

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 660/2012

Reserved on: 26.11.2018
Pronounced on: 05.12.2018

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Shri G.S.Rathore S/o late Sh. Rewat Singh, Aged 54 Years, residing at 238/45, Gulab Bari, Ajmer. Presently working as Deputy Chief Electrical Engineer, Head Quarter Northern Railway, Jaipur.

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India, through the Secretary, Railway Board, Rail Bhawan, New Delhi-110001.
2. The General Manager, North Western Railway, Jagatpura, Jaipur.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: A.Mukhopadhyaya, Member (A):

The brief facts of this Original Application, (OA), are that, vide OM No.GOM/53/2010 dated 01.10.2010, (Annexure R/1), the applicant was sanctioned one year's study leave from 01.10.2010 to 30.09.2011 in order to pursue a two year MBA course on regular basis. As per the applicant, he applied well in time for extension of leave by one more year in order to complete the course vide application dated 04.08.2011 and subsequent

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reminder dated 05.09.2011; (Annexure A/2). As the extension sought was not granted, the applicant, on expiry of his study leave on 30.09.2011, joined duties on 03.10.2011; (Annexure A/3 refers). Thereafter vide their letter dated 11.10.2011, (Annexure A/4), the respondents asked the applicant to "**submit necessary documents such as performance sheet, results and other materials of the first year of study leave to this office at the earliest so that your request for extension of study leave may be considered.**" The applicant thereupon submitted a copy of a general certificate dated 16.12.2011 issued by the college relating to his performance during the first year of the course; (Annexure A/5 with enclosure refers). Despite this, the respondents issued him a notice dated 07.08.2012, (Annexure A/7), for recovery of a sum of Rs.6,60,852/- together with interest from the date of demand at Government rates applicable at the time on Government loans. His representation of 17.08.2012 against this notice, (Annexure A/8), was rejected vide respondents' letter/impugned order No.465-E/1/2/Study Leave/G.S.Rathore/conf. dated 28.08.2012; (Annexure A/1). Aggrieved by this, he has approached this Tribunal seeking the following relief:-

Relief

- i) That the Tribunal quash and set aside the impugned order dated 28.08.12 (Annexure A/1) by which respondents have sought recovery from the petitioner arbitrarily.

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- ii) That the respondents be directed to pass any other order in favour of the petitioner which this Tribunal may deem fit and proper as per the facts and circumstances of the case.
- iii) Cost of the petition be awarded in favour of the petitioner.

Interim relief:-

This Tribunal stay the operation of the impugned order dated 28.08.12 and direct the respondent not to give effect to recovery of the money from the salary of the petitioner while this petition is pending.

2. In reply, the respondents contend that the conditions governing the grant of the leave in question, (sanction at Annexure R/1 refers), stipulated, amongst other things, that where the duration of the course of study was more than one year, extension of study leave would be subject to "**satisfactory performance of the officer during the one year period**"; (Para 4.1(3) of the reply refers). As the applicant did not keep the respondent authority informed of his progress from time to time and did not submit a performance report related to the first year of his course, extension of leave could not be considered and encashment of the bond relating to such satisfactory performance was resorted to. Further, the respondents contend that the recovery proposed to be effected from the applicant is both lawful and in accordance with the stipulation made in the note below Rule 14 of the Study Leave Rules, in the Indian Railway Establishment Code Volume-I which reads as under:

Note:- The amounts referred in sub-rule (1) of the aforesaid Rule (14) shall also be refundable by a Railway Servant who fails to complete the course of study and is thus unable to furnish the certificate as required in sub-rule(5) of Rule 4.

With regard to the certificate of satisfactory performance submitted by the applicant, (Annexure A/5), the respondents contend that this is neither a marksheet nor a substantive performance report and therefore, the applicant's performance could not be assessed from the certificate produced. The reply also alludes to the guidelines issued for the sanction of study leave to railway officers by the Secretary, Railway Board, (enclosure with Annexure A/10 refers), and points out that these guidelines required the applicant to provide performance reports, results and other materials through e-mail or any other mode of correspondence regularly so that his performance in the course could be monitored and assessed. The applicant however failed to provide any such interim reports. Consequently, the respondents contend that their action in seeking recovery of the amount sanctioned for the course in question is completely justified as per law and rules applicable.

