

(2019) 04 CAT CK 0003

In the Central Administrative Tribunal

Case No : Original Application No. 0348 Of 2019, Miscellaneous Application
No.1057 Of 2019

D. Shanthi Sankar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 16-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 04 CAT CK 0003

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : J.B. Ravi, J. Vijetha, Sanjay Yadav, Gopal Singh

Final Decision : Dismissed

Judgement

1. The applicant has passed B. Sc. Nursing and joined as Staff Nurse in Safdarjung Hospital on 11.03.1999. She tendered technical resignation and joined Rajkumari Amrit Kaur College of Nursing (RAKCON) Lajpat Nagar, New Delhi as faculty on 01.01.2009. RAKCON runs various courses leading to degree in nursing, including M. Sc. Nursing.

2. The applicant wanted to do M. Sc. Nursing course which is a two years course and she sought permission on 18.01.2018 to apply for the same. This permission was granted on 16.02.2018, which clearly indicates that she can apply for 2018-20 session in RAKCON even though actual admission will depend upon her seniority amongst faculty.

3. It is noted here that earlier two faculty members of RAKCON could be sent on study leave for such course as per the decision of the Controlling Ministry, i.e., Ministry of Health and Family Welfare (MoH&FW) letter dated 30.07.2015 and 10.08.2015. Later on, due to shortage of faculty and with a view that quality of training course for nursing students in RAKCON is not adversely affected, MoH&FW decided on 15.03.2018 that at a time only one faculty will be sponsored

for such M. Sc. course. Accordingly, the applicant was advised on 05.10.2018 as follows:

"With reference to her request dated 26/09/2018 Mrs. D. Shanthi Sankar, Clinical Instructor is hereby informed that RAK College of Nursing is having one reserve seat for the faculty on Seniority basis for the session 2018-19. One faculty member has already been relieved as per seniority of Master of Nurses for the year. Due to shortage of staff, no more faculty can be permitted/considered for Master of Nursing course during this academic year. For the next academic session as per your seniority you will be recommend to the Ministry for Master of Nursing course."

4. The Delhi University which governs RAKCON made a representation to MoH&FW on 10.10.2018 to restore two seats for the M. Sc. study course. This has not been agreed so far.

5. RAKCON has a system wherein one seat in M. Sc. course being run at this College, is reserved for the senior-most faculty who is desirous of undergoing the M. Sc. training course. In view of the directions of MoH&FW for sparing only one faculty for the study leave and in keeping with the reservation of one seat in M. Sc. Course at RAKCON and since applicant was not the senior-most faculty, she desired to undertake M. Sc. course at Dr. M.G.R. University at Chennai and sought permission from MoH&FW vide her representation dated 28.11.2018. This representation was not replied and feeling aggrieved the applicant approached the Tribunal in OA No.4587/2018, which was decided on 17.12.2018 at admission stage itself, with the following directions:

"5. Having regards to the submission made and without going into the merits of the case, the O.A. is disposed of at the admission stage 3 itself with direction to respondent No.1 to decide the applicant's pending representation dated 28.11.2018 within a period of four weeks from the date of receipt of a copy of this order, by way of passing a reasoned and speaking order, under intimation to the applicant. Needless to say that the applicant shall have liberty to take recourse to appropriate remedy, as available to her under law, in case she remains dissatisfied with the order to be passed by respondent No.1 on her representation."

5.1 Thereafter, the applicant filed CP No.60/2019 for compliance of these directions. Before the CP could be taken up by the Tribunal, the said speaking order has since been passed by MoH&FW on 12.03.2019. The relevant parts of these speaking orders are reproduced below:

"WHEREAS it is a precedent that RAK College of Nursing sponsors one senior most faculty member from the cadre of Clinical Instructors for pursuing Master of Nursing Course from the College itself in every academic session. Till the academic year 2015-16, only one Clinical Instructor was allowed to pursue M.Sc. (N) from the College. On a specific case, two Clinical Instructions were allowed to pursue M.Sc (N) from the College itself for the academic year 2016-17 and

2017-18.

