
(2006) 02 DEL CK 0079
In the Delhi High Court
Case No : Writ Petition (C) 9538 of 2005

Anita Malik

APPELLANT

Vs

A.I.I.M.S. and Another

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Fundamental and Supplementary Rules — Rule 50, 50(5), 53(4)

Citation : (2006) 129 DLT 136

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K.P. Gupta and Ankit Kalra, for the Appellant; Mukul Gupta and Ankur Jain, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Issue Rule. Mr. Mukul Gupta, learned counsel waives notice of Rule. With consent of counsel for parties, the matter was heard for disposal.

2. The petitioner in these proceedings was appointed as Sister Nursing Grade-II on 25.8.1994 by the All India Institute of Medical Sciences (hereafter called AIIMS). She was regularised to the post on 29.2.1996. Apparently, she had sought for study leave in order to pursue B.Sc. (Post Certificate Course) on 17.4.2000. The request was however turned down by the AIIMS on 26.4.2000 on the ground that she was ineligible in terms of Rule 50 of the Fundamental and Supplementary Rule (FRSR) applicable to the employer. Two years later, the petitioner again applied for grant of study leave for joining the same course on 20.3.2002. This application was again turned down on 3.5.2002. The AIIMS however indicated that if she sought for extra-ordinary leave without pay, the request would be considered.

3. The communication was apparently acted upon, and the petitioner wrote to the AIIMS on 29.7.2002 seeking that class of leave. However, in the application, the petitioner also reserved her liberty to raise all legal contentions and pursue

the remedies available in law. The petitioner appears to have represented for conversion of the extra-ordinary leave which was granted, into the study leave on category various dates, between 3rd December, 2002 and January 2004

4. It is undisputed that the petitioner completed her course and rejoined duties in May 2004 Her requests for conversion of extra-ordinary leave without pay into study leave with full pay and allowances were declined. She appealed to the President of the AIIMS, but unavailingly. In these circumstances, she has approached this court for the reliefs claimed. This writ petition was filed in May 2005.

5. Mr. K.P. Gupta, learned counsel appearing for the petitioner in these proceedings urged that the position taken by the AIIMS is utterly arbitrary. He submitted that in terms of Section 50 (5) of the FRSR, petitioner was eligible for the class of study leave and complied with all the conditions. Declining her request without assigning any reason and granting the request of other candidates who were not even eligible, amounts to discrimination. Learned counsel has relied upon the contents of certain representations which indicate the names of others who has said to have been granted study leave without being eligible in terms of rules.

6. The AIIMS in its return has raised a preliminary objection that the petitioner has approached after having accepted the extra-ordinary leave without pay and completed her course. On the merits, it is submitted that the request for study leave was not acceded to since the petitioner's controlling authority sought for a leave substitute in her absence.

7. Mr. Mukul Gupta, learned counsel appearing on behalf of the AIIMS submitted that the petitioner was working in the Cardio Thoracic Centre (CTC) where keeping in view the several circumstances and exigencies of patient care, there no precedent for granting study leave to nursing personnel. It was also submitted that instances cited related to other areas or the department of AIIMS which were somewhat different from CTC. As far as the allegations of discrimination are concerned outlined in paras 5 and 6 of the writ petition, they have been denied and the AIIMS submits that one Ms. Janak Rani was conditionally granted study leave. That employee sought transfer to the main hospital where she was permitted to proceed on study leave. After having availed of that leave for two moths she discontinued the course.

8. Rule 50(5) of the FRSR which has been relied upon is re-produced below:

(5) Study leave may be granted to a Government servant--

(i) Who has satisfactorily completed period of probation and has rendered not less than five years" regular continuous service including the period of probation under the Government;

(ii) who is not due to reach the age of superannuation from the Government service within three years from the date on which he is expected to return to

duty after the expiry of the leave; and

(iii) who executes a Bond as laid down in Rule 53 (4) undertaking to serve the Government for a period of three years after the expiry of the leave.

9. It is no doubt true that the rule talks of eligibility and enables the Government or the concerned employer to grant study leave if the employee desirous of such a facility, fulfills the conditions. However, the rule is not cast in imperative terms. It is only an enabling discretionary provision and necessarily has to be exercised having regard to the circumstances of the case.

10. The question is whether the refusal by the AIIMS to convert the class of leave granted, namely, extra-ordinary leave without pay into study leave with full pay and allowances can be characterised as arbitrary in the facts of this case.

11. Apart from the fact that the Rule in question does not entitle the employee to study leave but merely enables a consideration which of course means fair consideration, the facts of this case show that the petitioner accepted the leave which had been offered in the year 2002. Though, while accepting the leave she protested and reserved the right to move the Court, nevertheless she waited for one more year after completing her course, before approaching the Court. This circumstance is not entirely irrelevant to consider whether the action of the AIIMS is arbitrary or illegal.

12. Even on the merits, the question is whether denial of request for conversion is arbitrary. The AIIMS has in its return categorically stated that the two most important considerations which weighed with it for refusing the study leave, were the nature of duty performed by the petitioner in the centre or unit where she was worked, i.e. in the CTC. It has been claimed that no nursing personnel had been previously granted study leave so as claimed by the petitioner. The isolated instance of Ms. Janak Rani, to my mind, cannot afford a parallel since that employee had been conditionally granted leave and she returned after two months. In the case of the petitioner, however, the AIIMS has also stated that apart from the nature of the duties attached to the unit, there was need for a leave substitute in her absence.

13. It is trite law that the Court sitting in judicial review, (service matters not excepting) does not sit in appeal over the wisdom of the executive's decisions or policies. It is concerned with the legality, procedural propriety or reasonableness (in the Wednesbury sense) of the order complained against. I am not persuaded to hold that the reasons given by the AIIMS are in any manner arbitrary or unreasonable while declining the petitioner's request for conversion of the class of leave granted to her into study leave.

14. For the above reasons, the writ petition is un-merited. It is accordingly dismissed.