

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 467 of 2023.

BIMAL PAL -VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

03
17.01.2024

For the Applicant : None.

For the State Respondents : Mr. S.N. Ray,
Learned Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt. II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsel for the contesting parties, the case is taken up for consideration sitting singly.

The applicant has prayed for setting aside the impugned order dated 01.02.2023 passed by the Director of Technical Education and direct the respondents to sanction Extra Ordinary Leave for 207 days from 06.01.2003 to 31.07.2003 and 341 days from 28.01.2004 to 02.01.2005. The impugned order was passed rejecting his application of leave on the ground that no specific provision exists in the West Bengal Service Rules.

The applicant joined Kalyani Govt. Engineering College on 06.09.1996 as a Laboratory Assistant on contractual basis for one year, which was later confirmed in regular establishment by an order dated 07.9.1999. Later he was re-designated as Technical Assistant. Desiring to receive a degree in M. Tech from IEST Shibpur, he sought leave for two years including EOL without pay. However, despite no such leave being granted by the respondent authority, he joined the course and continued his studies by remaining absent from his duty from 06.01.2003 to 31.7.2003 and again from 28.01.2004 to 02.01.2005. During this period, the applicant was served several show cause notices. In the records, one such notice to him dated 15.06.2004 directed him to join duty within seven days, otherwise, the Director of

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Technical Education will be recommended for termination of his service. Eventually, the applicant joined the college on 03.01.2005. After joining his duty, he started praying for regularisation of his period of absence from duty during two spells totalling 548 days. Though there was no permission accorded to pursue his M. Tech degree and his absent period were not regularised, however, the authorities granted him two increments for having completed his M. Tech degree. In terms of direction of this Tribunal in OA26 of 2022 directing the respondent authorities to consider his application for regularisation of leave, the respondent – The Director of Technical Education passed the reasoned order.

It appears from the contents of the reasoned order that though the applicant had prayed for leave on 24.02.2002 to pursue his M. Tech degree from August, 2002, but no permission was granted. Despite the respondent authority not granting him permission, the applicant continued his studies for M. Tech degree and remained absent from duty. The applicant remaining absent in two spells – from 06.01.2003 to 31.7.2003 (207 days) and from 28.01.2004 to 02.01.2005 (341 days) totalling 548 days of absent from his duty.

The respondent authority has also observed that in the rules governing such leave – West Bengal Service Rule, Part-I rule, there is no provision to regularise such period of absence. The specific rule 175(2)(a) provides for such EOL on any occasion for not more than three months. The reasoned order observed that though Rule 175(2)(b)(iii) provides for EOL for 24 months as study leave in public interest, but this provision was not applicable for this applicant. Further, since no explicit formal approval was granted to the applicant to remain absent to pursue his M.Tech course, regularisation of this long period of absence was not permissible under the rules.

During the submission, Mr. B. Pal appearing in person admitted that though he had applied for permission for leave to pursue M. Tech course, but no such permission was granted by the competent authority. When asked by the Tribunal, can a Government employee proceed on leave without being given approval, Mr. Pal submitted that though one ought not, but there has been instances where such

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approval was accorded at a later stage. Believing that his prayer for leave will be accorded later on, he proceeded with his studies and remained absent from duty.

Mr. S.N. Ray, learned counsel appearing for the State respondents reiterates the specific service rule and points out that this applicant has completely disregarded the rules and without being accorded formal permission, he proceeded on leave to pursue the M. Tech course. Mr. Ray also submits that despite several show cause notices issued to him directing him to join his duty, Mr. Pal refused to do so .

From the submission and the records in this application, a clear picture emerges giving the impression that the applicant being a Government employee and fully aware of the rules was bent on leaving his duty and pursuing his passion – the M. Tech course. There is no doubt that the applicant was aware that without explicit and formal letter of approval, he could not and should not have joined the M. Tech course. Holding the post of Lab Assistant/ Technical Assistant definitely had some responsibility. It is the impression of the Tribunal that the applicant placed his position the M. Tech course as his primary goal and discharging his duty as a Government employee as secondary. It is also a little bit astonishing that being a Government employee leaving his duties behind despite direction of the employer to join his duty, he not only disregarded these notices, but continued to pursue his studies. The respondent authority was right in considering his application for regularisation of leave and not granting it.

It is also note worthy that despite the applicant being a disobedient employee, the respondent authority allowed him his pay increments and promotions. From the records available it is seen by G.O. No.717-Edn(T) dated 24th October, 2008 he was elevated to the post of Assistant Professor. In a letter addressed to the Director of Technical Education he signs as Assistant Professor, Department of CSE.

The Tribunal is also concerned that the said leave period is not a matter of few days, but it totals 548 days! As a Government employee, it is surprising that he not only disregarded the rule and without formal approval proceeded to pursue his M. Tech degree, but despite show cause notices, he was stubborn and did not bother to

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join his duty. A Government employee disregarding the formal approval and disobeying the directions in the show cause and absenting himself for a long period of 548 days is unparallel and a classic case of insubordination.

With the above observation, the Tribunal finds that the reasoned order passed by the respondent authority rejecting his prayer for regularisation of 548 days of absent was on merit and in conformity with the rules.

Accordingly, this application is disposed of without passing any order.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A).

Skg.