

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No.021/00614/2017

Date of C.A.V. : 14.06.2019

Date of Order : 25.06.2019

Between :

Yogendra Babu Sharma,
S/o Late Shri R.K.Sharma,
Aged about : 50 years,
Occ : Executive Engineer, 85 D,
Indira Nagar, Gachibowli,
Hyderabad – 500032.

... Applicant

And

1. Union of India, rep. by Secretary,
Department of Personnel and Training,
North Block, New Delhi – 110 001.

2. The Secretary,
Ministry of Water Resources, RD & GR,
Government of India,
Sharam Shakti Bhawan,
Rafi Marg, New Delhi – 110 001.

3. The Chairman,
Central Ground Water Board,
Bhujal Bhawan, NH-IV,
Faridabad – 121 001.

4. The Director Administration,
Central Ground Water Board,
Bhujal Bhawan, NH-IV,
Faridabad – 121 001.

5. The Regional Director,
Central Ground Water Board,
Southern Region, GSI post,
Bandlaguda, Hyderabad – 500 068.

6. The Assistant Executive Engineer and H.O.O.,

Central Ground Water Board,
Division-IX, GSI Post,
Bandlaguda, Hyderabad – 500 068.

... Respondents

Counsel for the Applicant ... Mrs.Rachana Kumari, Advocate
Counsel for the Respondents ... Mrs.Megha Rani Agarwal, Addl.CGSC

CORAM:

Hon'ble Mr. B.V.Sudhakar ... **Member (Administrative)**

ORDER

{ As per Hon'ble Mr.B.V.Sudhakar, Member (Admn.) }

The O.A. has been filed challenging the impugned office order No.216/2017 issued by the 6th respondent for recovery of Rs.6,48,200/- in certain instalments.

2. The brief facts which need to be adjudicated are that the applicant while working as Executive Engineer (Group-A) Service was directed to report to the University of Oxford vide letter dated 08.10.2007 to take up research work. It was informed, as stated by the applicant, that his case for foreign deputation had been recommended by the Ministry of Water Resources for a decision in the matter and that the same will be communicated in due course. The applicant left for Oxford University on 10.10.2007. He was awaiting deputation orders from the respondents' organization. Instead, he was surprised, to receive an office memo dated 07.05.2008 to explain his absence during the visit of AS(WR) to Chennai on 06.02.2008 knowing fully well that he was on deputation to undertake research

work at Oxford University. After an year, the applicant received a sanction of partial financial assistance of US \$25000.00 from the 1st respondent vide order dated 05.12.2008. However, these funds were not remitted properly to the Oxford University. After a few months the applicant received a part of the amount from the 1st respondent, but the significant amount was not credited to the University account because of wrong transfer of funds. These funds, the applicant claims, were then refunded to the Government of India and kept unutilized. The unutilized amount was pending with the 1st respondent, which can actually been disbursed to the applicant to complete his thesis at Oxford University. The administrative officer of the 3rd respondent wrote to the 2nd respondent to convey its long pending decision for treating the study period of the applicant for foreign deputation vide letter dated 18.04.2013. The applicant represented on several occasions, to issue the order of foreign deputation and release the unutilized amount pending with the 1st respondent. There being no response from the respondents, the applicant himself paid all the amount due to the University by borrowing the same from family members. After returning to India the applicant represented to the respondents from 2013 onwards requesting to release the unutilized amounts and also to issue pending deputation order. In stead of attending to his grievance, the applicant was transferred to Hyderabad. The applicant also pointed out that he never received the GBP 800 as mentioned in para-7 of the letter dated 04.05.2016 of the respondents. The applicant also approached the Oxford University for confirming the availability of the financial support so that he could complete the thesis. While this was in process,

respondents issued the impugned order dated 21.07.2017 ordering recovery of Rs.6,48,000/-. Aggrieved, the present OA has been filed.

3. The contentions of the applicant are that the show cause notice issued by the respondents ordering recovery was signed by an incompetent authority. Further the applicant was directed to report at Oxford University by the 4th respondent with the assurance that foreign deputation order would be issued. 4th respondent has not given any reply to the applicant regarding the consideration of his foreign deputation. The 1st respondent made a grave error of remitting funds to the wrong account of the University. Large sum of funds which ought to be released to him are lying unutilized with the 1st respondent. The applicant made several attempts to get his foreign deputation orders and unutilized funds released, so that he could submit his thesis. Respondents did not respond favourably. The release of GBP 800 to the applicant by the High Commission of India, London has not fructified. The subject matter of his research was in the interest of the Nation and hence the respondents could have favourably considered his request to complete it. The learned counsel for the applicant has stated that the respondents asking for the explanation of the applicant for his absence during the period from 07.05.2008 is irrational, since they are aware that the applicant has already gone abroad to pursue higher studies. Once having recommended the case of the applicant for foreign deputation, it is the responsibility of the respondents to ensure that the approval is given for foreign deputation. The objection of the learned counsel for the

