

Sunita Vs Govt. Of NCT Of Delhi Through Chief Secretary Delhi Secretariat I.P. Estate, New Delhi 110002 & Ors.

Court: Central Administrative Tribunal Principal Bench, New Delhi

Date of Decision: Jan. 14, 2025

Acts Referred: Central Civil Services (Classification, Control & Appeal) Rules, 1965 – Rule 14

Hon'ble Judges: Harvinder Kaur Oberoi, Member (J); Dr. Sumeet Jerath, Member (A)

Bench: Division Bench

Advocate: Setu Niket, Purnima Maheshwari

Final Decision: Partly Allowed

Judgement

Harvinder Kaur Oberoi, Member (J)

1. Aggrieved of the order dated 02.02.2024 passed by the respondents rejecting the application for grant of study leave and other benefits, the

applicant has approached this Tribunal seeking the following relief(s) :-

A. Call for records of the case;

B. Quash and set aside the order dated 02.02.2024 passed by the Respondents;

C. Pass an order directing the Respondents to grant study leave to the Applicant for the period from 20.08.2015 till 18.08.2017 and grant all the

consequential benefits and reliefs;

D. Award cost of the proceedings; and

E. Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice in favour of the Applicant.

2. Upon her selection by the DSSSB, the applicant was appointed on 10.02.2009 as Nursing Officer with the Guru Teg Bahadur Hospital in Delhi.

3. The applicant submitted an application on 08.05.2015 seeking grant of NOC for sitting in the entrance examination for pursuing MSc. (Nursing) for

the academic year 2015-2016.

4. The applicant thereafter submitted a reminder representation on 06.07.2015, however, there was no response. Hence, the applicant decided to sit

for the entrance examination. The applicant being meritorious was declared successful in the entrance examination on 28.07.2015. She again

approached the respondents vide her application of 06.08.2015, along with documents, for grant of study leave for admission in the MSc. (Nursing)

course for the academic year 2015-2016. Since there was no response to the applications and the course commences from 20.08.2015, the applicant

sought permission to proceed on Earned Leave. She was granted 20 days EL, which was extended for 10 days i.e. until 20.09.2015. Applicant as

such proceeded to take admission in the course and continued to pursue higher studies.

5. The applicant continued to represent the respondents, however, no order was passed by the respondents. She made a subsequent representation on

19.08.2016. On 19.09.2016, the applicant received a memorandum for being absent from her duties. She submitted her reply to the said memorandum

on 26.09.2016.

6. On 06.09.2016, the respondents passed an order directing the stoppage of the salary to the applicant. The applicant continued to study and she

completed the course of M.Sc. (Nursing). She finally reported for duties on 19.08.2017. She was allowed to re-join and she continued to work

thereafter. On 23.01.2018, again the applicant preferred a representation seeking expeditious processing of the pending application for grant of NOC

and study leave.

7. The applicant again sent a representation on 03.08.2018 seeking approval of study leave. She then approached the respondents by filing an RTI

application seeking information and certain replies were also provided to her informing her of the pending decision in her case before the Competent

Authority. She has continued to make representations on 26.06.2019 and on 14.11.2019.

8. That Vide order dated 11.12.2019, the respondents directed that the study leave of the applicant will be treated as *Ex-Ordinary* on a private basis.

Aggrieved of the order of 11.12.2019 the applicant preferred an OA No.336/2020. Vide order dated 10.11.2022, the Tribunal was pleased to dispose

the OA with the following order:-

9. In this view of the matter, present OA has got merit on itself particularly when the applicant's counsel has shown that there it is a practice in the

department, where they are doing ex-post facto approval for grant of study leave after two years in due course, which takes time. In the present case,

particularly in view of the clause (iii) mentioned herein above there is no reason for rejection of the same because it is indirectly connected to the job

performed by her. Her career and department would be benefitted out of her higher qualification. This further study will widen the mind of the

applicant for performing duties. Thus, present OA stands allowed with direction to the respondents to pay her salary, and grant the extra ordinary

leave/study leave to her by placing her file before Chief Secretary, Govt. of NCTD, within a period of 30 days from the date of receipt of a copy of

this order, who may take decision within a period of 45 days and same shall be communicated to the applicant. There shall be no order as to costs.

