

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application Nos.180/000598/2018,
180/533/2018 & 180/626/2018
& M.A 180/00959/2018 in O.A 533/18**

Wednesday, this the 20th day of February, 2019

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

O.A 180/598/2018

Dr.Kaladevi.K
W/o.Ginu Ponnappan, Aged 31 years
Insurance Medical Officer Grade II
ESIC Hospital, Udyogamandal, Eloor
Residing at Kalanivas House
Anickadu P.O, Kottayam-686 503 **Applicant**

(By Advocate – Mr.M.R.Hariraj, Mr.P.A.Kumaran & Ms.Lekshmy Omanakuttan)

V e r s u s

1. Employees State Insurance Corporation
represented by its Director General
ESIC Head Quarters, Panchdeep Bhavan
CIG Marg, New Delhi – 110 002
2. Assistant Director (Medical Administration)
ESIC, Head Quarters, Panchdeep Bhavan,
CIG marg, New Delhi – 110 002
3. Medical Commissioner, ESIC Head Quarters
Panchdeep Bhavan, CIG Marg, New Delhi-110 002
4. Medical Superintendent
ESIC Hospital, Udyogamandal P.O
Ernakulam, Kerala – 683 501 **Respondents**

(By Advocate – Mr.Sandesh Raja for R 1-4)

O.A 180/00533/2018

1. Dr.Parvathi.V.S
Aged 33 years
W/o.Dr.Sreekiran.S
Insurance Medical Officer Gr.II
ESIC Model and Super Specialty Hospital
Ashramam, Kollam-691 002
Residing at Bharani
Altharamoodu, Chirayinkeezhu P.O
Thiruvananthapuram – 695 304
2. Dr.Veena.S, aged 36 years
W/o.Dr.Basil.B
Insurance Medical Officer Gr.I
ESIC Model and Super Specialty Hospital
Ashramam, Kollam-691 002
Residing at House No.41-B
Navajyothi Nagar, Kadappakkada P.O
Kollam – 691 008
3. Dr.Lekshmi V.K., aged 32 years
D/o.N.Kesavan Nair
Insurance Medical Officer Gr.II
ESIC Model and Super Specialty Hospital
Ashramam, Kollam – 691 002
Residing at Vaishnavan
Edayilaveedu, Perumkoor
Konchira P.O, Vembayam
Thiruvananthapuram-695 615
4. Dr.Abdul Saleem T, aged 35 years
S/o.Kunhabdulla
Insurance Medical Officer Gr.II
ESIC Model and Super Specialty Hospital
Ashramam, Kollam – 691 002
Now residing at Room No.8, IMI DS Cadets Hostal (Boys)
Armed Forces Medical College
Sholapur Road, Wanowrie, Pune – 411 040
5. Dr.Rajesh K.P, Aged 41 years
S/o.B.Krishnan
Insurance Medical Officer Gr.I
ESIC Model and Super Specialty Hospital
Ashramam, Kollam – 691 002
Now residing at Room No.8
IMI DS Cadets Hostel (Boys)
Armed Forces Medical College
Sholapur Road, Wanowrie, Pune – 411 040

..... **Applicants**

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(By Advocate – Mr.Kaleeswaram Raj)

V e r s u s

1. Union of India, represented by its Secretary
Ministry of Labour & Employment
New Delhi – 110 001
2. The Director General
Employees State Insurance Corporation
Panchdeep Bhavan, Comrade
Inderjeet Gupta (CIR) Marg
New Delhi – 110 002
3. Medical Commissioner,
Employees State Insurance Corporation Headquarters
C.T.G Marg, New Delhi-110 002
4. Medical Superintendent
Model and Super Specialty Hospital
Employees State Insurance Corporation
Asramam,Kollam, Kerala -691002

..... **Respondents**

(By Advocate – Mr.Sandesh Raja for R 2-4, Mr.Sinu G.Nath,ACGSC for R1)

O.A 180/626/2018

Dr.Navya Pradeep,W/o.Dr.Arun Deepak, Aged 33 years
Insurance Medical Officer Grade II
ESIC Hospital, Udyogamandal, Eloor
Permanently residing at Sreekarthika
Perambra,Calicut – 673 525

..... **Applicant**

(By Advocate – Mr.M.R.Hariraj)

V e r s u s

1. Employees State Insurance Corporation
represented by its Director General
ESIC Head Quarters, Panchdeep Bhavan
CIG Marg, New Delhi – 110 002
2. Assistant Director (Medical Administration)
ESIC, Head Quarters, Panchdeep Bhavan,
CIG marg, New Delhi – 110 002

3. Medical Commissioner, ESIC Head Quarters
Panchdeep Bhavan, CIG Marg, New Delhi-110 002

4. Medical Superintendent
ESIC Hospital, Udyogamandal P.O
Ernakulam, Kerala – 683 501

.... **Respondents**

(By Advocate – Mr.Sandesh Raja.K for R 1-4)

These Original Applications having been heard and reserved for orders on 12.2.2019, the Tribunal on 20.02.2019 delivered the following:

O R D E R

Per: Mr.E.K.Bharat Bhushan, Administrative Member

These Original Applications are filed by Insurance Medical Officers working under the hospitals of Employees State Insurance Corporation. They are sponsored candidates for the Post Graduate Course offered by Army Hospital (R&R). Having been selected for the same, they are now denied study leave and instead asked to take Extra Ordinary Leave.

