

(2021) 02 DEL CK 0324
In the Delhi High Court
Case No : Civil Writ Petition No. 3895 Of 2020

Asha Rani

APPELLANT

Vs

Union Of India Through Secretary & Ors

RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 14
Central Civil Services (Leave) Rules, 1972 — Rule 7, 50(3), 50(3)(i)
Employees State Insurance Act, 1948 — Section 17, 17(2), 17(2)(a), 17(2)(b)

Citation : (2021) 02 DEL CK 0324

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal , J

Bench : Division Bench

Advocate : Rajesh Gehlawat, Nirvikar Verma, Shalok Chandra

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

1. This petition was filed, impugning the order dated 8th August, 2019 of the Central Administrative Tribunal (CAT), Principal Bench, of dismissal of

OA No.41/2019 preferred by the petitioner impugning the inaction of the respondents in the matter of application of the petitioner for grant of study

leave, and seeking a direction to the respondents to grant study leave with pay, to the petitioner, w.e.f. 21st December, 2018, with all other

consequential benefits.

2. The petition came up first before this Court on 2nd July, 2020 and thereafter on 16th July, 2020, when notice thereof was ordered to be issued. The

respondents have filed a counter affidavit. The counsel for the petitioner seeks time to file rejoinder. However there is no explanation, why the

rejoinder has not been filed till now. Even otherwise, considering that the petition

impugns the order of CAT, which has to be judicially reviewed on the basis of the material before the CAT, the need for replicating the pleadings in this writ petition is not felt. We have heard the counsels.

3. The undisputed facts are, (a) that the petitioner is employed as a Staff Nurse with the respondents Employees State Insurance Corporation (ESIC)

Hospital; (b) the petitioner, on 26th July, 2018 applied to ESIC, stating that she had completed nine years of service and wanted to apply for higher

study of M.Sc. (Nursing) Course of two years, at Rohtak, and sought a No Objection Certificate (NOC) Cum Experience Certificate and Study

Leave; and, (c) though the petitioner was furnished the NOC Cum Experience Certificate for appearing in the entrance examination but the study

leave sought by the petitioner was rejected vide Memorandum dated 1st November, 2018, reasoning that ""the course being applied for is not a

requirement for the job being performed"". Impugning the said Memorandum dated 1st November, 2018, the OA aforesaid before CAT was preferred.

4. CAT, in the impugned order, has found/observed/held, that (i) the respondents were permitting the petitioner to pursue higher studies but pursuing

the higher studies by mandatorily allowing the petitioner study leave, was an issue which was well within the domain of the authorities to decide,

having regard to the functional requirement of the organisation and impact of the said higher studies in the functional improvement or definite

advantage in the respondent organisation; (ii) no employee can be allowed to claim study leave as a matter of right; (iii) there was not a single post for

which M.Sc. (Nursing) qualification was required mandatorily and as such M.Sc. (Nursing) qualification does not provide definite advantage to the

respondents ESIC and which is an essential criteria for granting study leave, as per Rule 50(3) of Central Civil Services (Leave) Rules, 1972 (Rules);

(iv) Rule 7 of the said Rules provides that leave cannot be claimed as a matter of right; (v) Rule 50(3) thereof provides that:

(3) Study leave shall not be granted unless-

(i) 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 interest;

(ii) It is for prosecution of studies in subjects other than academic or literary subject."";

(vi) 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;

(vii) the rule aforesaid 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; (viii) grant of study leave is not for higher studies simpliciter; the higher study must be of nature

and description as envisaged in the Rules; (ix) 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; (x) 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; (xi) once the

competent authority has declined to certify in terms of Rule 50(3)(i), the petitioner cannot assail the same for the reason that she holds a different

opinion so as to say that the proposed course of study would be beneficial to the department; (xii) it was not the case of the petitioner also that M.Sc.

(Nursing) is one of the essential qualifications required in the hierarchy of promotional avenues; (xiii) when the subject matter is governed by the

Rules, the reasons for refusal also flow from the Rules; and, (xiv) it could not be said that the Memorandum dated 1st November, 2018 is without

application of mind inasmuch as it was supported by reasons.

5. The counsel for the respondents has also drawn our attention to the policy of ESIC qua study leave, as contained in the communication dated 31 st

October, 2018. The said policy inter alia states as under:-

â??In ESIC, there is no functional requirement for a degree of M.Sc. (Nursing). Therefore, the course cannot be said to be meeting the pre-

condition as per Rule 50(3) of CCS (Leave) Rules specifying grant of study leave for a course with â??a definitive advantageâ? to the

organisation.

