

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.41 of 2019

This the 8th day of August, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Smt. Asha Rani (age about 32 years), Staff Nurse, Group C
W/o Sh. Sameer Mann
D/o Sh. Jagdish Chandra Nehra
R/o A-3/9, Second Floor,
Rohini, New Delhi-110089

- Applicant

(By Advocate : Shri Rajesh Gehlawat)

Versus

1. Union of India
Through Secretary
Ministry of Labour and Employment
Govt. of India
(Social Security Division)
Shram Shakti Bhawan
Rafi Marg, New Delhi-110001
2. The Director General
Headquarters Office
Employees State Insurance Corporation,
Panchdeep Bhawan, C.I.G Marg,
New Delhi-110002
3. The Regional Director
Regional Office
Employees State Insurance Corporation
3rd and 4th Floor, Rajendra Bhawan
Rajendra Place, New Delhi-110008
4. Medical Superintendent
Employees State Insurance Corporation,
Basaidarapur, New Delhi-110015

- Respondents

(By Advocate : Shri Harshvardhan for Shri Sholak Chandra)

O R D E R (Oral)

By filing this OA, the applicant is seeking the following reliefs:-

- i) Quash the impugned inaction of the respondents whereby they are not allowing study leave to the applicant, being arbitrary, malafide, discriminatory and illegal.
- ii) Direct the respondents to grant the study leave with pay to the applicant w.e.f. 21.12.2018 with all other consequential benefits in the interest of justice.
- iii) Direct the respondents to produce all the records of the case along with their reply for perusal by this Hon'ble Tribunal
- iv) Allow the cost of this application to the applicant.
- v) Pass such other orders or reliefs as deemed fit and proper in the facts and circumstances of the case in the favour of the applicant and against the respondents.

2. In this OA, the main grievance of the applicant, who is working as Staff Nurse in one of the hospitals of the ESIC, is against the rejection of the request for grant of study leave for pursuing higher studies, i.e., M.Sc. (Nursing) vide Memorandum dated 1.11.2018.

3. During the course of hearing, counsel for the applicant submitted that applicant applied for no objection certificate from the respondents to pursue the aforesaid higher study but before the receipt of the reply dated 1.11.2018, the applicant had already qualified the entrance examination of

M.Sc. conducted by Pandit Bhagwat Dayal Sharma University of Health Science, Rohtak, Haryana. Thereafter, the applicant was in receipt of No objection cum experience certificate dated 12.11.2018 whereby though the respondents have conveyed their no objection for her pursuing M.Sc. (Nursing) Course), but they have stated that grant of specific kind of leave for pursuing higher studies is a separate matter and the discretionary power of the competent authority. Counsel then submitted that once they have conveyed their no objection to the applicant for pursuing higher studies, it is legitimately expected by her that they will sanction her study leave but denial of the same would lead to act of malafide, arbitrary and discriminatory on the part of the respondents and the same is liable to be quashed by this Tribunal and the respondents be directed to sanction study leave to the applicant for pursuing higher studies.

3.1 In support of the claim of the applicant, counsel for the applicant placed reliance on the decision of the Hon'ble Calcutta High Court in the case of ***The Medical Superintendent vs. Prnoti Roy*** in WPCT No.145 of 2014 decided on 5.9.2014.

4. On the other hand, learned counsel for the respondents by referring to their counter affidavit submitted that grant of NOC for appearing in the entrance exam is not being restricted for the simple reason that in the event of qualifying

the entrance exam and securing the seat in the higher study course, an employee has the option to decide further course of action according to one's own priorities. In this case, the applicant has the option to either resign from the service to pursue higher studies in the eventuality where leave is not granted to her due to exigencies or she may leave the course or continue with the employment. Counsel further submitted that respondent has authorized MSs/Deans to issue NOC to the candidates to appear in the entrance exam for the PG courses which is mandatorily required in terms of Rule 3(GID-r) of CCS (Conduct) Rules.

4.1 Counsel further contended that grant of specific kind of leave for pursuing higher studies is a separate matter and the discretionary powers of the competent authority and the authority to grant extra ordinary leave/other leaves for higher studies is with the Director General, ESIC. Counsel also contended that as per existing Recruitment Regulations of ESIC, essential qualification required for the post of staff nurse is diploma in General Nursing Mid-wife and the hierarchy of Nursing cadre consists of Staff Nurse, Nursing Sister, ANS, DNS and Nursing Superintendent and there is not a single post for which M.Sc.(Nursing) qualification is required mandatorily and as such M.Sc. (Nursing) qualification does not provide definite advantage to the

corporation which is essential criteria for granting study leave as per Rule 50(3) of CCS (Leave) Rules.