2. OAs Nos. 180-598-2018, 180-533-2018 and 180-626-2018 have common points of fact and law involved and hence are being disposed of through this common order. The pleadings, documents and records in OA No. 180-598-2018 are referred to in this common order for the sake of convenience.

3. O.A 180-598-2018 is filed by Dr.Kaladevi.K, Insurance Medical Officer Grade II, ESIC Hospital, Udyogamandal. She commenced her service as Insurance Medical Officer Grade II with effect from 1.1.2013.

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She is eligible for grant of study leave in accordance with Rule 50 of CCS (Leave) Rules, 1972. She applied for admission to Post Graduate Course in Medicine through proper channel and the respondent Corporation issued No Objection Certificate dated 15.11.2017 (Annexure A-2) enabling her to seek admission for the course. On being selected as per her eligibility acquired through National Eligibility and Entrance Test, the applicant was sponsored by the respondent organisation for admission at the Armed Forces Medical Service Post Graduate Institutions. A copy of the sponsorship certificate dated 27.3.2018 is produced as Annexure A-3. As per Annexure A-4, the applicant was admitted and allotted seats under priority III at Army Hospital (R/R), New Delhi for Post Graduate course in Radio Diagnosis.

4. Being a candidate sponsored by a Central Government organisation and thus falling under priority III, the applicant is not eligible for any stipend or hostel facilities. In the sponsorship certificate issued by respondent organisation, it is stated that the sponsored candidate will be paid all emoluments by the sponsoring authority during the entire training period. A copy of the offer letter inviting her for joining the Post Graduate Course is produced at Annexure A-5.

5. At this stage, being informed of her selection for the course, she submitted representations on 9.4.2018 and 16.4.2018 (Annexures A-6 & A-7) respectively seeking study leave with pay for three years. She left Kerala to join the course at New Delhi, starting on 1.5.2018. There was no response to her representations requesting for study leave. At the same time, she was

directed by the Army Hospital to execute a bond stating that she will be called upon to pay liquidated damages of Rs.10,00,000/- (Rupees Ten Lakhs Only) if she leaves the course mid-way and fails to complete it for any reason. While at Delhi, after the course had started, she was served with a letter dated 25.5.2018, a copy of which is produced as Annexure A-8, rejecting her request for study leave. It was suggested that the applicant may apply for Extra Ordinary Leave for study prupose. Finding her options limited, she sent a letter dated 30.5.2018 to the Director General, ESIC i.e, respondent no.1, requesting that Extra Ordinary Leave for three years may be granted to her. In the same letter she reiterated her request for sanction of study leave instead. By communication at Annexure A-10, the ESIC also sought declaration from the applicant that she would join her posting after the course was completed.

6. The grievance of the applicant is that she is being refused study leave which she is entitled to after having completed 5 years of service as per Rule 50 of the CCS (Leave) Rules. The respondents had found it appropriate to sponsor her candidature for the Post Graduate Course and the applicant had joined the course on 1st May 2018 after succeeding in the competitive examination. It was apparent to the respondents, as they indicated in the sponsorship certificate, that the employer will be called upon to pay salary for the period the applicant is undergoing the course. The action of the respondents to deny the applicant her study leave and insist that she apply for EOL and then granting the same is violative of the rights allowed to employees as per CCS (Leave) Rules. As grounds, the applicant

challenges the action of the respondents as illegal, arbitrary, discriminatory and unjust.

7. Respondents have primarily taken up the contention that as per Annexure A-11 they are required to restrict the number of applications to 4% of the personnel in-position. The applicant maintains that the present number of candidates, who are undergoing the Post Graduate training, comes to a significantly less figure than 4% as only one person has been granted study leave so far from the hospital that the applicant is working in. The Corporation has been managing by employing a large number of Doctors on contract basis. Thus the claim that there is shortage among personnel affecting the working of the ESIC hospitals is untrue. The fact that the applicant has been permitted to proceed on leave after availing Extra Ordinary Leave is proof of the fact that there is no administrative exigency preventing the grant of study leave to the applicant. Annexure A-11 is an administrative instruction issued by an Assistant Director (Med) in the respondent organisation directing that number of applications for study leave are to be restricted to 4% of their in-position Specialists/GDMOs. The rights enshrined under Rule 50 of the CCS (Leave) Rules cannot be abrogated through administrative instructions.