3. Opposing counsel for the applicant and the respondents were heard and the material available on record was perused. It is undisputed in this case that the applicant was indeed granted one year's study leave and thereafter when this was not extended

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beyond the period of one year, he rejoined his duties with the respondents. Further, it is observed that, as per Secretary, Railway Board's DO No.E (O)I/2003/EE-6/12 dated 18.11.2003 alluded to and relied upon by the respondents themselves, the officer to whom study leave is granted is required to submit performance reports etc. "**within a maximum of three months**" after completion of his study leave; (para 4 of the letter refers). The certificate submitted by the applicant dated 16/19.12.2011, (enclosure with Annexure A/5), falls within the stipulated three month period after the applicant rejoined his duties with the respondents on 03.10.2011; (Annexure A/3). Since the format and content of reports and certificates issued by the institution which teaches the course in question cannot be dictated by the applicant, therefore, the contention of the respondents that the format in which the performance certificate is submitted is inadequate is not admissible. In any case, a perusal of this certificate shows clearly that the applicant was a regular student of MBA – I & II Semester in Aryabhatt College of Management, Ajmer for the session 2010-11 and that "**his performance during 1st year course session 2010-11 was satisfactory**". As such therefore, it is difficult to see how the applicant's performance during the year in question can be said to be less than satisfactory as required under the guidelines issued and relied upon by the respondents themselves; (Secretary, Railway Board's DO No.E(O)I/2003/EE-6/12 dated

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18.11.2003 enclosed with Annexure A/10). As regards the question of interim reports, it is noted that the guidelines required the respondent authorities also to maintain a regular watch on the performance of railway officers like the applicant and that no evidence has been led on whether and how the respondent authorities fulfilled their part of the arrangements, e.g. by seeking interim reports etc. from the applicant. As such therefore, the applicant cannot be said to be at fault for not providing interim reports of progress/developments during study leave to the authorities concerned, especially when, as stated by the applicant at Annexure A/5, no specific format/proforma for furnishing such *suo moto* reports was intimated to him.

4. Coming to the question of the note appended below Rule 14 of the Study Leave Rules referred to earlier, it may be inferred from a plain reading of the same that this refers to a case where the Railway servant is himself responsible for failing to furnish the requisite certificates of performance/passing of examinations etc. on account of failing to complete the course of study. This stipulation is clearly not applicable in the present circumstances as here the respondent authorities only sanctioned the applicant one year's study leave for a course they were aware was of two years' duration. As per the certificate enclosed with Annexure-V, the applicant satisfactorily completed the first year of the course in question.

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5. While grant of study leave for the second year of the two year course cannot be treated as a matter of right, the exercise of discretion in the matter of grant of study leave for the second year of a two year course also has to be based on fair and reasonable grounds. Given that the applicant's performance was certified as being satisfactory during the first year of the course, there appears to be no substantive reason on record to indicate why the respondent authorities did not enable him to complete the course in question by issuing the necessary sanction in time. The explanation afforded for this that the applicant submitted a bond wrongly referring to the month of September as having thirty one days is flimsy at best as the error appears to be typographical rather than substantive. Be that as it may, not having issued the necessary enabling sanction for extension of study leave, they cannot now hold the applicant at fault for not completing the course because this appears to be the direct result of the respondents' own action rather than being any fault of the applicant. The recovery envisioned by the aforementioned note to rule 14 clearly appears to be indicated for a case where the applicant does not complete the course of study due to his own fault. In the present case, the applicant has furnished a certificate of satisfactory performance for one year of study which the respondents allowed him against the two year course. As such therefore, it would be manifestly unjust for any claim to be made to the effect that it was the applicant's fault that he did not

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complete the course when it is clear from the record and the admission of the respondents themselves that he was not granted the necessary extension of leave in order to do so. As the applicant did not overstay the period of leave granted in substantive terms and continues to serve with the respondents after rejoining duties, there appears to be no justification for visiting him with the recovery demand in question.

6. Accordingly, this OA is allowed and the recovery sought vide impugned notice dated 07.08.2012 and letter dated 28.08.2012 is quashed.

7. There will be no order on costs.

(A.Mukhopadhyaya
Member (A)

(Suresh Kumar Monga)
Member (J)

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