Therefore, the Corporation in its 175th meeting and in supersession of previous guidelines on the subject, has decided that now onwards no

study leave shall be granted to Nursing Cadre employees to pursue higher studies viz. M.Sc/B.Sc (Nursing).

However, as a good Human Resource practice of an employer, ESIC will continue to contribute in growth of Nursing Cadre employees, who

are willing to do B.Sc./M.Sc (Nursing) as part of their personal growth and development by granting personal leaves (i.e. EL/HPL/Extra

Ordinary Leaves) to admissible as matter of general service conditions.

MSs/Deans will continue to be authorized to issue NOC to the applicants to appear in entrance exam for PG courses mandatory required in

terms of Rule 3 (GID 4) of CCS(Conduct) Rules. Grant of specific kind of leave for pursuing higher studies is a separate matter and the

discretionary powers of the Competent Authority as per merits of the case. The authority to grant Extra Ordinary Leave/Other Leaves for

higher studies shall remain with Director General. Prior to issuance of provisional NOC to applicants, it may be got noted from them that

grant of NOC for appearing in entrance exam is not being restricted for the simple reason that in the event of qualifying the entrance exam

and securing seat in the higher study course, an employee has the option to decide future course of action according to one's own

priorities. In this case employee have the option to resign from service to pursue higher studies in the eventuality where leave is not granted

to them due to administrative exigencies or he/she may leave the course and continue with the employment.

6. The counsel for the petitioner has drawn our attention to the question of law framed at serial No. 1 in the writ petition as under:-

E. Whether the Ld. Tribunal erred while not appreciating the fact that THE EMPLOYEES' STATE INSURANCE CORPORATION

ACT, 1948 Section 17(2)(a)&(b) clearly defines that "The method of recruitment, salary, and allowances, discipline and other conditions

of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in

accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of

pay:

Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of

any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

In determining the corresponding scales of pay of the members of the staff

under clause (a), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government

and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decision thereon shall be final.â??

7. We have perused Section 17(2) titled â??Staffâ??, of the Employees State Insurance Act, 1948 (the Act) and which inter alia provides that the

method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of ESIC shall be such as may be

specified in the Regulations made by ESIC in accordance with the Rules and orders applicable to the officers and employees of the Central

Government drawing corresponding scales of pay. It further provides that where the ESIC is of the opinion that it is necessary to make a departure

from the said Rules or orders in respect of the any of the matters aforesaid, ESIC shall obtain prior approval of the Central Government. It is argued

by the counsel for the petitioner that the nurses of the Ram Manohar Lohia (RML) Hospital and Safdarjung Hospital who are at par with the nurses in

the ESIC hospital, as per the policy framed by the said hospitals, are entitled to study leave but the staff nurses of ESIC hospital are not. It is

contended that no prior permission of Central Government for making the said change has been taken.

8. We are unable to agree. The relevant Rule qua study leave in the CCS Rules is Rule 50(3) supra and which lays down the parameters. If RML

Hospital and Safdarjung Hospital, as per their requirement, have made a policy for grant of study leave, it is not essential that the ESIC hospitals

should also adopt the same policy. Section 17 or Rule 50(3) nowhere provides so and once the decision on the application of the petitioner for study

leave is in consonance with the policy framed by respondents ESIC for all, and no case of discrimination is made out, it is not for the Court to

interfere.

9. The counsel for the petitioner then contends that the policy of respondents ESIC is violative of Article 14 of the Constitution of India.

10. However neither in the O.A before CAT nor in this writ petition any challenge to the policy of ESIC has been made and the counsel for the

petitioner fairly admits that in the absence of the said challenge the respondents,

in their reply/counter affidavit also have not pleaded about the validity of the policy.

11. The counsel for the petitioner then contends that since there is a provision in the ESIC for various kinds of leave, the respondents cannot deny leave to the petitioner, even if she pursues higher studies therein.

12. In this context we may notice that during the hearing it has been informed that the petitioner has been on leave since 7th February, 2019 but notwithstanding the same, she has been paid her emoluments till 31st May, 2020.

13. There is some controversy, with the counsel for the petitioner stating that the petitioner, after completion of her M.Sc. programme has joined back

ESIC in January, 2021 and the counsel for the respondents, after taking instructions stating that the petitioner has not so joined back. On enquiry,

whether any action against the petitioner for absenteeism has been initiated, the counsel for the respondents states on instructions that the same will be

decided when the petitioner joins back.

14. We are in this petition not concerned with the action if any against the petitioner or qua entitlement of the petitioner to wages for the period she

has been on leave. If the petitioner has any grievance with respect thereto, she will be entitled to avail of remedies therefor.

15. However as far as judicial review of the impugned decision of CAT is concerned, we do not find any perversity or even error and resultantly the

writ petition is dismissed.