8. The applicant, being a candidate sponsored by the respondents and having gained the admission due to the sponsorship, is ineligible for other facilities like stipend or hostel facilities. If she is refused study leave also, she will be left with no means to subsist herself during the period of study.

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The decision taken by the respondents not to pay her even the emoluments is also violative of the offer made in Annexure A-3. The arrangement appears to be patently discriminatory when we consider that the candidate would be otherwise entitled to stipend and facility of hostel etc. Indeed, she is in great difficulty between the proverbial devil and the deep sea, as, if she discontinues the course, she will be required to compensate the Army Hospital to the extent of Rs.10 lakhs.

9. It is also submitted that the speciality of Radio Diagnosis is one which is deficient among the staff strength of the ESIC. Due to lack of specialists in this field, hospitals are compelled to refer the patients to private hospitals incurring huge expenditure. None can defend continuance of the present arrangement, if one keeps the welfare of general employees in mind. The applicant seeks a declaration that she is entitled to be granted study leave from 1.5.2018 to 30.4.2021 for undertaking post-graduation course in Radio Diagnosis at Army Hospital (R/R), New Delhi and a direction to the respondents to grant the applicant all consequential benefits on account of study leave including arrears of pay with interest of 12% per annum on delayed payment.

10. Respondents in the reply statement have contested the relief sought for in the Original Application. While admitting that Specialist Doctors are in short supply at various hospitals of ESIC, the respondents, keeping in mind the interests of employees, have been allowing all intending medical officers to appear in the entrance examination. Thus, the NOC is mandated

under Rule 3 of CCS (Conduct) Rules and is applicable to the employees of ESIC as well. However, with a view to carry on the services of the hospitals without interruption, it is necessary to ensure the presence of a sufficient number of medical officers in the Corporation hospitals. It was with this purpose in mind that a restriction had been imposed by allowing only 4% of the staff strength to be offered study leave. The direction issued at Annexure A-11 was for this stated purpose. It was under these circumstances that the Corporation decided to refuse study leave to the applicant and instead directed her to apply for Extra Ordinary Leave, which was granted.

11. The sponsorship form which was filled in, copy of which is available at Annexure A-3, is a standard certificate and no further meaning or commitment may be read into it. The applicants are benefitted by their employment under the respondent organisation as because of this only they had become eligible for the much sought after Post Graduate studies in Army Hospital. So more than anyone else, the employees themselves stand to benefit when they undertake the course. Despite the staff constraints, the Corporation, keeping the interests of the applicant in mind, had agreed to grant her Extra Ordinary Leave. After being granted the same at her request, she cannot now turn around and challenge the EOL granted. As per communication at Annexure R1(a), the applicant is duty bound “to pay all the expenses and liabilities for the course by herself”. Now she cannot turn around and plead penury.

12. The ESIC is fully financed by the contribution received from workers

and their employers. It does not receive any other source of financial support. Grant of study leave to Medical Officers entails the beneficiaries get deprived of the medical care which they would have otherwise obtained. The Corporation does not get the benefit of service of those on study leave despite the pay and other emoluments and at the same time are forced to employ substitutes on contract at large cost. When the 4% restriction is considered, it can be seen that this is fully utilised in the case of Udyogamandal Hospital, where there are 26 medical officers in position and one already on study leave. There was no room for granting study leave to any other candidate and this is the reason for refusing the same to the applicant.

13. In O.A 180/00533/2018, 5 applicants are working as Insurance Medical Officers in ESIC Model Super Specialty Hospital, Kollam and were aspiring to pursue their post graduation. They applied for admission under priority III category for Post Graduate Courses in AFMS Institutions through NEET – PG 2018. Applicants were issued with the Sponsorship Certificate as requested and hence they got admission for post graduate course. Applicants 1 to 4 got admission for the course M.D (General Medicine) and 5th applicant got admission to M.S (General Surgery). They applied for study leave for a period of 3 years and they are eligible to get study leave as per Rule 50 of the CCS (Leave) Rules. But the applicants were not be granted study leave relying on Annexure A-11 wherein it is stated that the authorities should restrict the number of applications for study leave to 4% of their in-position Specialists. It was insisted upon by the

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respondents that if at all the applicants are in need of leave, they will have to apply for Extra Ordinary Leave. Applicants submit that the action on the part of the respondents in granting EOL instead of study leave is unjust, illegal and arbitrary. Hence they approached this Tribunal challenging Annexure A-11 and chellenging the action of the respondents in granting EOL instead of study leave.

14. O.A No.180/00626/2018 is filed by Dr.Navya Pradeep, Insurance Medical Officer Grade II, ESIC Hospital Udyogamandal, Eloor agrrieved by the refusal of the respondents to grant her study leave for pursuing higher studies. In this case also the applicant was sponsored by the respondent corporation for admission at the Armed Forces Medical Service Post Graduate Institutions. Without considering the claim for study leave the respondents granted EOL. Hence she approached this Tribunal.