applicant was that the letter dated 08.10.2007 was not communicated to the Ministry and the letter did not have the approval of the competent authority. The respondents have admitted vide their email dated 06.04.2009 about the wrong remittance of the funds to the University. The respondents informed vide letter dated 18.04.2013 that the request of the applicant to treat his stay period as foreign deputation is under the consideration of the Ministry and a decision is awaited. As financial assistance was not considered despite repeated pleas, applicant in order to meet the liabilities raised a loan of Rs.20,00,000/- and that the same is evidenced by the voucher dated 25.11.2011 of the State Bank of India, enclosed to the OA. Learned counsel for the applicant has pointed out that the bond was signed in 2008. The applicant also objected that only part of the letter dated 09.04.2014 was enclosed to the reply statement without revealing the full details of the letter. The learned counsel for the applicant argued that the case is fully covered by the judgement of the Hon'ble Supreme Court of India in ***State of Punjab Vs. Rafiq Masih in Civil Appeal No.11527/2014 dated 18.12.2014***. The applicant also relied on the judgement of the Principal Bench of this Tribunal in OA.2735/2010 dated 11.08.2011.

4. The respondents in their reply have stated that the applicant has made his submissions to suit his purpose and the applicant has made several submissions suppressing the facts of the case. The applicant's application for Common Wealth Scholarship and Fellowship Plan 2007-UK for Research work at

University of Oxford, UK was duly considered by the competent authority and the applicant was not selected on the basis of the interview and for the said Scholarship. However, the University of Oxford informed the applicant on 21.02.2007 that he has been admitted in the University as a graduate student and has been permitted to pursue Doctor of Philosophy degree beginning in October 2007. The applicant on 05.10.2007 had informed that the University of Oxford had asked to report by 12.10.2007 and requested to grant EL, HPL and EOL as per his entitlement from 10.10.2007 to facilitate him to report to the University in time. Applicant had secured a seat at St. Edmund Hall, Oxford as a graduate student for D. Phil, Geography and Environment through his own efforts as a private student. He did not route his application through proper channel. The respondents vide letter dated 08.10.2007 granted the leave sought for from 10.10.2007 to 09.10.2010 to enable him to complete his research work. The applicant was also informed that his case for foreign deputation has been recommended by the Ministry and as and when they receive the approval, the same will be communicated to him. He was also directed to report to University of Oxford, UK by 12.10.2007. Accordingly the applicant submitted his departure report to join Oxford University on 10.10.2007. Meanwhile based on a VIP reference, the case of the applicant was considered under the Scheme of Partial Funding of foreign study as per DOP&T guidelines dated 17.05.2004. The respondents could not consider the case of the applicant for regular foreign deputation, because the applicant has not forwarded his application through regular channel and that even if submitted it has to be screened by a Committee

of Secretaries and thereafter approval will have to be given. Further for such foreign studies budget is separately allocated on being projected with justifiable reason. The respondents do not have any scheme or programme under which they can project and seek funds, in order to consider the case of the applicant to undertake research on foreign deputation basis. Nevertheless, applicant was directed to submit an application to consider his case for partial funding. Based on the application, DOP&T vide letter dated 05.12.2008 has sanctioned financial assistance of US \$ 25000 to enable the applicant to pursue research in Geography & Environment. The condition was that the applicant is responsible to cover the balance cost through personal resources like GPF and scholarships vide letter dated 08.01.2008 of DOP&T. The applicant submitted a bond for pursuing studies abroad under the partial funding of foreign study in response to the sanction issued on 05.12.2008. The same was accepted by the Ministry. DOP&T informed the applicant that US \$19,973 was released on 30.01.2009 which were wrongly credited in the name of one Ms.Anshu Shukla Pandey at Oxford University. The bank was advised on 19.02.2009 to make necessary corrections and credit the amount to the correct account. The applicant vide email dated 28.10.2009 addressed to the Director (Training) Division of DOPT, had informed that he was in receipt of the complete tuition fees and maintenance allowance for the period January 2009 to September 2010. However, the applicant mentioned that he did not receive the maintenance allowance for the period October 2007 to December 2008 and requested to release the same due to saving of funds under the head tuition fees. The University granted tuition fee waiver and consequently on the

