

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 25th August, 2017**

+ **W.P.(C) 657/2017**

UNION OF INDIA & ANR Petitioners
Through: Mr.Sanjeev Narula with
Mr.Ajay Sondhi & Ms.Anumita
Chandra, Advocates.

versus

AJAY KUMAR Respondent
Through: Mr.Bani Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioner-Union of India assails the order dated 16.09.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3814/2013 whereby the Tribunal has allowed the original application preferred by the respondent and a direction has been issued to the petitioner herein to sanction the financial assistance to the respondent under the 'Partial Funding of Foreign Study Scheme' within a period of three months from the date of receipt of certified copy of the order.
2. The respondent belongs to the 1999 batch of Indian Revenue Service (IRS). He claimed that on 07.07.2009, he secured offer of

admission from University of Leicester (UK) to study LLB (Senior Status) Course. The duration of the said course was from September, 2009 to September, 2011 (two years). The Respondent wanted to avail the financial assistance under the Scheme of 'Partial Funding of Foreign Study', under the Plan Scheme of DFFT, framed by the Department of Personnel & Training (DoPT) vide OM dated 17.03.2008. The said Scheme *inter alia* provided:-

“III. Institutes for which the eligible applicants would be supported: (i) Financial support may be extended to officers, who secure admission for a study programme in the foreign universities/ institutions, which figure in the list of top 200 universities/ institutions as per the THES-QS ranking, published each year. In addition, each cadre controlling authority may also recommend not more than 5 specialized or professional courses in specified foreign universities/institutions that they feel would be of particular relevance and importance for officers of that service.”(emphasis supplied)

3. The respondent stated that since there was not much time to avail of the study leave and apply for financial assistance, he requested the foreign University for extension of the offer of admission, which was agreed to by the University and the admission was deferred till September, 2010. The respondent made an online application on 12.07.2009 for availing of the 'Partial Funding of Foreign Study' Scheme. He also sent a hard copy of his application to the Cadre Controlling Authority, namely, the Central Board of

Direct Taxes (CBDT), Department of Revenue. The respondent claimed that his application remained pending with CBDT for almost two years. On 17.10.2011, the CBDT forwarded the same to the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training (DoP&T). The petitioner granted study leave to the respondent for 668 days between 03.10.2011 to 31.07.2013. Consequently, the respondent proceeded to the University of Leicester to pursue the aforesaid course between 21.09.2011 to 29.06.2013. Subsequently, on 25.10.2012, the respondent was informed that his application for 'Partial Funding of Foreign Study' had not been recommended by the Central Establishment Board (CEB). The reason given in this communication was that the University of Leicester does not fall in the top 100 university criteria as per the rankings, and is also not one of the 5 additional programmes/universities recommended by the petitioner-Cadre Controlling Authority. Consequently, the respondent approached the Tribunal with the aforesaid application.

4. Before the Tribunal, the petitioner took the stand that the scheme for grant of partial assistance was amended on 06.05.2011. Under the amended scheme, it was essential for officers seeking financial support to secure admission for a study programme in the foreign university/institutions, which figures in the list of top 100 universities/institutions as per the (Times High Education World University) Ranking published each year. The Tribunal allowed the original application, on the premise that the crucial date of eligibility

is the date of filing the application and the eligibility should be determined on the date of the application. Consequently, the Tribunal held that the respondent's eligibility should be determined in terms of circular dated 17.03.2008, by which DoP&T circulated the scheme for 'Partial Funding of Foreign Study' under which the respondent applied, and not by the subsequent scheme contained in the DoP& T circular dated 06.05.2011. The Tribunal also held that since the respondent's study leave had been sanctioned between 01.10.2011 to 31.07.2013, "*the applicant would have come to believe that his application for partial funding assistance under the scheme of respondent No.1 is being considered favourably*".