15. Shri.M.R.Hariraj appeared for the applicants in O.A 598/18 and 626/18 whereas Mr.Kaleeswaram Raj represented by Mrs.Maithreyi appeared for the applicants in 533/18. Shri.Sandesh Raja appeared for the respondents. Heard both sides and perused the records.

16. Leading the arguments on behalf of the applicants in 3 Original Applications, Shri.M.R.Hariraj argued that the rights of the applicants allowed under Rule 50 of the CCS (Leave) Rules have been denied to the applicants. The respondent organisation, out of their own volition, had provided the sponsorship certificate for the employees duly agreeing “that

the candidate will be paid all emoluments by the sponsoring authority during the entire training period. Payment of any nature will NOT be a responsibility of Armed Forces Medical Services.” The implication involved in the said sponsorship certificate is obvious; the employer organisation will be continuing to pay all emoluments and there shall be no liability (in the form of stipend etc) to be met by Army Hospital. The certificate is dated 26.3.2018. The intimation communicated through Annexure A-4 allotment letter is dated 2.4.2018 selecting the candidate for the course. Shri.M.R.Hariraj points out that Annexure A-6 is the initial application for study leave dated 9.4.2018. She was advised to apply in proper form and the resultant application is Annexure A-7 filed on 16.4.2018. No formal sanction was issued and the applicant proceeded for the course which started on 1.5.2018 at Army Hospital, New Delhi. It was well after the course began that a letter dated 25.5.2018, i.e, Annexure A-8, was addressed to the Medical Superintendent of ESIC Hospital that the applicant's study leave application has been rejected and directing that she may apply for the Extra Ordinary Leave for study purpose. Shri.M.R.Hariraj submits that the sequence of events clearly show that the applicant has been placed in a most unenviable position. She had proceeded for the course for which she had been sponsored by her parent organisation and then informed that she will not be entitled to her normal emoluments which she expected to receive if on study leave. The reason for this is stated to be a communication at Annexure A-11 directing that no NOC may be given beyond 4% of the specified quota for study leave. Apparently, on the ground that this 4% is already utilised by sending one candidate for the course, the respondents

decided that she is eligible only for Extra Ordinary Leave.

17. Shri.M.R.Hariraj submits that it is entirely illegal on the part of the respondents to impose a condition on the rights enshrined under Rule 50 of the “Conditions for grant of Study Leave” in CCS (Leave) Rules. To the argument of the counsel for respondents that the restriction was imposed on the basis of the decision of the Standing Committee of ESIC Corporation as reflected at Annexure R1(d), Shri.M.R.Hariraj submitted that any direction of the kind had to be issued under the relevant provisions of the ESIC Rules. An executive direction at the level of an official or an official committee of the employer organisation cannot ride rough shod over the rights of the employees enshrined in CCS (Leave) Rules. Shri.M.R.Hariraj also submitted that shortage of staff cannot be an excuse for denying study leave to the employees with or without reference to any percentages. He submitted that there are 305 persons remaining in the rank list of medical officers selected for ESIC, out of whom only 5 have been appointed. If they were sincere in their purpose, they could so easily post persons from this list.

18. Mrs.Maithreyi representing Mr.Kaleeswaram Raj, learned counsel for the applicant in 533/18 also argued on the same lines. She drew our attention to the orders of the Kerala High Court in **State of Kerala and Others v. M.D.Mahesh** reported in 2012 (3) KHC 575, wherein it is stressed that adequate encouragement should be given by employers to support further studies. The Hon’ble High Court goes on to observe that:

“ 2. After hearing both sides, what we notice is that Rule 91A is a provision for granting leave for higher studies to those with minimum service of 5 years but on condition that higher studies including Post-graduate studies is in the interest of public service. On the other hand persons without the required period of service and whose claims do not satisfy the requirements of Rule 91A are entitled to leave under Rules 82 and 88. Since all service benefits are available during the leave granted under Rule 91A, certainly leave has to be granted for higher studies under Rule 91A itself. So much so, the question to be considered is the correctness of Ext.P4 whereunder leave applied for by the respondent under Rule 91A was converted into an application for leave in terms of Rules 82 and 88 and in granting the same. Since the controversy is only on eligibility for leave under Rule 91A, we have to necessarily examine the scope of the said Rule and it's application to the respondent. Rule 91A is extracted hereunder:

"Rule 91A. Officers with a continuous officiating or temporary service of 5 years or more may be granted in addition to any leave to which they are eligible for, leave for undergoing Post-Graduate Courses in the sphere of their duties which are primarily of benefit to the State, such as Post-Graduate Courses for Teachers, Engineers and Doctors. The leave shall be granted only with due regard to the usefulness of the higher studies to the public service."

