

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Original Application No.021/00503/2018 &
MA 696 of 2018**

Reserved on: 02.11.2018

Order pronounced on: 14.11.2018

Between:

A.V. Karunakar, S/o. late Sri A. Nageswara Rao,
Aged 47 years, Group C, Occ: Vocational Instructor,
ATI, Vidyanagar, Hyderabad,
R/o. A-54/B-2, Rukmini Puri Colony, AS Rao Nagar,
Kapra, Hyderabad.

...Applicant

And

1. Union of India, Rep. by its Secretary,
Ministry of Labour & Employment,
Ministry of Skill Development & Entrepreneurship,
Shram Shakthi Bhawan, Rafi Marg, New Delhi – 110 001.
2. The Director General of Training,
Ministry of Labour & Employment,
Ministry of Skill Development & Entrepreneurship,
Employment Exchange Building, IARI PUSA Complex,
New Delhi – 110 012.
3. The Director, Advanced Training Institute,
Vidyanagar, Hyderabad – 500 044.

...Respondents

Counsel for the Applicant ... Dr.P.B. Vijaya Kumar

Counsel for the Respondents ... Mr. M. Brahma Reddy, Addl. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)
Hon'ble Mr. Swarup Kumar Mishra ... Member (Judl.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed for not admitting the applicant to duty from 14.10.2016 by
the respondents.

2. Brief facts of the case are that when the applicant was working as Vocational instructor in ATI, Vidyanagar he was granted 28 months Study Leave from 1.11.2010 to 28.2.2013. Applicant made an application for grant of extension of leave upto 30.6.2013. On 14.10.2016 the applicant requested for permission to join duty but was not permitted on grounds that his absence from 1.11.2010 crossed 5 years, which has to be treated as unauthorised absence warranting disciplinary action culminating in termination of services. A fact finding committee was constituted for the purpose which recommended to allow applicant to join duty but the respondents did not act so. Aggrieved by the actions of the respondents the present OA has been filed.

3. The contentions of the applicant are that though the B.Tech course is for 3 years but because of back log papers and issues on the domestic front he could complete the course in November 2016 and sought permission for joining on 14.10.2016. Of the 5 years claimed to be on unauthorised leave, 2 years 4 months was covered by sanctioned leave. Hence the period of unauthorised leave is not beyond 5 years as claimed. Applicant has not violated the conditions of the bond executed and hence order of recovery of pay and allowances is unjustified. He has been kept under compulsory wait from 14.10.2016 without any disciplinary action and hence is eligible for pay and allowance for the period of compulsory wait. Action under Rule 12 of CCS was initiated on 5.6.2018 whereas the rule can be invoked only if the Govt. Servant is continuously absent unauthorisedly as on the date of initiation of such action. The applicant did report for duty on 14.10.2016 and hence the said rule cannot be applied against him. Respondents issued a show cause notice on 5.6.2018 when the issue was under adjudication and this fact was suppressed in the reply statement.

4. Respondents contend that the conditions of the study leave are that the maximum study leave that can be granted is 28 months and if an employee resigns or quits within 3 years after return from study leave or does not return to duty or fails to complete the course the employee has to pay leave salary and other expenses with interest at rates in force. The applicant was granted study leave for 28 months from 1.11.2010 and he was due to report for duty on 1.3.2013. The applicant's request for extension of leave was rejected and he was directed to report to duty vide letters dt 21.11.2012, 11.12.2012, 20.3.2013, 10.7.2013 and 25.3.2014 but he did not. As per terms governing grant of study leave, the applicant was issued a show cause notice to credit Rs.8,15,229 based on the undertaking given by him towards pay and allowances paid to him during study leave and giving one more opportunity to join after paying the said amount. On 14.10.2016, after a lapse of 6 years of unauthorised absence the applicant sought permission to join duty without giving proper reasons for the delay and not responding to letters cited. As per clause 1 of Rule 12 of CCS (Leave) Rules, no Govt. Servant shall be granted leave of any kind for a continuous period exceeding 5 years and as per clause 2, unless the President, in view of the exceptional circumstances of the case, otherwise determines, a Government Servant who remains absent from duty for a continuous period exceeding five years other than on foreign service, with or without leave, shall be deemed to have resigned from Government Service immediately, provided that reasonable opportunity to explain the reasons for such absence shall be given to that Govt. Servant before provisions of sub rule (2) are invoked. The respondents claim that as per the said rule the applicant is deemed to have resigned from Govt. Service since he was given many opportunities to join duty but he did not avail. Moreover, the fact finding committee only suggested that if he were to

complete the B.Tech Course in time and if Rule 12 is not attracted then applicant be allowed to join.

5. Heard the learned counsel and perused the documents on record.

6. The applicant sought study leave to pursue B.Tech course which is of 3 years duration i.e. 36 months, but study leave granted was for 28 months. The period of 24 months from 1.11.2010 to 1.10.2012 was covered with full salary and another 4 months without salary. The purpose of study leave was to complete B.Tech course and hence granting leave less than 36 months would not serve the purpose. This being so, the respondents have not even granted the extension of leave sought up to 30.6.2013. Having granted leave for 28 months, treating the leave period as unauthorised absence is illogical. Employee cannot join duty without completing the course as per study leave rules, lest he has to refund the pay and allowances paid during study leave with interest. Therefore the applicant had to complete B.Tech course, which he ought to in his own interest and in the interest of the organisation. An employee with a higher qualification is an asset to an organisation and in particular to a vocational training organisation like the A.T.I. By having a higher qualification the applicant can train the trainees in a better way than he could before acquiring the said qualification. The applicant completed the course in November 2016 as per the degree certificate enclosed. The applicant was obviously on loss of pay from 1.3.2013 onwards. There was thus no financial burden on the institution. Generally for acquiring higher qualifications, employees in the organisation are awarded promotions like in the Dept. of Atomic Energy under Merit Promotion Scheme. Here we are finding that the applicant is being penalised for his effort to