5. The submission of Mr.Narula, learned counsel of Union of India is that the reliance placed by the Tribunal on ***Diptimayee Parida v. State of Orissa & Others***, 2009 (2) SLJ 212 SC and ***Alka Ojha v. Rajasthan Public Service Commission & Another***, 2011 (3) SLJ 228 SC, was completely mislead inasmuch, as, those were cases relating to determination of eligibility of the candidates who were applying for public employment. The Supreme Court in both these decisions held that the crucial date of eligibility would be the last date of making of the application for public employment. Mr.Narula submits that the scheme for grant of partial funding of foreign education does not vest any right in the applicant to secure such funding. The scheme circulated on 17.03.2008 provides that "*Financial support may be extended to officers.....*". The use of the expression "may" shows that there was no definite promise or representation made in the said

circular that if the applicant Government servant meets their eligibility norms stipulated in the said Scheme, he shall be granted partial funding assistance. Mr.Narula submits that a similar issue has been considered by the Supreme Court in *Howrah Municipal Corpn. & Others vs. Ganges Rope Co. Ltd. & Others*, (2004) 1 SCC 663 and *State Of Kerala & Anr vs M/S. B. Six Holiday Resorts (P). Ltd. & etc.*, (2010) 5 SCC 186. In these cases, the Supreme Court examined as to which of the two building bye-laws would apply in respect of an application which is made for raising construction during the currency of the earlier bye-laws, but, by the time the application was considered, the amended bye-laws stood enforced. The Supreme Court held that on the date of making of the application, there were no vested right in the applicant to obtain sanction of building plans under the bye-laws, as they existed on the date of the application. The Supreme Court held that the amended bye-laws would govern the application, even if it were made when the earlier bye-laws were in force. He particularly relies on Para 37 of *Howrah Municipal Corpn.(supra)* which reads as follows:-

“37. The argument advanced on the basis of so-called creation of **vested right** for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived. The word 'vest' is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With

the long usage the said word 'vest' has also acquired a meaning as "an absolute or indefeasible right" [See K.J. Aiyer's '**Judicial Dictionary**' (**A complete Law Lexicon**), **Thirteenth Edition**]. The context in which respondent - company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to 'ownership or possession of any property' for which the expression 'vest' is generally used. What we can understand from the claim of a 'vested right' set up by the respondent-company is that on the basis of Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the court for its consideration, it had a 'legitimate' or 'settled expectation' to obtain the sanction. In our considered opinion, such 'settled expectation', if any, did not create any vested right to obtain sanction. True it is that the respondent-company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such 'settled expectation' has been rendered impossible of fulfilment due to change in law. The claim based on the alleged 'vested right' or 'settled expectation' cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the

Corporation against whom such 'vested right' or 'settled expectation' is being sought to be enforced. The 'vested right' or 'settled expectation' has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this such a 'settled, expectation' or so-called 'vested right' cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon.”

6. Similarly, he relied on Para 22 to 25 of the **State of Kerala** (*supra*), which read as follows:-

“22. Where the Rule require grant of a licence subject to fulfillment of certain eligibility criteria either to safeguard public interest or to maintain efficiency in administration, it follows that the application for licence would require consideration and examination as to whether the eligibility conditions have been fulfilled or whether grant of further licences is in public interest. Where the applicant for licence does not have a vested interest for grant of licence and where grant of licence depends on various factors or eligibility criteria and public interest, the consideration should be with reference to the law applicable on the date when the authority considers applications for grant of licences and not with reference to the date of application.

23. The applicant submitted that it had originally filed an application on 11.12.2000 and in pursuance of the decision of the High Court on 14.12.2001, it submitted an application on 19.12.2001 and that application was considered and disposed of on 27.12.2001. The applicant contended that even if the principle laid down in Kuldeep Singh was applied, the application having been considered and disposed of by the concerned authority on 27.12.2001, the law in force on that day ought to have been applied. The applicant further contended that the amendment to the rules which came into effect only on 20. 2.2002, was not applicable on 27.12.2001 and therefore the rejection on 27.12.2001 was bad and consequently the impugned order of the High Court may be construed as requiring the authority to decide the matter as on 27.12.2001. We find that the said contention does not have any merit.

24. It is true that the application was given on 19.12.2001. It is true that the application was considered and rejected on 27.12.2001 on a ground which may not be sound. It is also true that the amendment to the rules which was introduced by notification dated 20.2.2002 was not in force or effect on 27.12.2001. But the said order dated 27.12.2001 was neither challenged nor set aside by the High Court. The applicant chose to file a contempt application alleging that the excise authorities had disobeyed the order dated 14.12.2001.