Government Pleader challenged the findings of the learned Single Judge contending that for performing the duties of U.P. School teacher which respondent was at the time of submission of application for leave, Post-Graduation is not required and the qualification the respondent already had namely, B.Sc. with B.Ed. was sufficient qualification. In other words, according to the appellants, higher qualification namely, Post-Graduate studies in the same subject and acquisition of wider knowledge for the respondent does not lead to any benefit to the State or to public service entitling him for the leave. The learned Single Judge, however, rejected this contention and held that acquisition of Post-Graduate Degree for a teacher in the same subject certainly will improve his faculties in imparting education to the student community and, therefore, it will benefit the State and public service as referred to in the Rule. Before us, counsel for the respondent submitted that the subsequent developments i.e. the benefit the respondent as well as the State and the community received with the higher qualification i.e. M.Sc. and the fact that he became a Higher Secondary School Teacher also should be reckoned while considering his eligibility for leave under Rule 91A. There can be no dispute that objective of Rule 91A providing for leave for higher studies to employees in service is to benefit the State and public service and just not for the personal

benefits of the employees. This certainly pre-supposes that employee after acquiring higher qualification while in service on leave granted under Rule 91A should be available in the service of the State for the benefit of the public. However, there is nothing in the Rule to indicate that after acquiring the Post-Graduate Degree the person should serve for a minimum period of years and not even a bond is collected undertaking to be in service atleast for a minimum period after acquiring the higher qualification. Probably the learned Single Judge taking note of the presumption stated in the Rule itself held that Post-Graduate study for teachers will intrinsically make them more efficient to discharge their duties leading to benefit to the State and to the public service. Even though study for Post-Graduate courses only is stated as the ground for applying for leave for teachers and Doctors, the only condition in the Rule for eligibility for leave is that the higher studies should be useful to the public service. So much so, what is required to be considered is the nature of service rendered by the applicant not only in the post he was holding at the time of applying for leave but the eligibility for promotion on acquiring higher educational qualification and the potential in him to serve the community in higher positions to which he is likely to be promoted. Even though Post-Graduate studies in Physics for the respondent would not have benefited the students he was teaching in the elementary classes in the Upper Primary School, considering his eligibility for promotion by transfer as High School Teacher and later as Higher Secondary School Teacher which he really got, we feel the Post-Graduate degree in Science acquired by him will make him a better teacher. Further, as already stated, we feel while considering leave under Rule 91A what the Government has to consider is the age of the applicant, the period of service he is likely to render after completion of higher studies, the higher positions he is likely to get and unless there is likelihood of his continuing in service after acquiring the higher educational qualification and there is a sufficient duration of service and usefulness of the education in the nature of employment, there will be no justification to grant leave under Rule 91A. All the tests are satisfied in the case of the respondent because he was aged only 36 years of age with 5 years of experience as teacher in the Upper Primary School and he was already B.Sc. B.Ed. in Physical Science when he went for Post-graduate studies on leave. Therefore, his long service and potential for promotion to the post of High School Assistant and later as Higher Secondary School teacher should have been in the contemplation of appellants while considering his application for leave under Rule 91A. Since the above tests stated by us apply to the facts of the respondent's case, nobody should hesitate to grant leave to him under Rule 91A which respondent was eminently entitled to. We, therefore, uphold the judgment of the learned Single Judge and dismiss the Writ Appeal filed by the State

directing the appellants to grant all benefits entitled to the respondent under Rule 91A. We also feel that Government should issue guidelines for grant of leave under Rule 91A attaching significance for reasonable duration of service after acquiring higher educational qualification, potentials of applicants for promotion and the usefulness of higher education in promoted positions and if required, a Bond can be provided for ensuring continued service for a reasonable period. ”

19. She argued that sponsorship by itself has a certain sanctity behind it and for all practical purposes it is a No Objection Certificate, promising the candidate study leave, as otherwise, by indicating that she should not receive any financial support from the training institution, the candidate will be left high and dry.

20. Shri.Sandesh Raja who appeared for the respondents in all 3 Original Applications began his argument on the point that study leave is not a matter of right and is merely a discretionary provision and if the respondents have justifiable reason to deny the same, they are well within their rights to do so. Balancing the interests of the employees as well as the staff at the hospitals and the genuine requirement of professional advancement of the latter, the ESIC have issued sponsorship to several of its medical officers to appear for Post Graduate entrance examination. However, if one is selected, the Corporation has to be necessarily balance its service requirements with the professional aspirations of the selected medical officers. It was in this background that the 4% limit was prescribed. Already one candidate out of the 26 medical officers in position at Udyogamandal Hospital has been granted study leave, thereby fulfilling the quota of 4%. The applicants had

agreed to be granted EOL and after being granted the same are now demanding study leave. The employer Corporation has not deprived the medical officers like the applicants herein, of any of their rights. In fact by agreeing to sponsor their candidature, the latter has come to benefit as otherwise they would not have qualified under the normal quota.

