

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.310/00479/2018

Dated Tuesday, the 13th day of November, Two Thousand Eighteen

PRESENT

HON'BLE MRS.JASMINE AHMED, MEMBER(J)

T.Anantha Jothi F/A-31
D/oL.Thiyagarajan,
"L"Block, 30K, Bharathidasan Colony,
K.K.Nagar, Chennai 600 078.

... Applicant

By Advocate M/s M.Dhamodharan

Vs.

1.Union of India rep.,
Through Secretary,
Ministry of Labour & Employment,
Govt. of India (Social Security Division),
Shram Shakti Bhawan,
New Delhi 110 001.

2.The Director General,
Headquarters office,
Employees"State Insurance Corporation (ESIC),
Panchdeep Bhawan, CIG Marg,
New Delhi 110 001.

3.The Dean,
ESIC Model Hospital, Medical College and
PGIMSR, K.K.Nagar, Chennai 600 078.

4.The Deputy Director (Admn),
ESIC Model Hospital,
K.K.Nagar, Chennai -78.

... Respondents

By Advocate Mr.K.C.Ramalingam

ORDER

(Pronounced by Hon'ble Mrs.JASMINE AHMED, Judicial Member)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following relief:

“(i)To direct the respondents No.2,3 & 4 to sanction the study leave sought by the applicant vide her representations dated 14.10.2017 & 28.10.2017 (Annexure A-3) for two years to pursue M.Sc. Nursing Course during 2017-2019 along with relieving order, experience certificate and character certificate.

(ii)Award exemplary costs of the proceedings,

(ii)Pass such further other orders which this Hon'ble Tribunal may deem fit and proper based on facts and circumstances of the present case.”

2. The applicant has assailed the order dated 15.02.2018 by which her request for granting of study leave for pursuing M.Sc (Nursing) has not been acceded to. The brief facts in nutshell is that the applicant is working as a Staff Nurse at ESI Corporation Model Hospital, K.K.Nagar, Chennai and she wants to pursue her study in M.Sc.(Nursing) and for that she requested the respondents for grant of study leave. It is a second round of litigation wherein it is seen that the applicant filed OA 1799/2017 before this Tribunal which was disposed of by order dated 23.11.2017 directing the respondents to reconsider the application of the applicant for grant of study level for the period from 01.11.2017 to 31.10.2019 and to pass a reasoned and speaking order within a period of three weeks from the date of receipt of a copy of that order finding that the impugned order dated 10.11.2017 was not a reasoned order. The court in Para 5 of that order observed as under:

“On perusal of the impugned order dated 10.11.2017, it is seen that it merely states that application for study leave for the period from 01.11.2017 to 31.10.2019 for doing M.Sc.(Nursing) had not been considered by the competent authority. No reasons for rejection had been disclosed. Clearly, her application has been rejected through a non-speaking order.”

In pursuance of that the respondents have passed the impugned order dated

15.02.2018 wherein the plea taken by the respondents for not granting her study leave is mainly that M.Sc(Nursing) qualification is not at all required for the post the applicant holds. In Para 3 of the impugned order dated 15.02.2018, the respondents have stated that as per Recruitment Regulations of ESI Corporation, essential qualification required for the post of Staff Nurse is Diploma in General Nursing, Mid-wifery. Hierarchy of Nursing cadre consist of Staff Nurse, Nursing Sister, ANS, DNS & Nursing Superintendent and for not a single post M.Sc. is the basic qualification required for direct recruitment qualification mentioned in the existing RRs is duly approved by the ESI Corporation as per their work and requirement at hospital. Hence, the respondents have not granted her study leave. The respondents have also taken the plea of shortage of staff for not granting her study leave. It is seen in OA 1799/2017, the applicant gave example of Ms.Anita who belongs to the same organization who was selected in Bhopal Nursing College had been granted study leave for pursuing M.Sc.(Nursing) on regular basis for two years for the academic session 2016-2018, the applicant took the plea that as the applicant is also similarly placed in the same organization why she has been discriminated. It is seen that while passing the impugned order the respondents have not uttered a single word about the point raised by the applicant. It was the duty of the respondents to explain the point of discrimination raised by the applicant as this court observed that the impugned order dated 10.11.2017 was non-speaking in nature. In the present OA, the applicant has given examples of Ms.Anita, Ms.Meenakshi, Ms.Anita Krishnan and Ms.Neha Prakash Desai all of them were similarly placed like the applicant herein got sanction to pursue M.Sc.(Nursing) by grant of sanction of study leave. The counsel for the applicant has also relied upon the judgement passed by CAT, Calcutta Bench dated 09.10.2014 in OA 1093/2014 titled Dipannita Hazra (Ghosh) Vs. UOI & Others and also the judgement of Hon'ble High Court of