9. Upon non-compliance, the applicant preferred the Contempt Petition No.342/2023.

10. The respondents filed a Writ Petition No.10326/2023, challenging the order passed by the Tribunal. Honâ€™ble High Court while disposing of the

Writ Petition preferred by the respondents was pleased to issue the following directions on 07.08.2023:-

“6. Noting the submissions made by the counsel of the parties we agree with the submission made by Mr. N.K. Singh that the directions given by

the Tribunal are as good as allowing the O.A. It should not have averted on the merit of grant of study leave to the respondent. In other words, it

should have left it to the Chief Secretary to decide the issue of study leaves. To that extent, we set aside the order of the Tribunal, but the direction of

the Tribunal for placing the file before the Chief Secretary for a decision is not disturbed.

7. The chief secretary shall decide the issue without being influenced by any observation made by the tribunal, on merit. In other words, he shall take

an independent decision, as per rules and regulations on the entitlement of the respondent for grant of study leave within two months from today.

8. We also like to add that the chief secretary shall issue necessary instructions to all the departments regulating the consideration of the application

for grant of study leave, well in advance i.e. before the Government servants proceed on leave.

9. Suffice to state, if the respondent is aggrieved by any order to be passed, liberty is with the respondent to seek such remedy as available in law. In

view of our above directions, the writ petition stands disposed of. Pending application also stands disposed of.

11. It was pursuant to the directions of the Honâ€™ble High Court that the impugned order of 02.02.2024, was issued, whereby the case of the applicant

has been rejected and certain decisions have been taken by the respondents having a far-reaching effect on the applicant.

This order dated 02.02.2024 is the subject matter of challenge in the present OA.

12. The counsel for the applicant argued that the Honâ€™ble High Court while disposing of the Writ Petition, had granted liberty to the applicant to seek

remedy if she is aggrieved by the decision of the respondents. He submits that the present OA is the remedy being sought by the applicant, following

the Honâ€™ble High Courtâ€™s order. It was argued that respondents, have failed to consider the case of the applicant afresh, and have merely relied on

the averments and stand of the respondents before the Tribunal and the Honâ€™ble High Court. As such the impugned order is nothing but a reiteration

of the respondents stand in the earlier round of litigation which has been rejected by the Tribunal and the Honâ€™ble High Court.

13. Further the impugned order is also vitiated due to non-application of mind. Applicant contended that the impugned order is nothing but a malafide

exercise. He submitted that during contempt proceedings personal presence of the Chief Secretary was called for by the Tribunal to ensure

compliance. Contempt being a proceedings between the court and the alleged contemnor. However, the respondents blame the applicant for the same

therefore the Chief Secretary has issued the impugned order purely out of vendetta. The contempt proceedings peeved the respondents so much so

that they have issued the impugned order in total disregard to the import and spirit of the Tribunal and the Honâ€™ble High Courtâ€™s order.

14. It was further argued that respondents have failed to consider the case of the applicant vis-Ã -vis other similarly placed employees, who have

been granted benefits of study leave on an ex-post facto basis. It is alleged that the act of the respondents in issuing the impugned order/rejecting the

case of the applicant for grant of study leave is tantamount to pick and choose, depriving the applicant of her lawful rights, and is against all principles

of natural justice.

15. The impugned order also amounts to double jeopardy. The respondents while rejecting the request of the applicant for grant of study leave have

treated the period from 02.10.2015 to 18.08.2017 as dies-non and on the other hand, the respondents/Chief Secretary has also directed initiation of

disciplinary proceedings against the applicant under Rule 14 of the CCS (CCA) Rules for taking admission in the first year MSc. (Nursing) course

without obtaining approval from the competent authority and for unauthorized absence during the period 02.10.2015 to 18.08.2017. Counsel submitted

that initiating disciplinary proceedings for the same period by treating the same as unauthorized absence and also treating the same as dies non,

amounts to double jeopardy. Moreover the Chief Secretary is not the Disciplinary Authority. He is superior to the Disciplinary Authority as such the

applicant does not expect a free and fair, disciplinary proceeding. Hence the OA.

