

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 2878/2018

Reserved on:05.12.2018
Pronounced on:13.12.2018

Hon'ble Ms. Praveen Mahajan, Member (A)

Jyoti
Aged about 30 years
Staff Nurse (Labour Room)
Grade 'C'
D/o Shri Rattam Chand
Working under:Medical Superintendant
Directorate, (Medical) Noida
ESIC Model Hospital
Sector-24
NOIDA, U.P.
Resident of:
R/o H.No.134, Tower-1
ESIC Hospital Complex
Sector-24, Noida, U.P. ... Applicant

(By Advocate: Shri K.K.Patel)

VERSUS

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

2. The Director General
Headquarters office
Employees' State Insurance Corporation (ESIC)
Panchdeep Bhawan, CIG Marg
New Delhi – 110 002.

3. The Regional Director
Regional Office
Employees' State Insurance Corporation
3rd & 4th Floor, Rajendra Bhawan
Rajendra Place
New Delhi – 110 008.
4. The Director
Directorate, (Medical) Noida
ESIC Model Hospital
Sector-24
NOIDA, UP-201 301.
5. The Principal
Institute of Liver & Biliary Sciences
D-1, Acharya Shree Tulsi Marg
Vasant Kunj
New Delhi – 110 070. ...Respondents

(By Advocate: Shri Amit Chawla)

O R D E R

The applicant is working with Employees State Insurance Corporation (ESIC) as staff nurse since June, 2011 at Noida, UP. The current OA has been filed by the applicant for sanction of study leave sought vide her representation dated 18.06.2018 for pursuing the M.Sc. Nursing Regular Course for two years for which she has been selected.

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2. The applicant represented to the respondents on 05.05.2018 seeking permission for appearing in M.Sc. Nursing Entrance Examination which was to be held on 14.06.2018. She did not

receive any response so she took the entrance test. On 15.06.2018, the applicant qualified the same and was selected for pursuing the M.Sc. Nursing Course.

3. On 18.06.2018, the applicant submitted another representation informing the respondents about her selection and for issuance of NOC for pursuing the course from 01.08.2018 to 31.07.2020. She also informed the respondents that last date for completing admission process is 30.06.2018. Again, she did not receive any response from the respondents. Since the admission procedure was to be completed by the stipulated date, she deposited the admission fees on 03.07.2018.

3.1 On 26.06.2018, an application for NOC in respect of the applicant was forwarded to respondent no.4. On 29.06.2018, her case was forwarded by respondent no.4 to respondent no.3, i.e. Regional Director, Regional Office, Employees' State Insurance Corporation requesting for issue of NOC in favour of the applicant with due approval from the competent authority i.e. Directorate (Medical) Noida (UP).

3.2 It is averred that though she fulfils the eligibility criteria under Guidelines and Rules to pursue study leave, the same has still not been sanctioned by the respondents. The applicant has mentioned names of some identically placed employees (Nurses), who were granted permission to pursue study leave.

4. The respondents in their counter affidavit submit that no approval was granted to the applicant granting study leave. Their non-communication or specific rejection of her application has wrongly been inferred as acceptance by the applicant.

5. The respondents further mention that currently study leave is not being granted in the nursing cadre, since it has become a common practice amongst the Medical/Nursing Officers employed under the Government Hospitals to misuse the facility and pursue a post graduation course in an easy field to secure the tag of 'Post Graduate'. Such qualifications, it is averred, are not beneficial to the Organization, since there is no functional requirements of a degree of M.Sc. (Nursing) for the nursing staff, therefore, the course does not meet the pre-condition of Rule 50(3) of CCS (Leave) Rules specifying grant of study leave for a course with "a definitive advantage" to the organization.

5.1 It is further submitted that in the case of Shri Om Prakash Bairwa, Staff Nurse Vs. ESIC (OA No.3798/2017) the Principal Bench, New Delhi commented that granting of study leave is a discretionary provision and cannot be claimed as a matter of right. If the respondents have justifiable reasons to deny the study leave, they are will within their right to do so.

6. During the course of hearing, the learned counsel for the applicant Shri K.K.Patel argued that the respondents in identical

and similar cases granted study leave to Ms. Anita, Ms. Meenakashi, Ms. Anita Krishnan and Ms. Neha Prakash Desai she had to approach CAT, Ahmedabad Bench. The Tribunal vide its order dated 15.07.2016 directed the respondents to sanction her study leave, Shri Patel argued that –other nurses like Ms. Farrha Khan and Ms. Deepika Patel also had to approach the Tribunal for grant of study leave for pursuing M.Sc Nursing Course, and received favourable decisions.

7. Per contra, the learned counsel for the respondents, Shri Amit Chawla submitted that NOC had not been granted to the applicant to either appear in the exam or deposit the fees. He informed the Bench that the respondents have now changed the Policy relating to grant of Study Leave and the ESI Corporation in its 175th meeting, has decided that study leave shall not be granted to Nursing Cadre employees to pursue higher studies viz. M.Sc/B.Sc (Nursing).

8. I have gone through the facts carefully. The applicant had applied for study leave in May, 2018, and sought permission for appearing in an exam to be held one month later. Not having received any information, the applicant took the entrance test and duly qualified the same. The respondents had ample time at their disposal to accept or deny her the permission to take the exam, which they did not do. Subsequently, the applicant

informed the respondents that she has qualified in the exam and requested them to issue NOC alongwith other documents required to pursue the said course. The respondents again took their own sweet time to process her case. Finally, the respondent no.4 vide letter dated 29.06.2018 recommended that NOC should be issued to the applicant to enable her to submit the same to the nursing college. It was also mentioned in the letter that the last date of completing the admission process was 30.06.2018.

9. At the time of hearing on 05.12.2018, there was no rejection/acceptance letter issued by the respondents on the request of the applicant. However, it was informed by the learned counsel for the respondents that vide their letter dated 12.07.2018, it has been decided to take disciplinary action against the applicant for appearing in the entrance exam without obtaining an NOC from the office of Regional Director, Kanpur, UP.

10. Undoubtedly, it is the prerogative of the respondents to either grant or cancel study leave in the interest of the respondent organisation. But it is incumbent upon the respondents to have reacted and informed the applicant in time that leave cannot be granted to her. The applicant in this case kept approaching the respondents with her request, duly informed them the fact of her selection. Not having received a

negative response she even deposited the fees for the course. I find that it was the silence of the respondents which led the applicant to the bonafide believe that her request was being favourably considered. A timely reply would have saved her the burden of this extra (deposit of fees) financial burden.

11. The decision taken by the respondents now, not to allow study leave to the nurses who wish to follow nursing course can only be prospective and cannot be made applicable to the applicant, since the guidelines regarding Study leave which were in operation at the relevant time would apply.

12. In the facts and circumstances of the case, I think the respondents have been rather insensitive to the request of the applicant. The respondents do have an equitable right either to accept or deny the request of their employees but such requests cannot be allowed to pend indefinitely. In the case relied upon by the learned counsel for the respondents, it is clearly stated that if the respondents have a justifiable reason, they are well within their rights to deny the leave. In the instant case no "justifiable" reason was ever given to the applicant. It has still not been mentioned by the respondents whether the leave has been denied and if so, on account of what/which 'justifiable' reason, if any.

13. In view of the peculiar circumstances of the current case, I allow the OA and direct the respondents to sanction study leave to the applicant as sought by her in her application dated 18.06.2018 and allow her to pursue the nursing course for which she has been selected. OA is allowed. No costs.

**(Praveen Mahajan)
Member (A)**

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