Calcutta dated 05.09.2014 in WPCT No.145 of 2014 in the case of The Medical Superintendent, ESIC Hospital & ODC (EZ) Joka, Kolkata Vs. Pronoti Roy and states that in both the cases the applicants were similarly placed like her who had been granted study leave as per the directions of the CAT, Calcutta Bench as well as the order of the Hon'ble High Court of Calcutta in WPCT No.145/2014. The counsel for the applicant states that the applicant who has been permitted for counselling and after being selected, the respondents' denial of study leave is arbitrary and illegal as well as discriminatory in nature. He also argued that the higher qualification/degree will certainly benefit the institution as the applicant will be able to provide quality service after obtaining her M.Sc.(Nursing) degree. It was also contended that 4% of staff can be accommodated by allowing study leave and in this case the applicant is the only candidate who has applied hence it is well within the prescribed limit and the applicant can very well be allowed or sanctioned the study leave for pursuing higher studies and higher degrees. The counsel for the applicant states that by not allowing the applicant's study leave the respondents are creating a bar in the way of good and quality service to the institution. Hence he prays that the OA may be allowed.

3. The respondents have filed their reply and stated in the counter that the application of the applicant was forwarded on 07.09.2017 with a condition that no objection and permission will be considered subject to sanction of study leave by the competent authority. The respondents stated that the applicant was given no objection dated 20.10.2017 in consideration of her representation dated 25.09.2017 with a condition that the NOC is given only for appearing for counselling in M.Sc.(Nursing) and it does not assure sanction of study leave or any other leave nor it should be construed as a recommendation for study leave. The respondents stated in their counter that after being selected for M.Sc. (Nursing) at the Madras Medical College, the applicant requested for study leave

for two years which has been rejected by letter dated 10.11.2017 because of shortage of Nursing Staff in ESIC hospital, K.K.Nagar. It is also contended that the shortage in Nursing staff is critically objected by the Medical Council of India (MCI). Hence, in this situation the respondents have rejected her request. The respondents in their counter have also taken the plea that M.Sc.(Nursing) degree will not increase the utility in the service and as the essential qualification required for the post of Staff Nurse is Diploma in General Nursing and Midwifery. Hence for a Staff Nurse M.Sc.(Nursing) is not a basic qualification also for direct recruitment. Hence the respondents stated that allowing study leave for the applicant for two years will only increase the difficulties in the service of ESIC hospital and hence cannot be acceded to. They have also stated that the duties will remain the same even if the applicant acquires higher qualification of M.Sc. (Nursing) as the respondent institution is not going to gain in tangible manner in terms of quality of service. Accordingly, the respondents contended that if the applicant is willing to pursue M.Sc.(Nursing) for her personal growth, then she may take leave due to her in her account for study leave. The counsel for the respondents argues that rejecting the request of the applicant is nothing arbitrary or illegal on the part of the respondents.

4. Heard the rival contentions of the parties, perused the documents on record.

5. We have seen the judgement of the Ahmedabad Bench of this Tribunal relied upon by the applicant in the case of Neha Prakash Desai in OA 432/2016 dated 15.07.2016. The observations made in Para 13 & 14 are quoted below:

“13.Shri V.M.Dhotra invited my attention to the letter dated 15.03.2011 from the Headquarter office, ESIC to all Directors of ESIC. I have carefully gone through the said letter dated 15.03.2011. It prescribes the guidelines, subject to which study leave can be granted. One of the clauses is as under:

“The course of study consisting of higher studies or specialised training should have a direct and close connection with the sphere of his/her duty and it should be beneficial for beneficiaries and the organization”.