21. After having gone through the case in detail with due consideration extended to the pleadings made by counsel on both sides, we can see that the issue lies in a narrow compass. Respondents had, out of their own volition, agreed to sponsor the candidature of the applicants for Post Graduate Course. Once the offers came, the applicants went and joined the course under the bonafide belief that they will be granted study leave as no other financial assistance would be coming their way on account of the specific condition put in the sponsorship certificate. Clearly they were disappointed. The provision relating to Study Leave under Rule 50 reads:

50. Conditions for grant of study leave:

(1) Subject to conditions specified in this Chapter, study leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialized training in a professional or a technical subject having a direct and close connection with the sphere of his duty.

(2) Study leave may also be granted-

(i) for a course of training or study tour in which a Government servant may not attend a regular academic or semi-academic course if the course of training or the study tour is certified to be of definite advantage to Government from the point of view of public interest and is related to sphere of duties of the

Government servant; and

(ii) for the purpose of studies connected with the framework or background of public administration subject to the conditions that-

(a) the particular study or study tour should be approved by the authority competent to grant leave; and

(b) the Government servant should be required to submit, on his return, a full report on the work done by him while on study leave;

(iii) for the studies which may not be closely or directly connected with the work of a Government servant, but which are capable of widening his mind in a manner likely to improve his abilities as a civil servant and to equip him better to collaborate with those employed in other branches of the public service.

NOTE.- Application for study leave in cases falling under clause (iii) shall be considered on merits of each case in consultation with the Department of Expenditure of the Ministry of Finance.

(3) Study leave shall not be granted unless-

(i) it is certified by the authority competent to grant leave that the proposed course of study or training shall be of definite advantage from the point of view of public interests;

(ii) it is for prosecution of studies in subjects other than academic or literary subject:

Provided that an officer of the Indian Economic Service or Indian Statistical Service may be granted study leave for prosecuting a course of study for obtaining Ph.D., on a research thesis, subject to the conditions that-

(a) the subject of research and the institution at which such research is to be undertaken are got approved by the Chief Economic Adviser to the Government of India, in case the applicant is a member of the Indian Economic Service, or by the Director, Central

Statistical Organization, in case the applicant is a member of the Indian Statistical Service;

(b) the applicant obtains a certificate from the said authority to the effect that such study will be valuable in the matter of increasing the efficiency of the officer in the performance of his duties as a member of the Indian Economic Service or the Indian Statistical Service, as the case may be; and

(c) in cases where the study is to be undertaken at a foreign university, the applicant obtains a further certificate that the facilities for research on the particular subject chosen for study are not available at any University or other Institution in India:

Provided further that a Medical Officer may be granted study leave for prosecuting a course of postgraduate study in Medical Sciences if the Director-General of Health Services certifies to the effect that such study shall be valuable in increasing the efficiency of such Medical Officer in the performance of his duties:

Provided also that a specialist or a technical person may be granted study leave, on merits of each case for prosecuting a postgraduate course of study directly related to the sphere of his duty in case the Head of the Department or the Secretary to the Department or Ministry concerned certifies that the course of study shall enable the specialist or the technical person, as the case may be, to keep bares with modern development in the field of his duty, improve his technical standards and competence and thus substantially benefit the Department or Ministry.

(iii) the Department of Economic Affairs of the Ministry of Finance agrees to the release of foreign exchange involved in the grant of study leave, if such leave is outside India:

Provided that in releasing foreign exchange to Government servants proceeding on study leave abroad, the Department aforesaid shall satisfy itself whether such Government servant comply with the minimum educational criteria as specified in the general orders issued by the said Department from time to time regulating release of foreign exchange to persons proceeding abroad for higher studies at their

expense.

(4) Study leave out of India shall not be granted for the prosecution of studies in subjects for which adequate facilities exist in India or under any of the Schemes administered by the Department of Economic Affairs of the Ministry of Finance or by the Ministry of Education.

(5) Study leave may be granted to a Government servant-

(i) who has satisfactorily completed period of probation and has rendered not less than five years' regular continuous service including the period of probation under the Government;

(ii) who is not due to reach the age of superannuation from the Government service within three years from the date on which he is expected to return to duty after the expiry of the leave; and

(iii) who executes a Bond as laid down in Rule 53(4) undertaking to serve the Government for a period of three years after the expiry of the leave.

(6) Study leave shall not be granted to a Government servant with such frequency as to remove him from contact with his regular work or to cause cadre difficulties owing to his absence on leave.”