25. In the contempt case, the High Court made an order on 12.2.2002 that the new Excise Commissioner should pass an order on the application. Therefore the only question is whether the order passed by the Excise Commissioner on 20.2.2002 was in accordance with the Rules as they stood on 20. 2.2002. Under the amended rules, no new FL-3 licence could be issued. Consequently, the rejection of the application by order dated 20.2.2002 was in accordance with the rules and cannot be faulted.”

7. Mr.Narula further submits that the respondent initially made his application in the year 2009. The communication was issued on 13.08.2009, but Central Board of Direct Taxes, Ministry of Finance required the respondent to send this formal application for study leave through proper channel. Accordingly, the respondent had submitted his application for grant of study leave only on 11.05.2011 i.e. nearly two years later.

8. Mr.Narula has also referred to the respondent’s communication of 30.08.2012, wherein he referred to his application moved in the first quarter of 2011. He stated that he has not received any intimation regarding the fate of his application. He requested for the Government’s decision on this application, along with grounds for the decision. Mr.Narula submits that the respondent could not have remained under the impression that his application was decided in his favour. He was well aware that his application for partial funding

made on 11.05.2011 was still pending consideration, wherein decision had not been taken. He submits that the respondent went on study leave to the foreign university even without obtaining the sanction for partial funding. He did so at his own peril, and the Tribunal was not justified in concluding that merely because the study leave had been sanctioned, the respondent also had reasonable grounds for believing that his partial funding application would also be accepted.

9. On the other hand, the submission of learned counsel for the respondent is that the petitioner took over two years to act on the respondent's application. The application had been initially made in the year 2009. That application was not acted upon for two years and only thereafter the study leave was sanctioned as aforesaid. Learned counsel submits that had the study leave application been processed expeditiously, he would have also been granted partial funding assistance during the currency of the Scheme of 2008, and before the subsequent scheme of 06.05.2011 came into force. He submits that so far as the respondent is concerned, he had acted strictly in terms of the 2008 Scheme in making his application, and he had an expectation that his application would be considered and disposed of under the said scheme expeditiously.

10. Having heard learned counsel for the parties and perused the impugned order and the decisions relied upon, we are of the view that the impugned order cannot be sustained.

11. The undisputed facts as emerge from the record and the submissions of the parties, are that the Respondent had upon

procurement of admission in the University of Leicester (UK) to study LLB (Senior Status) Course, submitted an application seeking ‘partial funding of foreign study’ under the DoPT’s OM dated 17.03.2008. The OM while laying down the salient features of the Government of India’s Scheme for partial funding of foreign study, clearly provided that upon fulfilling of the eligibility criteria therein, financial support **may be extended** to officers (emphasis supplied). The relevant para III (i) of the OM reads as under:-

“III Institutes for which the eligible applicants would be supported:

- (i) **Financial support may be extended to officers**, who secure admission for a study programme in the foreign universities/institutions, which figure in the list of top 200 universities/institutions as per the THES-OS ranking, published each year. In addition, each cadre controlling authority may also recommend not more than 5 specialized or professional courses in specified foreign universities/institutions that they feel would be of particular relevance and importance for officers of that service.”(emphasis supplied)

12. This provision of the Scheme in itself makes it clear that no employee has a right to insist that merely because he fulfils the eligibility criteria, he must be granted financial support for the course which he proposes to undertake. It is for the Government to decide upon consideration of all relevant factors, as to whether financial support may, or may not be granted to any employee. No doubt, the said decision had to be based on consideration of all relevant criteria and cannot be taken at the *ipse dixit* of the Government.

