

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO. 200/01077/2018

Jabalpur, this Wednesday, the 13th day of February, 2019

**HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Baiju.S S/o late Shri S.(Sreenivasan), aged about 37 years,
R/o H.No.B-29, Type-2 Quarters, Bhopal Memorial Hospital
& Research Centre Campus, Karond,
Bhopal-462038 (M.P.)

-APPLICANT

(By Advocate – Shri Shamim Ahmed Khan)

Versus

1. Union of India through Under Secretary,
Ministry of Health and Family Welfare (Nursing Section)
Nirman Bhawan, New Delhi-110 001
2. Dr.Prabha Desikan (Director), Bhopal Memorial Hospital &
Research Centre Campus, Karod, Bhopal-462038 (M.P.)
3. The Principal, Bhopal Memorial Hospital & Research Centre,
Address-Raisen Bye Pass Road,Bhopal-462038 (M.P.)-**RESPONDENTS**

(By Advocate – Shri Ashish Shrotri)

(Date of reserving the order: 20.01.2019)

ORDER

By Navin Tandon, AM.-

The applicant is aggrieved by non-grant of study leave to pursue
M.Sc.(Nursing).

2. The applicant has submitted in his Original Application as under:-

2.1 He was appointed on 20.11.2008 as Nursing Tutor at Bhopal
Memorial Hospital and Research Centre (for brevity ‘**BMHRC**’), Bhopal
and is working as such since then.

2.2 He submitted an application dated 24.08.2016 for joining M.Sc. Nursing Course for academic year 2017-2019, and grant of study leave. When he did not receive any response, he filed another application on 13.10.2016. However, the respondent No.2 did not grant him permission.

2.3 He again applied for grant of study leave for M.Sc. Nursing Course, academic year 2017-2019 on 18.03.2017. His application was duly recommended and forwarded to the Director. He also gave a reminder on 21.07.2017. However, again no permission was granted.

2.4 He again applied for grant of study leave for academic year 2018-2019 on 15.03.2018 and gave reminders on 12.07.2018 and 27.08.2018. However, no permission was granted to him.

2.5 The respondent No.3 has already recommended to respondent No.2 for giving him permission vide her note dated 06.04.2018 (Annexure A-6), still the respondent No.2 is not granting him permission without any reason.

2.6 Government of India, Ministry of Health & Family Welfare (Nursing Division) vide OM dated 14.06.2011 (Annexure A-8) has instructed that the senior most teachers should be preferred for grant of study leave to take admission for M.Sc.(N).

2.7 He is fulfilling all the eligibility criteria i.e. he has completed five years of service and as per norms M.Sc. Nursing is in close connection and having direct connection with the sphere of his duties as civil servant.

3. The applicant has, therefore, prayed for following reliefs in this Original Application:

“(8.1) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal;

(8.2) To direct the respondent no.2 to grant permission as per the recommendation made by respondent no.3 to enable (sic- enable) the applicant to pursue M.Sc.Nursing Course for academic year 2018-19.

(8.3) Grant any other relief/s, which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

(8.4) Award cost of the instant lis to applicants.”

4. The respondents have submitted as under:-

4.1 The following is the faculty working at present at Bhopal Nursing College:

(i) Principal	: 1
(ii) Vice Principal	: 1
(iii) Lecturer	: 2
(iv) Tutors	: 6
Total	: 9 (sic – 10)

As against this, the strength of students in the college is as under:-

(i) B.Sc. Nursing 2 nd year	: 33
(ii) Post Basic B.Sc. Nursing 1 st year	: 44
(iii) Post Basic B.Sc. Nursing 2 nd year	: 27
(iv) M.Sc. Nursing	: 5
Total	:109

4.2 As per the norms prescribed by Indian Nursing Council, the teacher-students ratio for running the above courses is 1: 10 i.e one teacher for every 10 students. The college is already suffering shortage of teachers.

4.3 The applicant wants to pursue higher study of M.Sc. course which runs for two years. It is not possible for the hospital management to spare a tutor for two years in view of scarcity of teachers in the college.

4.4 A teaching staff of Bhopal Nursing College is on her family way and would be soon required to proceed on maternity leave.

4.5 The competent authority has not granted permission to renew contracts of contractual tutors. Hence the required faculty strength of College of Nursing can not be fulfilled if the applicant goes on study leave.

4.6 There is a proposal to take admission for B.Sc. Nursing again. The sanctioned strength of students is 50 per year. This proposal is pending and could not be implemented because of current shortage of teaching staff in Bhopal Nursing College.

4.7 Leave is not a right of a government servant and the respondents are justified in not granting study leave to the applicant.

5. In his rejoinder, the applicant has submitted as under:

5.1 The total strength excluding M.Sc. students would be 104 and total existing staff excluding guest faculty is sufficient in number and can

maintain 1:10 ratio. The present existing staff can teach 150 students excluding the applicant as there are total 16 faculties in Bhopal Nursing College.

5.2 The school of nursing has been closed down but the faculty is existing and taking classes of Basic BSc, Post Basic BSc and MSc. In support of his contention the applicant has filed the time table showing names of the working faculty for the year 2018 as Annexure A-11.

6. In their Additional Return the respondents have submitted thus:-

6.1 Because of paucity of staff in Nursing College, the staff of Nursing School was given additional responsibility for taking classes for Post Basic BSc., BSc. & MSc. Nursing and was utilized for meeting out the need in Nursing College.