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WHEREAS on the basis of request from the College that they are not able to meet the shortage of Clinical Instructors, it was decided that only one candidate will be sponsored from the A.Y. 2018-19 onwards.

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WHEREAS Mrs. Tumpa Roy, Clinical Instructor had been sponsored for attending the Master of Nursing Course from RAK College of Nursing on the basis of her seniority for the academic year 2018-20. Mrs. D. Shanthi Sankar is the next senior most Clinical Instructor and thus by virtue of her seniority, she is eligible for pursuing Master of Nursing Course from the academic year 2019-20.

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WHEREAS Vice Principal, RAK College of Nursing has again maintained that due to acute shortage of faculty, it is not possible to relieve Smt. Sankar for pursuing M.Sc Course for the academic session 2018-20. Smt. Sankar being the senior most among clinical Instructors, would be sponsored for pursuing Master of Nursing Course for the academic session 2019-21 in RAK College of Nursing itself.

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AND WHEREAS the competent authority in the Ministry after examining the representations of Mrs. Shanti Sankar, Clinical Instructor and the comments of the Vice Principal, RAK College of Nursing, has not acceded to the request for grant of permission to M.Sc in Nursing from Dr.MGR University, Tamil Nadu in the academic session 2019-20."

5.2 It is thus seen that MoH&FW have now decided to sponsor the applicant, she being the senior-most faculty to the M. Sc. course against the one reserved seat in the session 2019-20 at RAKCON.

6. Meanwhile, it appears that the applicant had directly applied to another college, namely, Sresakthimayeil Institute of Nursing and Research, Namakkal, Tamil Nadu for M. Sc. course and sought permission vide her representation dated 26.09.2018.

This college vide letter dated 08.11.2018 has advised the applicant that she has been short-listed for admission to this course. The applicant has now approached the Tribunal in the instant OA, seeking direction to respondents to release her to undertake this course along with study leave at this Institute at Namakkal.

7. MA No.1057/2019 has also been filed by the applicant, seeking direction that no other faculty should be nominated to undergo M. Sc. course at RAKCON in Session 2019-20, as that is likely to jeopardise her taking admission at Sresakthimayeil Institute of Nursing & Research College, Namakkal on account of shortage of faculty at RAKCON and directions by MoH&FW in para-3 above.

8. The applicant has relied upon the following judgments:

i) Union of India & Ors. v. Havildar/Clerk S.C. Bagari, [(1993) 3 SCC 709]. In this case, the Army had a system wherein the study leave was granted to Commissioned Officers only to undergo course of study at various Institutes even other than those under the Army control. Such study leave was not available to non-Commissioned officers. Pleading that this is discriminatory, the Havildar/Clerk S.C. Bagari challenged this policy. The Hon'ble High Court took the view that non-Commissioned officers also need to be granted study leave. This judgment was challenged by the Union of India before the Hon'ble Apex Court. The Hon'ble Apex Court allowed this appeal with the following directions:

"20. It has also been stated in the counter that there cannot be any dispute that the character and duties of Junior Commissioned Officers and Non-Commissioned Officers are different as compared to that of Regular Commissioned Officers. If the competent authority thought it fit and proper that the case for study leave for Commissioned Officers should be considered and this benefit should not be given to other categories of officers, as for this category Army Authorities take adequate care for training them in their own institutions or outside, it cannot be said that the impugned Order No. 11 of 1987 is arbitrary or irrational. The object as stated in the counter, of granting study leave is to enhance the knowledge of Commissioned Officers who have an important role to play not only in maintaining discipline but also in performing their duties as Commissioned Officers. Therefore, it cannot be said that Army Order No. 11 of 1987 was not founded on intelligible differentia and it has no relation with the object sought to be achieved and we hold that the order in question is not violative of Article 14 of the Constitution.

21. For the reasons stated above, we find merit in the appeal and accordingly it is allowed by setting aside the impugned order. Costs on the parties."

ii) Judgment by the Principal Bench of the Tribunal in OA No.2878/2018, decided on 13.12.2018 (Jyoti v. Employees State Insurance Corporation (ESIC)).