request of the applicant an amount of US \$9373 was further released to the applicant towards living expenses. As a result, a total amount of US \$14,400 which is the maximum that can be released for living expenses has been released. In addition, he was paid Rs.39,152/- towards air fare. The applicant repeatedly represented for release of the balance amounts of tuition fee to him towards maintenance expense, which the respondents could not release as there is no provision under the rules. The same was informed to the applicant on a couple of occasions. The applicant represented on 23.01.2012 that he was in grave financial hardship and requested the respondents for payment of pending fees. However, he did not inform the respondents that his name has been removed from the list of graduate students on 20.04.2011, though 22 months have elapsed from the date of the removal of his name. The applicant in his representation dated 06.06.2012 has also stated that he is expecting a decision from the Independent Adjudicator for Higher Education and that he will inform the outcome as and when a decision is taken. The issue of his further studies in Oxford University have become a legal issue and the same was challenged in the High Court of Justice in UK. Stating so, the applicant requested for extension of EOL upto 08.10.2013. The applicant continued to represent from January 2014 to the High Commission of India in London and to the DOP&T stating that the amounts were wrongly transferred to another name, despite knowing the fact that the amount was returned to DOPT because of the tuition fee waiver by the University. Nevertheless, applicant was replied stating that he was given the maximum eligible financial assistance of US \$14400 towards monthly living expenses and

Rs.39,152/- towards air fare under the partial funding component. It was also informed that the unutilized tuition fees cannot be converted into maintenance / monthly living expenses. The dispute of the applicant with the University was in regard to the improper supervision arrangements which the applicant did not inform for many years. The decision to litigate on the issue was taken unilaterally by the applicant without any communication to the respondents. As the applicant failed to obtain the diploma / degree / doctorate for which financial assistance under the scheme was given, he was directed to refund the total amount of financial support provided. The DOP&T vide letter dated 10.09.2015 had made it clear that the officer has not completed the course within the stipulated period, for which partial funding was granted and as such since he has not fulfilled the conditions of the scheme and the agreement executed, the officer must return the total amount of financial support of Rs.6,48,200/- provided. The applicant represented vide letter dated 01.05.2015 to permit him to submit his D.Phil thesis. In response the Ministry vide letter dated 27.04.2016/03.05.2016 has directed the applicant to provide a letter from the University stating that they are agreeable to permit his candidature as D.Phil student and about the extent of fee payable to the University. The applicant was asked to obtain a confirmation from the University in this regard. Till date the applicant failed to submit such a letter. The respondents have also informed that Oxford University has not conveyed their approval for acceptance of thesis of the applicant in response to the request dated 08.08.2016 (Anx-R-XXIX) made through email by the Ministry. Hence, the applicant had to be directed once again to refund the amount. Instead of

refunding the amount the applicant is only pleading to issue order for foreign deputation and permit him to complete his D.Phil thesis.

5. The learned counsel for the respondents has pointed out that the applicant was informed vide letter dated 05.12.2008 that the financial assistance was granted under the component of partial funding of foreign study. The assistance was provided to him to meet the expenditure on course fee, living expenses and air fare in that order. It was also made clear in the said order that the first year of being abroad for studies would be treated as on duty and on completion of the study the applicant should report to the authority who have relieved him and that he will not be entitled for any TA/DA during the said period. Learned counsel for the respondents also stated that the applicant has signed the bond on 08.05.2008, wherein it was clearly stipulated that in the event of failing to complete the said programme, he shall forthwith pay to the Government the sum granted with interest for study abroad.

6. Heard Mrs.Rachana Kumari, learned counsel for the applicant and Mrs.Megharani Agarwal, learned standing counsel for the respondents. Perused the material papers submitted. Learned counsel for the applicant has also submitted rejoinder and written arguments, which were also gone through. Learned counsel for the respondents filed additional reply statement, which was perused.

7. Learned counsel for the applicant has raised a preliminary objection that the Single Member Bench cannot hear the matter as it relates to foreign deputation. The OA has been filed against the recovery of the amount granted by the respondents to pursue studies Abroad. All matters relating to recovery are dealt with by the Single Member Bench and therefore it has the jurisdiction to adjudicate the issue, therefore the objection raised is not maintainable.