22. These are all instructions relating to the grant of study leave and any attempt to circumscribe the same through an artificial quota as done by the respondent organisation is impermissible. In any case, if at all, it was their fear that the work in the hospital would suffer, they ought to have desisted from forwarding so many applications and once having done so, it would not be just to resile from their stand. More importantly, while the respondents mention 4%, they give no indication of the total number in terms of vacancies or approved posts. There is no meaning in repeating 4%

ad nauseam without mentioning what is the percentage of. The applicants in the Original Application have mentioned that there are 305 Medical Officers in the current rank list, out of whom only 5 have been appointed. If shortage of personnel is such a major issue it is not known why the Corporation is not moving in the direction of giving them appointment. It is interesting to note that respondents have not disputed this claim and instead talk about only 26 Medical Officers at Udyogamandal ignoring the number who are on contract. All this leads us to conclude that the issue of manpower shortage is merely a red herring raised by the respondents to thwart the applicants.

23. The applicants are all Medical Officers and are expected to continue their service after returning from the Post Graduate Course. There is no doubt that their performance would be significantly better once they have acquired the Post Graduate qualification. The respondent organisation clearly has use for them so that they can offer still better services. We feel that respondents have missed this important factor while refusing the request of the applicants for study leave.

24. After considering all factors, we have no hesitation in concluding that the Original Applications have merit on their side. Accordingly, we allow the three Original Applications and the prayer contained in the 3 Original Applications are allowed in full except for the interest claim on the delayed salary. All emoluments should be disbursed in time and any arrears as on today should be disbursed within 15 days of receipt of a copy of this order. No costs.

25. M.A 180/959/2018 in O.A 180/00533/2018 is closed.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

SV

List of Annexures

O.A 598-18

Annexure A-1 - A true copy of the memorandum No.A-12(3)-1/Kerala/2009-Med.IV dated 17.12.2012

Annexure A-2 - True copy of the no objection certificate No.543-A-19/11/142182/2013-Adm dated 15.11.2017

Annexure A-3 - A true copy of the sponsorship certificate dated 27.3.2018

Annexure A-4 - A true copy of the allotment letter dated 2/4/2018

Annexure A-5 - A true copy of the letter No.1116/PG/Adm/2018 dated 10.4.2018 issued by the Commandant, Army Hospital (R/R), New Delhi

Annexure A-6 - A true copy of the representation dated 9/4/2018

Annexure A-7 - A true copy of the application dated 16/4/2018

Annexure A-8 - A true copy of the letter No.A-19/11/1/1072/2013/Med-IV dated 25/5/2018

Annexure A-9 - True copy of the representation dated 30.5.2018

Annexure A-10 - A true copy of the order No.A-19/11/1/1072/2013/M.IV dated 5/6/2018

Annexure A-11 - A true copy of the order No.A-20/12/Misc.5/2013-Med.IV dated 9/5/2017

Annexure A-12 - A true copy of short list published on 10/6/2016 published by Employees State Insurance Corporation

Annexure R1(a) - True copy of the application submitted by the applicant dated 26.3.2018

Annexure R1(b) - True copy of the No objection letter No.A-19/11/1/1072/2013-Med.IV dated 26.3.2018 issued to the applicant

Annexure R1(c) - True copy of the letter No.A-19/11/86/2006 Med.IV dated 15/10/2015 of the Head Quarters of this respondent

Annexure R1(d) - True copy of the relevant extract of the minutes of the 172nd meeting of the corporation dated 9/06/2006

Annexure MA1 - True copy of the order dated 10.7.2018

Annexure MA2 - True copy of the order dated 18/7/2018 issued by 4th respondent

O.A 180/00533/2018

Annexure A1 - True copy of the relevant pages of Information Bulletin issued for Post Graduate Course in AFMS Institutions through NEET-PG 2018

Annexure A2 - True copy of the application dated 19.3.2018 submitted by the 1st applicant for Sponsorship certificate before the 3rd respondent

Annexure A3 - True copy of the application dated 19.3.2018 submitted by the 2nd applicant for Sponsorship Certificate before the 3rd respondent

Annexure A4 - True copy of the application dated 19.3.2018 submitted by the 3rd applicant for Sponsorship Certificate before the 3rd respondent

Annexure A5 - True copy of the application dated 19.3.2018 submitted by the 4th applicant for Sponsorship Certificate before the 3rd respondent

Annexure A6 - True copy of the application dated 19.3.2018 submitted by the 5th applicant for Sponsorship Certificate before the 3rd respondent

Annexure A7 - True copy of the Sponsorship Certificate dated 21.3.2018 issued to the 1st applicant

Annexure A8 - True copy of the Sponsorship Certificate dated 21.3.2018 issued to the 2nd applicant

Annexure A9 - True copy of the Sponsorship Certificate dated 21.3.2018 issued to the 3rd applicant

Annexure A10 - True copy of the Sponsorship Certificate dated 21.3.2018 issued to the 4th applicant

Annexure A11 - True copy of the Sponsorship Certificate dated 21.3.2018 issued to the 5th applicant

Annexure A12 - True copy of the study leave application dated 5.4.2018 submitted by the 1st applicant