The applicant therein was working as a Nurse in ESIC. She sought study leave to do M. Sc. course. It was denied on the plea that this higher qualification is not beneficial to ESIC and that the study leave is admissible provided on completion of the proposed course, the concerned employee shall be more useful to ESIC. The ESIC pleaded that in their normal working B. Sc. course is adequate which the applicant had already passed. Accordingly, study leave was denied. However, the applicant wrote entrance examination for M. Sc. course on her own and on being declared successful, she sought permission to proceed on study leave. Once there was no response, she took chance to pursue the matter and deposited the fee to avoid last date. However, the study leave was eventually refused. Feeling aggrieved, she approached the Tribunal wherein the following directions were passed:

"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."

Applicant pleads that it is her right to undergo M.Sc. Course at a place of her choice, as was upheld by the Tribunal in above case, and she needs to be allowed the study leave.

9. The respondents opposed the OA. It was pleaded that RAKCON is a premier Institute of Nursing and is engaged in imparting training for nursing students for various courses. With a view to maintain quality of such training to their students, it is necessary that adequate faculty strength is always available. However, faculty with higher qualifications is also a desirable goal as that helps in improving the faculty as well as the training being imparted to the other students. With this in view, RAKCON has a policy that one seat in M. Sc. course being run at RAKCON, is reserved for the senior-most faculty who is desirous of undertaking such a course.

10. In case the applicant is allowed to undertake M. Sc. course at Sresakthimayeil Institute of Nursing & Research, Namakkal, Tamil Nadu, the next in line senior-most faculty will become eligible to take up M.Sc. course on the reserved seat at RAKCON. With this, the total faculty available for other students

will not be adequate and thus adversely affect the quality of training to other students. It was keeping in this in view that even though earlier two faculty could be nominated for the said course, MoH&FW decided to restrict this number to one only.

11. The applicant is an employee of RAKCON and as a matter of discipline the employees are required to take No Objection Certificate (NOC) from the Administration before they can go on study leave outside the Institute. The applicant was never granted NOC to apply to an outside Institute.

Her efforts to secure admission at the Sresakthimayeil Institute of Nursing & Research, Namakkal, Tamil Nadu were on her own volition and at her own risk and cost. The respondents have already decided vide order dated 12.03.2019 that she is to be sponsored for study leave for the session 2019-20 at RAKCON against the reserved seat (para 5.1 supra). In view of this, there is no cause of action and the OA is required to be dismissed.

12. The matter has been heard at length. Shri J.B. Ravi with Ms. J. Vijetha, learned counsel represented the applicant and Shri Sanjay Yadav with Shri Gopal Singh, represented the respondents.

13. RAKCON is an Institute engaged in training of nursing students and they are also running various courses. It is undisputed that to ensure quality of training to their students, availability of adequate faculty is a necessary input. At the same time, improving the technical skills of the faculty is also an important goal. It is towards this that one seat in M. Sc. course has also been reserved for the senior-most faculty. Faculty is also required to maintain certain discipline as a role model to their students.

14. Once RAKCON has a system of reserving one seat at M. Sc. course for the senior-most faculty, it stands to reason that if the applicant goes to some other college, another faculty will take up the said M. Sc. course. It is with this in view that the applicant had filed an MA, seeking directions for restraining the respondents from nominating the senior faculty to their in-house M. Sc. course.

15. Since the respondents have already decided to sponsor the applicant for the 2019-20 session M. Sc. course, the applicant is at liberty to take up admission for this course at RAKCON for this session. Her plea to go to another College at Namakkal, on study leave from RAKCON, cannot be accepted. Her pleas for discrimination, as earlier two faculty could go on study leave and sometimes the faculty went to another Institute which is now denied to her, cannot be accepted, in view of extant decision by MoH&FW and provision of a reserved seat at RAKCON. Accordingly, the OA is dismissed, being devoid of merit.

16. Consequently, the MA filed by the applicant is also dismissed.

17. The respondents will have liberty that in case the applicant refuses this admission to M. Sc. course in 2019-20 session at RAKCON, the Institute can nominate faculty next in seniority, as per the extant rules for such a course.

There shall be no order as to costs.