13. The issue in the present case, however, does not rest here as the facts show that much before the Respondent's application for consideration under the Scheme was taken up, a modified Scheme dated 06.05.2011 had come into force. The Respondent, admittedly, did not fulfil the eligibility criteria laid down in the OM dated 06.05.2011 as the University of Leicester (UK) - where he had secured admission, neither figured in the list of top 100 universities as per THE (Times Higher Education World University) ranking, nor his course was recommended as one of the five additional programmes/Universities recommended by his Cadre Controlling Authority. The relevant para III(i) and (ii) of the OM dated 06.05.2011 reads as under:-

“III Institutes for which the eligible applicants would be supported:

- (i) Financial support may be extended to officers, who secure admission for a study programme in the foreign universities/institutions, **which figure in the list of top 100 universities/institutions as per the THE (Times Higher Education World University) Ranking**, published each year.
- (ii) In addition, each Cadre Controlling Authority may also recommend not more than 5 specialized or professional courses in specified foreign universities/institutions that they feel would be of particular relevance and importance for officers of that service.”(emphasis supplied)

14. It is also an undisputed fact that when vide order dated 12.09.2011 the Respondent was granted study leave from 03.10.2011 to 31.07.2013, there was no assurance of any kind given to him that

his request for financial support under the erstwhile 'Partial Funding Foreign Study Scheme, had been accepted, or would be accepted. It clearly emerges that despite the Respondent, having no reason to believe, that he would most certainly get financial support, he chose to proceed abroad for undertaking the LLB (Senior Status) Course, in the University of Leicester, immediately upon sanction of his study leave. Obviously, the Respondent did so with open eyes, and while remaining fully conscious that in case his application is rejected, he would have to foot the bill on his own.

15. The next undisputed fact which emerges from the record, is that when the Respondent's application for grant of financial support was considered by the Petitioner, the modified Scheme introduced vide OM dated 06.05.2011 was already enforced, and the Respondent's case was not covered by the said Scheme. Therefore, we find force in the arguments raised by Mr.Narula, that on the crucial date when the Respondent's application was considered, his case was admittedly not covered by the then prevalent Scheme. The Petitioner was, therefore, fully justified in not granting financial support to the Respondent, as by the said date, the guidelines which had come into force clearly stated that to be eligible for financial support, the Officer had to secure admission for a study programme in foreign university/institution which figures in the list of top 100 universities. That being the position, the Respondent cannot claim that his case ought to have been considered in terms of the earlier policy dated 17.03.2008, merely because he had submitted an application before 06.05.2011 i.e. before

the new policy came into force.

16. We also find from the record that the Respondent, much after having already left for undertaking the course in October, 2011, had, vide his letter dated 30.08.2012, asked for information regarding the status of his application for partial funding of his course made in 2011. This letter clearly shows that as late as in August 2012, there was nothing to assure the Respondent that his case for financial support/partial funding had been considered, or was being considered favourably. We are of the view that the Tribunal has clearly erred in coming to a conclusion that upon sanction of a study leave, the Respondent had reason to believe that his application for Partial Funding assistance was being considered favourably. We are unable to find any basis for this presumption by the Tribunal.

17. The Tribunal has relied upon the judgment of the Supreme Court in the case of **Diptimayee Parida**(*supra*) and **Alka Ojha** (*supra*) to hold that since the Respondent had submitted his application for Partial Funding Assistance on 30.07.2009, his case ought to be considered as per the OM dated 17.03.2008, which was in vogue at the time of submission of his application. In our view, the reliance by the Tribunal on the aforesaid judgments of the Supreme Court is wholly misplaced, and the tribunal has failed to see the distinction between the cases relating to date of eligibility for public employment, and cases relating to consideration of applications for grant of some benefit. We agree that there was no vested right in the Respondent to get partial funding for studying abroad. Thus, the

crucial date was not when the application for grant of partial funding was submitted, but the date on which it was considered. We are fortified in our view by the judgment of the Supreme Court in the case of *Howrah Municipal Corpn. (supra)* and *State Of Kerala (supra)* on which reliance has been placed by the learned counsel for the Petitioner-the relevant paras whereof have already been extracted herein above. For this reason also, we find that the judgment of the Tribunal is liable to be set aside, as the Tribunal has considered the date of application as a material date, whereas the material date, in fact, would be the date on which the Respondent's application for financial assistance was being considered and which, admittedly, was after 06.05.2011. In our view, the Petitioner was fully justified in rejecting the case of the Respondent, as he was admittedly not fulfilling the eligibility criteria prescribed in the OM dated 06.05.2011.

18. For the aforesaid reasons, the order of the Tribunal is set aside, the writ petition is allowed with no order as to cost.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 25, 2017

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