16. On issuance of notice, respondents have filed their counter affidavit and are contesting the OA.

17. Counsel appearing on behalf of the respondents submitted that as per Rules, prior permission from the competent authority, before joining the

educational institutions or courses of the studies by any employee is a must. The application of study leave is required to be submitted in advance and

proper approval is to be taken. Government servants are also required to execute a bond before getting approval from the competent authority for

study leave. It is stated that grant of study leave is not a matter of right and the employer before granting study leave has to balance various aspects

including the working requirement of the employer office not being affected by the grant of such leave.

18. Counsel for the respondents admitted that applicant vide application dated 08.05.2015, as well as reminder dated 06.07.2015, applied for a No

Objection Certificate to sit in an M.Sc. Nursing Examination for the year 2015-2016. However, she did not disclose from where she wanted to

pursue the M.Sc. Nursing course nor did she attach any supporting documents. Thereafter, the applicant appeared in M.Sc. (Nursing) Entrance Exam

without obtaining NOC from the department and joined M.Sc. Nursing course from Teerthankar Mahaveer University without obtaining the approval

of the Competent Authority.

19. Further, as per EL application dated 20.07.2015, the applicant at Sr. No.8 has stated "Personal Work at home" which later on was struck out and it

was written as "Higher education", which is self-contradictory. Moreover, applicant was declared successful in the entrance examination only on

28.07.2015 i.e. almost a week after submission of EL application. Therefore, at the time of making such EL application on 20.07.2015, there was no

prima facie scenario of applying for "Higher Education", thus tampering with the said EL application by the applicant cannot be ruled out.

20. Respondents have specifically denied that the applicant was ever informed that her file is in progress, and that ex-post facto approval is granted by

the Hon'ble Lt. Governor and hence considerable time is taken. The file was not pending for ex-post facto approval on account of study leave on any

occasion.

21. Contention of the respondents is that the applicant's request for study leave is nothing but an intimation to the respondents by the applicant of her

intention to pursue higher studies. The intimation is not to be construed as an approval. Approval needs to be taken prior in time and when the approval

is given, only then one can pursue the course and not by just giving an intimation.

22. The Applicant appeared in M.Sc. (Nursing) entrance exam without obtaining NOC from the department and joined M.Sc. (Nursing) course from

Teerthankar Mahaveer University without obtaining prior approval of the Competent Authority. The application for EL was for a different purpose,

than study leave. As such the applicant was on an unauthorised absence from the department. That vide Memorandum dated 19.09.2016, the

applicant was directed to explain the reason for her unauthorized absence from duty, since serving in essential services i.e. Public health, Ms. Sunita is

duty bound to maintain utmost sincerity and discipline in her conduct. Further, being on unauthorised absence from department, vide order dated

06.09.2016, the Salary of Ms. Sunita was stopped. However, vide order dated 27.11.2017, the salary of Ms. Sunita has been released w.e.f.

19.08.2017 i.e. from the date of resuming her duty. Her subsequent admissions in MBA (HR) as well as M.Sc. (Nursing) course in PIGMER,

Chandigarh is without approval by the Department. No sanction has been taken for that too.

23. In defence of the impugned order it was stated that the same has been issued in compliance with the directions of Hon'ble High Court of Delhi, the

Chief Secretary has taken an independent decision as per rules and regulations for grant of study leave and has rejected the request for study leave.

Further period of her unauthorized absence w.e.f. 02.10.2015 to 18.08.2017 has been directed to be treated as 'Dies Non'. It is pertinent to mention

that there is no provision in CCS (Leave) Rules, 1972 for ex-post facto approval and the alleged practice is not applicable when there was no prior

intimation/ approval for taking examination/study leave.