acquire higher qualification under the garb of unauthorised absence. Application of rules should not be in the narrow sense but necessarily be looked primarily from the interest of the institution which in turn effects public interest. The Public interest served is that a well qualified employee will be able to train the trainees effectively and efficiently and this we are sure is the goal of the A.T.I, so that the trainees have a better future and in the process the country. Besides, the fact finding committee has vividly stated in its report dt 11.12.2017 that the applicant be allowed to join duty because he was not placed under suspension and that disciplinary action be taken, if reasons given for the absence are untenable. After constituting the fact finding committee and not acting on the recommendations of the same is surprising. It is also noticed that when the matter is being adjudicated by this Tribunal the respondents issuing another show cause notice vide O.M dt. 5.6.2018 on grounds of unauthorised absence lacks reason. Issuing show notice to recover pay & allowances is irregular since the applicant has reported for duty on 14.10.2016 and has not violated study leave rules quoted by the respondents. Invoking clause 12 of CCS rules, which states that an employee is deemed to have resigned from Govt. Service if he is continuously absent for more than 5 years with or without leave, is against the Principles of Natural Justice and the mandate provided under Articles 14, 16 and 21 of the constitution. If there is an allegation against a Govt. Servant that he is on unauthorized absence then it tantamounts to an allegation of misconduct and for termination of service on grounds of misconduct, Principles of Natural Justice have to be followed. In other words disciplinary action has to be initiated to terminate the services of the applicant. It was not done. Therefore it cannot be deemed that the applicant has resigned from service. Any action taken contravening the Principles of Natural Justice will be arbitrary. Honourable High

Court of Andhra Pradesh has held in W.P No 581 of 1995 vide judgment dt. 19.7.1995 as under:

“ 7. The question that has assumed importance in this case is , can the University ie the employer say to its employee ie the appellant “come and join on a particular date, and if you do not do so, your service is automatically terminated?” The learned counsel for the University has shown to us a provision in the regulations of the University which says that in case a teacher or employee workman is absent without sanction of leave for more than a period of five years, his service would stand automatically terminated. It is difficult to acknowledge the presence of a rule of automatic termination in the public law field. Provisions, which are not in consonance with Principles of Natural Justice and mandates of Articles 14, 16 and 21 of the Constitution cannot be used as weapons by the employers to terminate the services of the employees. Law in this behalf has been candidly stated in the case of D.K. Yadav v J.K.A. Industries Ltd., wherein it has been pointed out that if there is an allegation of unauthorised absence , that amounts to an allegation of misconduct and if there is an allegation of misconduct, termination of service without complying with the principles of Natural Justice would not be Justified.”

The present case is fully covered by the judgment of the Honourable High court. Thus the action of the respondents in not allowing the applicant to join duty and issuing show cause notice invoking clause 12 of CCS rules is illegal.

7. To conclude the applicant was granted study leave to pursue B.Tech which he completed in Nov 2016. Just before completion he reported for duty on 14.10.2016. Acquiring higher qualification is a desirable activity. After completion of the course, though belated for reasons stated, the applicant reported for duty. Applicant was not allowed to join invoking clause 12 of CCS rules which is against the Principles of Natural Justice and the legal principle enunciated by the Honourable High Court of A.P. Not accepting the recommendations of the fact finding committee which were fair and just, is untenable since they are in tune with the Principles of Natural Justice. As per

study leave rules, without completion of the course joining duty by the applicant, is a sure case of inviting the order of recovery of pay and allowances amounting to more than Rs 8 lakhs. Therefore the applicant had to complete the course and report for duty. Even otherwise the time and money spent would have been a National waste. The respondents issuing show cause notice on the subject when the matter is being adjudicated by this Tribunal is unfair to say the least and it gives an impression of trying to be vindictive, which generally State institutions are not supposed to indulge in. There were many letters too from the respondents directing to join but the applicant procrastinated in responding till 14.10.2016. Though the applicant reported on 14.10.2016 but he could not be engaged for reasons adduced by the respondents. Therefore treating him as being on compulsory wait does not arise. No work no pay principle operates. Had the applicant responded in time to the letters of the respondents prior to reporting on 14.10.2016, he would have been on strong grounds to claim for compulsory wait. The conduct of the applicant to this extent does not favour his case on grounds of compulsory wait. However, the overall facts of the case tilt the balance of convenience in favour of the applicant since the action of the respondents is arbitrary and illegal in view of the observations of the Honourable High Court. Merits of the case does indicate that it is advantageous to the respondents to have a higher qualified employee rather than trying to terminate his services. Therefore, the OA fully succeeds.

8. Hence the respondents are directed to consider:

- i) Allowing the applicant to join duty immediately on receipt of the copy of this order.

- ii) Not to recover any amount towards pay and allowances etc paid during study leave, as he has completed the course and has not violated the rules granting study leave.
- iii) It is open to the respondents to initiate disciplinary action against the applicant for the period of unauthorised absence ie for the period for which leave has not been granted.

9. In the result, OA is allowed with the above directions. Consequently, MA 696/2018 stands disposed. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 14th day of November, 2018

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