Annexure A13 - True copy of the study leave application dated

5.4.2018 submitted by the 2nd applicant

Annexure A14 - True copy of the study leave application dated 5.4.2018 submitted by the 3rd applicant

Annexure A15 - True copy of the study leave application dated 5.4.2018 submitted by the 4th applicant

Annexure A16 - True copy of the study leave application dated 5.4.2018 submitted by the 5th applicant

Annexure A17 - True copy of the application dated 5.4.2018 submitted by the 1st applicant

Annexure A18 - True copy of the application dated 5.4.2018 submitted by the 3rd applicant

Annexure A19 - True copy of the application dated 5.4.2018 submitted by the 4th applicant

Annexure A20 - True copy of the application dated 5.4.2018 submitted by the 5th applicant

Annexure A21 - True copy of the application dated 5.4.2018 submitted by the 2nd applicant

Annexure A22 - Copy of the order dated 20.4.2018 granting EOL to the 1st applicant from the period 1.5.2018 to 30.4.2021

Annexure A23 - Copy of the order dated 24.4.2018 sanctioning EOL to the 2nd applicant from the period 1.5.2018 to 30.4.2021

Annexure A24 - Copy of the order dated 20.4.2018 granting EOL to the 3rd applicant from the period 1.5.2018 to 30.4.2021

Annexure A25 - Copy of the order dated 19.4.2018 granting EOL to the 4th applicant from the period 1.5.2018 to 30.4.2021

Annexure A26 - Copy of the order dated 19.4.2018 granting EOL to the 5th applicant from the period 1.5.2018 to 30.4.2021

Annexure A27 - Copy of the communication no.A-20/12/Misc-5/2013-Med.IV dated 9.5.2017

Annexure A 28 - True copy of the check list provided with respondent to the application of the 1st applicant

Annexure A 29 - True copy of the check list provided with respondent to the application of the 2nd applicant

Annexure A 30 - True copy of the check list provided with respondent to the application of the 3rd applicant

Annexure A 31 - True copy of the check list provided with respondent to the application of the 4th applicant

Annexure A 32 - True copy of the check list provided with respondent to the application of the 5th applicant

Annexure A 33 - True copy of the bond dated 26.4.2018 executed by the 1st applicant

Annexure A34 - True copy of the bond dated 26.4.2018 executed by the 2nd applicant

Annexure A35 - True copy of the bond dated 26.4.2018 executed by the 3rd applicant

Annexure A36 - True copy of the bond dated 26.4.2018 executed by the 4th applicant

Annexure A37 - True copy of the bond dated 26.4.2018 executed by the 5th applicant

Annexure R2(a) - True copy of the application submitted by the 1st applicant dated 20.3.2018

Annexure R2(b) - True copy of the application submitted by the 2nd applicant dated 20.3.2018

Annexure R2(c) - True copy of the application dated nil submitted by the 3rd applicant

Annexure R2(d) - True copy of the application submitted by the 4th applicant dated 20.3.2018

Annexure R2(e) - True copy of the application submitted by the 5th applicant dated 20.3.2018

Annexure R2(f) - True copy of the No Objection Letter No.A-19/11/1/1076/2013-Med.IV issued to the 1st applicant dated 22.3.2018

Annexure R2(g) - True copy of the No Objection Letter No.A-19/11/1/1076/2013-Med.IV issued to the 2nd applicant dated 2.3.2018

Annexure R2(h) - True copy of the No Objection Letter No.A-19/11/1/1076/2013-Med.IV issued to the 3rd applicant dated 22.3.2018

Annexure R2(i) - True copy of the No Objection Letter No.A-19/11/1/1076/2013-Med.IV issued to the 4th applicant dated 22.3.2018

Annexure R2(j) - True copy of the No Objection Letter No.A-19/11/1/1076/2013-Med.IV issued to the 5th applicant dated 22.3.2018

Annexure R2(k) - True copy of the application for extra ordinary leave submitted by the 1st applicant dated 12.4.2018 – S.No.14 (R)

Annexure R2(l) - True copy of the application for extra ordinary leave submitted by the 2nd applicant dated 12.4.2018 – S.No.16 (R)

Annexure R2(m) - True copy of the application for extra ordinary leave submitted by the 3rd applicant dated 12.4.2018

Annexure R2(n) - True copy of the application for extra ordinary leave submitted by the 4th applicant dated 12.4.2018 – S.No.20 (R)

Annexure R2(o) - True copy of the application for extra ordinary leave submitted by the 5th applicant dated 12.4.2018 – S.No.11 (R)

Annexure R2(p) - True copy of the letter No.A-19/11/86/2006 Med.IV dated 15.10.2010 of the Head Quarters of this respondent

Annexure R2(q) - True copy of the relevant extract of the minutes of the 172nd meeting of the corporation dated 9.6.2006

O.A No.626/2018

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