8. The applicant, as per the details and the records submitted, has gone to Oxford University to pursue research work in Geography and Environment. Before he left for Oxford University on 10.10.2007, his application for foreign deputation was under examination. The respondents informed the applicant that the decision in regard to foreign deputation would be intimated, as soon as it is taken. In the meanwhile based on a VIP reference, the applicant's case was considered under partial funding for foreign study. He was granted US \$25000 as financial assistance. The amount is released under three heads namely tuition fees, living expenses and air fare. The tuition fee was remitted to the Oxford University. Later, the applicant got waiver of the tuition fee. There being a provision to grant living expenses upto the extent of US \$ 14400 further funds of US \$9373 were released to the applicant, so that total amount released was US \$ 14400. Besides a sum of Rs.39,152/- was granted towards air fare. The applicant has been insisting that instead of releasing US\$ 14400 as living expenses, the respondents could release the entire amount under the head tuition fee towards living expenses. Respondents stated that there is no such provision

under the rules to release the funds beyond the limit. Nevertheless, respondents have taken up the issue with DOP&T, but it was declined. For release of the said funds applicant signed a bond wherein the condition stipulated was that, if applicant does not complete the research work undertaken, he should return the financial assistance granted. It so happened that with regard to supervision of his work there were certain difficulties experienced on his getting admitted in the Oxford University. The issue went on and the respondents were not aware of the same until it was communicated vide applicant's letter dated 25.02.2013. Due to the complication that arose at Oxford University, the applicant could not complete his Doctorate and he had to return to India in 2013. The applicant being aggrieved over the issue has filed a case in the High Court of Justice at UK, without informing the respondents. The applicant contends that he has to be necessarily given foreign deputation orders, since he has gone to UK for pursuing Research work, as he was given to understand that such orders are likely to be issued by the respondents. As can be seen from the record, respondents have clearly communicated to the applicant that his request for study on foreign deputation basis was under consideration and he will be intimated as and when decision is taken. Besides, the respondents have also brought on record that they do not have any scheme for funding studies on foreign deputation. Even to take up the request of the applicant with the competent authority for studies abroad on foreign deputation basis, it has to be necessarily routed through proper channel, which was at the first instance, not done by the applicant. The same on receipt through proper channel has to be placed before the Committee of Secretaries and

thereafter, if approved, the foreign deputation orders will be given. In respect of the applicant the said procedure was not followed. Besides, for funding of foreign studies, a separate budget has to be maintained after projecting and seeking approval of the relevant Ministry. The Ministry in which the applicant is working, there was no such scheme nor funds available under the relevant head. Nevertheless, on receiving a VIP reference partial funding was approved under the condition that the applicant shall complete the course within the time stipulated and in case he does not, the funds granted shall be refunded. As the applicant failed to complete the course, respondents have ordered recovery. The respondents are not at fault for the applicant failing to complete the degree at Oxford University. On the contrary, they have supported the applicant by finding a way through partial funding. Even while doing so, they have granted the maximum of US \$14400 under the living fee head. Applicant insisting that he should get more for living expenses, when there is no provision under the rule, is unreasonable to say the least. The applicant also initiated legal proceedings in regard to his study abroad. The respondents also informed that the University is unwilling to permit him to continue to his thesis. Hence it is clear that the mistake lies with the applicant. He did not complete his studies, as was expected of him and as per the terms and conditions stipulated in the bond respondents have initiated action. Respondents tried to accommodate the interest of the applicant to the extent possible. Applicant trying to rub off his mistake on to respondents is impermissible as per Hon'ble Supreme Court judgement in ***A.K.Lakshmi pathy v. Rai Saheb Pannalal H.Lahoti Charitable Trust, (2010) 1 SCC 287*** “they cannot be

allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

9. The observation of the Hon'ble Supreme Court in Rafiq Masih case (supra) does not apply to the case of the applicant, since it is on a different footing altogether. Applicant was granted financial assistance to complete his research work at Oxford University. The applicant executed a bond undertaking to repay the funds granted, if he fails to complete the degree/doctorate research. In fact, as per Hon'ble Supreme Court judgement in ***High Court of Punjab & Haryana v. Jagdev Singh in Civil Appeal No.3500 of 2006 dated 29.07.2016***, when a bond is given, the applicant is duty bound to repay the same to the Government. Applicant failed to complete his studies. As per conditions of the bond he is not entitled to retain the funds which attain the character of excess payment. Applicant was put on prior notice to return as per bond executed. Further, the judgement of the Principal Bench of this Tribunal in O.A.2735/2010 dated 11.08.2011 on which the applicant is banking is not relevant since facts and circumstances of the cited cases are different and not relevant.

10. Before parting it need to be adduced that the tax payer money it was invested in sending the applicant abroad for higher studies, so that he can return and contribute to the organization and in the process to the Nation. Being a senior officer it was expected of him to accomplish the objective for which he was sent abroad, come what may, which we as Indians are known for and are proud for.

Sadly in the case of the applicant it was not seen.

11. To conclude, the Tribunal thus finds no reason to intervene on behalf of the applicant. The OA is devoid of merit. Hence the OA is dismissed. There shall be no order as to costs.

(B.V.SUDHAKAR)
MEMBER (ADMN.)

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