24. We have considered the rival contentions of both parties.

25. It is not disputed that the applicant did apply for NOC for sitting in the competitive examination for admission in the MSc (Nursing) course and

again sent the application for proceeding on EL. None of her applications were answered by the respondents, rather there was continued silence. In

such situation, the applicant decided to proceed with the higher study. It is also a fact that in other cases, the respondents have granted ex-post facto

sanctions to such similarly placed employees who proceeded on study leave or/EL to pursue higher education. Thus giving an impression that ex-post

facto approvals are valid and permissible. This fact has already been judicially noticed by the Tribunal in the first OA No.336/2020, filed by the

applicant. It is correct that as per the Hon'ble High Court's direction respondents were to consider her request. Unfortunately, the same has been not

only rejected, but the respondents have come down heavily on the applicant by passing the following order:-

“And Whereas, considering the fact that she was allowed EOL on private affairs by Medical Director, GTB Hospital without any authority,

and after careful examination of the facts of the case, rule position and extant guidelines, the undersigned is of the view that:-

(i) the request of Ms. Sunita, Nursing Officer for grant of study leave be rejected, and the period of her unauthorized absence w.e.f.02.10.2015 to

18.08.2017 be treated as “Dies Non”: and

(ii) major penalty disciplinary proceedings be initiated against Ms. Sunita in terms of Rule 14 of CCS (CCA) Rules, 1965 for:

a. taking admission in 1st year M.Sc. (Nursing) course in PGIMER, Chandigarh as informed by her vide her reply dated 26.09.2016 (received on

01.10.2016) without obtaining approval of the Competent Authority;

b. taking admission in MBA (HR) as intimated by her vide letter dated 13.04.2015, without obtaining approval of the Competent Authority;

c. unauthorized absence during the period 02.10.2015 to 18.08.2017;

d. tempering in the EL application dated 20.07.2015.

Now, therefore, I order accordingly.

26. The impugned order details the factual background of the case however the same is silent and contradictory on few important aspects. On one

hand respondents have kept the applications (sent prior in time by applicant), pending for undue long period, and there is no reason advanced as why

the applications were not decided one way or the other. Ex-post fact approvals have been the norm in the department is also admitted then how

respondents are holding applicant guilty for proceeding on study leave has not been clarified. Further, as per directions of the Hon'ble High Court, the

Chief Secretary, was to decide the case in its entirety, has arrived at a decision treating the unauthorized period i.e 02.10.2015 to 18.08.2017 as

unauthorized absence. This surely would

amount to double jeopardy to the applicant. No explanation has been provided by the respondents as to why the applications for NOC and EL were

kept pending. If the employee is bound by the rules to seek prior approval surely respondents are also bound to ensure early and proper disposal of the

applications by the govt servant, to ensure clarity and to remove doubts. Respondents are also bound to explain the difference between the case of the

applicant and others who have been treated differently.

27. The factual submissions/allegations in regard to the working of the Health Department in dealing with applications to proceed for study leave are

serious and the authorities can ill afford to turn Nelson's eye to those allegations. It is high time that the respondents take an inward look and not make

a scapegoat of the applicant alone.

28. Given the above, action of the respondents cannot be sustained, the Original Application is however partly allowed with the following directions:-

(a) The order dated 02.02.2024 is quashed and set aside to the extent that the period of alleged unauthorized absence w.e.f.02.10.2015 to 18.08.2017

is treated as "Dies Non" is illegal and therefore set aside.

(b) The major penalty proceedings, directed by the respondents shall however continue with a rider, i.e. the fact that respondents did not act on the

request of the applicant for NOC and EL in time, either accepting or rejecting the same shall be treated in favour of the applicant by the Disciplinary

Authority. Needless to say applicant will be at liberty to take all the defence/grounds as raised by her, before the disciplinary authority, who shall

decide the same as per law.

29. The Original Application is thus partly allowed in the above terms. Any pending MA's also stand disposed accordingly.