14.I may also observe that the guidelines in the said letter dated 15.03.2011 at Annexure A-15 is nothing but a reproduction of the provisions of the Leave Rules, subject to which a Government servant can be granted study leave. On a perusal of the said letter dated 24.05.2016, I find that the Headquarter office nowhere mentioned that M.Sc.(Nursing) Degree Course which the applicant is prosecuting has no close connection with the sphere of her duty and that the same will in no way beneficial either for the patients or the doctors and the Organization. On the other hand, the cause shown for rejecting her request is that in ESIC there is no post which requires M.Sc.(Nursing) Degree. Both the Leave Rules as well as in the guidelines of the ESIC for grant of study leave what is required is to be considered is whether higher study have direct and close connection with the sphere of a Government servant duty and that whether the study undertaken is beneficial for beneficiaries and the organization or not. Both, under the Leave Rules as well under guidelines of the ESIC, nothing is available to show that the qualification prescribed for different posts available in the Hospital has to be taken into account while considering the request of a Nursing Assistant for Study leave. It is not the case of the respondents that M.Sc in Nursing has no direct and close connection with the sphere of her duty. It cannot be said that the course to be undergone by the applicant is not beneficial for the beneficiaries. The beneficiaries are not only the patients, but also the doctors who can avail the services of the nursing staffs at certain crucial point of times. Therefore, I am not convinced with the reasons recorded in the notings of the file dated 04.05.2016 vide Annexure R-1 for denying the request of the applicant for grant of study leave. Consequently, I hold that the applicant is entitled for study leave."

6. The respondents, on the other hand, have relied upon the judgement of the Principal Bench of this Tribunal dated 19.04.2018 in OA 3798/2017 and stated that granting of study leave is a discretionary provision that lies with the authorities/respondents which cannot be claimed as a matter of right and if there is shortage of staff or any other justifiable reason to deny the study leave, the respondents are well within their right to deny the same.

7. Undoubtedly, the respondents have the discretionary power with them to agree or disagree to a request for grant of sanction of study leave to any of the employee, provided there is valid and reasonable reason for denying the same. At the same time, it is also a right of an individual for upgrading his/her degree and qualification. It is also a common phenomenon that every employee aspires for higher post, here the counsel for the applicant stated that for Nursing Superintendent and Nurses in the office of the Director of Health Services qualification required is Master degree in Nursing. It is also seen that the guidelines issued by the Headquarter office, ESIC on the subject of study leave

provides as under:-

“(i)The course of study consisting of higher studies are specialized training should have a direct and close connection with the sphere of his/her duty and it should be beneficial for beneficiaries and the organization. It is to be certified by the leave recommending authority.

(ii)The applicant should have satisfactorily completed the period of probation and has rendered not less than 5 years regular continuous service including the period of probation. The applicant is not due to reach the age of superannuation from the service within 3 years from the date on which he/she is expected to return to duty after expiry of the leave.

(iii)The applicant will execute a bond as laid down in Rule 53(4) of CCS (Leave) Rules, 1972.

(iv)For undergoing Nursing course preference may be given to the Government nursing college for M.Sc.(Nursing) Course. The college should be recognized by the Nursing Council of India/State Nursing Council of India.”

The statutory rules for grant of study leave of Nursing Personnel working in ESIC hospitals provide that they should have 5 years of regular service and are entitled for grant of study leave up to 2 years for pursuing the course if it is in public interest. Secondly, 4% of medical staff of effective strength may be granted permission for higher studies. The applicant states that she fulfils all the criteria as laid down in the guidelines and also the respondents themselves have allowed Ms.Anita, Ms.Meenakshi, Ms.Anita Krishnan and Ms.Neha Prakash Desai to go on study leave granting them study leave. We feel that while rejecting the claim of the applicant the respondents have not stated anything in regard to allowing other similarly situated persons granting study leave which was a point raised in the first OA and order in the OA was to pass a reasoned and speaking order. We feel while passing the order the respondents have very intelligently not replied in regard to the point of discrimination raised by the applicant. We feel the reasons given by the order dated 15.02.2018 of non-requirement of M.Sc.(Nursing) degree is not justified as already held by the Ahmedabad Bench in OA 432/2016 as always a better qualification and specialized qualification helps to serve in a better way. Accordingly in the case of a nurse also acquiring higher degree in that stream only, i.e., M.Sc.(Nursing) will certainly help the institute to gain

something out of her higher/specialised degree. As nothing has been controverted in the reply in regard to the discrimination raised by the applicant we feel that the applicant is entitled for getting study leave for pursuing her higher studies for better qualification. Accordingly, the respondents are directed to allow the applicant granting her study leave to pursue the M.Sc.(Nursing) course and the order dated 15.05.2018 is quashed and set aside. Accordingly the OA is allowed.

(JASMINE AHMED)
MEMBER (J)
.2018

M.T.