4.2 Counsel further contended that grant of study leave is a discretionary provision and cannot be claimed as a matter of right. The policy is to be determined by the Organization keeping in view of overall perspective and one must not get onto the question of finding justification and questioning the well-considered stand of the organization on the issue taken at highest level by the governing board, as the employees who are serving an organization, have the first responsibility towards their organization and a provision to pursue higher studies is always a desirable thing but the same cannot happen at the cost of the activities and responsibilities towards the organization. Further fulfilling the eligibility criteria does not create any right for grant of study leave under any circumstances. Counsel further emphasized that since there is no functional requirement of staff nurse with M.Sc. (Nursing), the corporation has decided not to grant study leave to any of the nursing cadre employees in future. However, ESIC has no objection if the applicant intends to do the higher studies by availing her personal leave, i.e., EL/HPL/EOL rather than giving study leave which is a financial burden on public money which is contributed by workers class of the society.

5. Heard learned counsel for the parties and perused the pleadings available on record. It is observed that there is no dispute that respondents are permitting the applicant to pursue the aforesaid higher studies but pursuing the higher studies by mandatorily allowing her study leave is an issue which is well within the domain of the authorities to decide having regard to the functional requirement of the organization and impact of the said higher studies in the functional improvement or definite advantage in the organization and no employee can be allowed to claim study leave as a matter of right. Since the respondents have clearly stated that there is not a single post for which M.Sc.(Nursing) qualification is required mandatorily and as such M.Sc. (Nursing) qualification does not provide definite advantage to the corporation which is essential criteria for granting study leave as per Rule 50(3) of CCS (Leave) Rules, it would be relevant to note the provisions of CCS (Leave) Rules, having bearing on the issues involved in the present case. Rule 7 deals with regard to right to leave provides as under:-

“7. Right to leave cannot be claimed as of right.

When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant.”

6. Chapter VI, containing Rules 50 to 63, deals with study leave. Rule 50 is relevant in this regard. This Rule 50 provides for conditions for grant of study leave. The relevant part of that Rule 50 is contained in sub-rule (3) as follows:-

“(3) Study leave shall not be granted unless-

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;

it is for prosecution of studies in subjects other than academic or literary subject:”

7. From the aforesaid, it is seen that grant of study leave is subject to the exigency of public service and must have direct and close connection with the sphere of applicant's duty. The rule mandatorily requires the competent authority to certify that the proposed course of study for training shall be of definite advantage from the point of view of public interest. It is also relevant to note that grant of study leave is not for higher study simpliciter. The higher study must be of the nature and description as envisaged in the rules. It is, therefore, for the competent authority to take care of the compliance of the requirement of the rules with regard to grant of study leave. If the rule envisages that the competent authority is to certify that the proposed course of study will be of definite advantage from the point of view of public interest, the opinion of the applicant to the contrary will not be of much relevance. Once the competent authority has

declined to certify in terms of Rule 3 (ii) of Rule 50, the applicant cannot assail the same for the reason that he holds a different opinion so as to say that the proposed course of study would be beneficial to the department.

8. It is further to be noted that the rule prohibit for grant of study leave for pursuing the academic and literary courses. It is not the case of the applicant that M.Sc.(Nursing) does not fall in this category or the same is one of the essential qualifications required in the hierarchy of promotional avenues.

9. The impugned Memorandum has been challenged by the applicant *inter alia* on the ground that it does not contain any reason or malafide. When the subject matter is governed by the rules, the reasons for refusal flow from the rules. As per rules study leave can be granted to a Govt. servant with due regard to exigencies of public service subject to certain conditions. In accordance with Rule 50 of CCS (Leave) Rules, 1972, the following observations have been made in this case by the respondents vide Memorandum dated 1.11.2018:-

“In reference to her application dated 26.7.18 on the above subject. In this connection, it is informed that her request for study leave for pursuing higher studies i.e. M.Sc. has not been considered by the Medical Superintendent since the course being applied for is not a requirement for the job being performed.”

10. From the aforesaid, it cannot be said that the impugned action of the respondents is without any application of mind.

It is supported by reasons, as mentioned above, and certainly the administrative orders as communicated to the person concerned need not contain the detailed reasons like the judicial orders. However, if certain orders infringed civil consequences, they ought to be in consonance with the rule of principles of natural justice. This is not the case here. In any case, leave has to be granted in accordance with the rules. It is for the applicant to make out the case in accordance with the rules governing the subject before seeking legal remedy in respect thereto. The applicant has failed to discharge his onus in the present case.

11. Reference to the aforesaid decision in ***Pronoti Roy's*** case of the Hon'ble Calcutta High Court is not of much help to her, as each case has to be decided on its own merits. As such the case relied upon by the applicant is not comparable as explained by the respondents in their reply.

12. In the facts and circumstances of the case and for the reasons stated above, the applicant has not been able to make out a case for grant of study leave as prayed for by her. The OA is accordingly dismissed. No costs.

(Nita Chowdhury)
Member (A)

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