6.2 The time table filed as Annexure A-11 along with the rejoinder show that in all there are 2 more members taking classes in the Nursing College. They are Dr.Puneet Gandhi & Dr.Lalit Kumar, who are staff of BMHRC, Bhopal but are taking classes in Nursing College because of paucity of teaching staff in Nursing College is only 9 (excluding Principal).

7. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

8. The purpose of grant of study leave is to enable an employee to pursue a course of studies for his career benefit as well as to provide quality of service in the institution where he is serving. Mainly, the Principal of each school remains responsible for managing the show. In the instant case we find that the respondent No.3 i.e. the Principal of the College has already recommended for grant of study leave to the applicant, vide her Note dated 06.04.2018 (Annexure A-6). Relevant paragraph of which read thus:

“Total No. of students in PBBSc Nsg 1st and 2nd year in the academic year 2017-18 and 2018-19 is 78. Required faculty student ratio as per the INC norms is 1:10. Existing No. of faculty in Bhopal Nursing College is 10. We fulfills the faculty strength to manage the PBBSc programme. Based on the present number of students in Bhopal Nursing College, BMHRC, we shall recommend two faculties from nursing college to pursue higher education (M.Sc. Nursing). Since the inception of Bhopal Nursing College in 2004, no faculty has gone for higher education. Our faculty are having more than 10 years of service in BMHRC. For their career benefit as well as to provide quality of education to our nursing students studying in nursing college they may permit to pursue the higher education.

In view of the above I recommend at least one faculty i.e. Mr.Baiju S. Nursing Tutor Bhopal Nursing College (10 years of service in BMHRC) for pursuing M.Sc. Nursing for 2 years from 2018 to 2020. He has been applying for NOC continuously from 2016 onwards. Kindly permit Mr.Baiju.S for his higher study and provide No Objection Certificate for the same”.

9. From a perusal of the above note of the Principal we find that there were 78 total number of students in PBBSc Nsg 1st and 2nd year in the academic year 2017-18 and 2018-19, and for which the required faculty

student ratio as per the INC norms is 1:10. The Principal has clearly stated that the existing number of faculty in Bhopal Nursing College is 10 and that fulfils the faculty strength to manage the PBBSc programme. After taking into account these facts the Principal has recommended for two faculties from nursing college to pursue higher education (M.Sc. Nursing). The Principal has specifically mentioned that since the inception of Bhopal Nursing College in 2004, no faculty has gone for higher education. The Principal has, therefore, sought permission in favour of the applicant for pursuing higher education, by specifically stating that the same will be in the interest of career benefit of the individual as well as to provide quality of education to the nursing students studying in nursing college.

10. On perusal of pleadings, we find that the respondents have not furnished full facts about the strength of faculty members. While the first round of pleadings mentioned 10 faculty members, in the rejoinder the applicant furnished information received through RTI wherein the number changed to 16, including the strength of Nursing School. The applicant has clearly stated that the Nursing School has been closed, but there is no remark from the respondents about the same in their additional reply.

11. The respondents have also mentioned about non-continuation of contractual faculty members, but have failed to provide information about how many such faculty members are there and when their contracts are expiring.

12. It is seen that the applicant has been repeatedly applying for study leave since 2016, but each time his application has not been forwarded.

13. Perusal of information provided by the respondents in their additional reply (Annexure AR-1) regarding guidelines provided by Indian Nursing Council indicates that all the posts above Tutor require the minimum qualification as M.Sc.(Nursing). Hence, acquiring this degree seems to be necessary for further promotion of the applicant.

14. Ministry of Health & Family Welfare is encouraging the employees to study M.Sc.(Nursing) as is clearly evident from Annexure A-8.

15. Learned counsel for the respondents placed reliance on **National Institute of Technology Vs. Chandra Shekhar Chaudhary, (2007) 1 SCC 93**. However, perusal of the same indicates that though the case is about grant / refusal of study leave, but there are other important issues which were dealt therewith. The employee had abandoned the course at I.I.T. Madras after April 2005 when he secured low grades in three

subjects and had not attended the rest of the course. There were also insinuations about manipulated and fabricated documents to substantiate the stand.

15.1 Keeping in view the facts of the present case, we are of the considered opinion that the present case is distinguishable from the above cited case.

16. We do appreciate the fact that grant of study leave can not be claimed as a matter of right and the competent authority has the power to sanction it. However, such a power is always accompanied by responsibility of taking decisions in a rational manner and not in an arbitrary fashion.

17. In the present case, the respondents have not been able to demonstrate their plan of action in meeting out the current responsibility/future plans and dovetailing it with the reasonable aspiration of the applicant. The applicant has applied in 2016, 2017 and 2018, but only to meet with stubborn rejection. At last he approached this Tribunal.

18. Having considered all pros and cons of the matter and on analysis of the facts of the present case, we are of the considered opinion that the denial of the claim of the applicant for grant of study leave on the part of respondent No.2 was not justified.

19. In this view of the matter, the Original Application is allowed. The respondent No.2 is directed to reconsider the matter of grant of

permission to the applicant to pursue M.Sc. Nursing Course, within a period of one month from the date of communication of this order. The applicant, if he so desires, may apply for grant of study leave for the next academic year, if he is too late to attend the academic session for which he sought admission. In that case, the respondents are further directed to consider his application for next academic session accordingly. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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