIS course of sports coaching despite the fact that he is pursuing the course study on his own expenses. The reply statement of the railway clearly states that he had failed to meet the selection criteria for the railway sponsored candidates for that course. We further note that respondent No. 5 selected him to the course subject to the production of NOC from the employer, subject to the final outcome of this OA.

12. In Annexure A3 order this Tribunal had made scathing remarks about the indisciplined conduct of the applicant when he sent application for the NIS course of sports coaching for the year 2016-17. The High Court of Kerala in Annexure A6 judgment has made it clear that study leave is not a vested right of the employee. Respondent No. 6 has stated cogent reasons in Annexure A7 for rejecting study leave applied for the year 2016-17. For the present course for the academic year 2017-18 also the applicant has bye-passed the competent authorities for securing admission in NIS without obtaining 'no objection' certificate from the competent authority of the Railway. No wonder, the respondent railway authorities rejected the request for study leave vide the impugned Annexure A1 letter citing the same reasons as stated in Annexure A7 communication.

13. Taking stock of the facts and circumstances of this case, we are of the view that even though the applicant had continued his studies/course up to this stage at NIS in Bengaluru, his errant conduct in not securing a 'no objection' certificate before he actually joined the course is a factor which should dis-entitle him for grant of study leave and 'no objection' certificate. It may be harsh that he had to suffer the loss of money and time for having undergone the course on the bonafide belief that he would be ultimately getting NOC from the authorities., This Tribunal had already made it clear in the interim order that the permission we granted was subject to the outcome of the OA.

14. In view of the attending circumstances of this case, we are of the considered opinion that the applicant does not deserve to be granted NOC by the Railway administration. We are of the view that the reasons stated by respondent No.6 in Annexure A7 are quite cogent and convincing. Therefore we find no merit in the OA. The OA is accordingly dismissed. The interim order dated 23.6.2017 stands vacated. Respondent No. 5 is free to disallow the applicant for continuing his study for Diploma in Sports Coaching and may relieve him from the Institute. No order as to costs.

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U. SARATHCHANDRAN)
JUDICIAL MEMBER**

“SA”

Original Application No. 180/00500/2017**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of letter bearing No. J/P OA 762/2016 dated 24.5.2017 issued from the office of the 3rd respondent.

Annexure A2 – True copy of Railway Board order bearing RBE No. 74/2016 dated 16.6.2016.

Annexure A3 – True copy of order dated 21 July 2016 in OA NO. 496/2016 rendered by this Hon'ble Tribunal.

Annexure A4 – True copy of representation dated 1.8.2016 addressed to the Divisional Railway Manager.

Annexure A5 – True copy of order bearing No. J/P. OA 496/2016 dated 5.8.2016, issued from the office of the 3rd respondent.

Annexure A6 – True copy of judgment dated 24 October, 2016 in OP (CAT) No. 270/2016 rendered by the Hon'ble High Court of Kerala.

Annexure A7 – True copy of order bearing NO. J/P.OP(CAT)270/16-OA 762/2016 dated 21.12.2016 issued from the office of the 3rd respondent.

Annexure A8 – True copy of covering letter dated 17.5.2017 addressed to the Divisional Railway Manager less its enclosures.

Annexure A9 – True copy of application form dated 17.5.2017 submitted to the 5th respondent.

Annexure A10 – True copy of communication bearing NO. SAI/B/ACDS-DC/2017-18 dated 7th June, 2017 from the 5th respondent.

Annexure A11 – True copy of communication issued from the office of the 5th respondent under No. SAI/B/ACDS/DC-ATH/2017-2018 dated 4th July, 2017.

Annexure A12 – True copy of Railway Sports Promotion Board order bearing No. RSPB/2009/Policy/NIS Course dated 12.1.2010.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the letter dated 13.7.2016.

Annexure R2 – True copy of the letter dated 25.7.2016.

Annexure R3 – True copy of the letter dated 19.10.2016.

Annexure R4 – True copy of the letter dated 15.10.2016.

Annexure R5 – True copy of application dated 5.5.2017.

Annexure R6 – True copy of relevant pages of the service register.

Annexure R7 – True copy of the letter dated 5.7.2017.

Annexure R8 – True copy of the letter dated 9.7.2017.

Annexure R9 – True copy of the explanation of ACM-I.

Annexure R10 – True copy of the appendix V of IREC.

Annexure R11 – True copy of the schedule of powers related to study leave.

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