

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

% Decided on: February 20, 2017

+ W.P.(C) 5952/2016

CPL.B.K.Verma Petitioner
Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Ms. Monika Arora, AGSC with
Mr. Kushal Kumar and Mr. Harsh Ahuja,
Advocates.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

INDIRA BANERJEE, J

1. The petitioner, a non-commissioned officer in the Indian Air Force of the rank of Corporal, has filed this writ petition, interalia challenging an order dated 05/07/2016, whereby the application of the petitioner for study leave to enable him to undergo the M TECH course at IIT Dhanbad has been rejected.
2. The petitioner has been denied leave on the purported ground that there is no provision for grant of study leave to 'airmen' in

the Defence Services Regulations (India) Leave Rules, which deals with all types of leave to defence personnel.

3. The Defence Services Regulations (India) Leave Rules provide for the following kinds of leave:-

- (I) Casual Leave under Rule 38

- (2) Annual Leave under Rule 39

- (3) Sick Leave under Rule 40

- (4) Compassionate Leave under Rule 42

4. The respondents contend that at present study leave is restricted to the serving officers, for enhancing their usefulness in their branch as air force officers.

5. The AA Headquarters Human Resource Policy Part 1/PO/MISC/15/2015 as circulated by a circular being Air HQ/98805/8/PO – 5 dated 23/12/2015 has introduced Study Leave for Air Force Officers, subject to fulfilment of the terms and conditions for grant of study leave as stipulated in the policy.

6. Paragraph 5 of the Policy, which stipulates the eligibility criteria for grant of study leave is set out herein below for convenience:-

“Eligibility Criteria Grant of study leave to officers of all branches in IAF, other than Medical and Dental branch, will be governed by the following eligibility conditions:-

- (a) Study leave may be granted to an officer, to enable him/her to undergo in India or abroad, a special non-academic course or study, certified by Air HQ, as enhancing his/her usefulness in his/her branch as an IAF Officer.
- (b) Study leave abroad would be admissible for non-academic courses which are not available in any University or Institute in India.
- (c) Study leave may be granted to officers for attaining higher levels of education, culminating in the award of PG or higher degree, from institutions recognised by University Grants Commission (Recognition of the course by any university under the UGC), All India Council for Technical Education (AICTE) or the Department of Electronics (DOEACC ‘A’ level), Government of India.
- (d) **QRs** The study leave will normally be granted to the officers of Indian Air Force who fulfil the following QRs:-

(i) **Type of Commission** Study leave would be granted to only Permanent Commission officers of the Indian Air Force. Study leave is not authorised for Short Service Commission officers.

(ii) **Length of Service** The officer should have rendered a minimum of 15 years of service.

(iii) **AR Grading** The officer should have an average AR grading of 6.5 or above in last five years.

(iv) **Residual Service** The officer should have minimum three years residual service on completion of study leave.

(v) **Type of Course** Study leave would not be granted for any correspondence course or part time course.

(vi) Study leave abroad would be admissible for those non-academic courses which are not available at any University or Institution in India.

(vii) The officer should be spareable by hi/her Branch.

(viii) The research Subject/Topic selected by the officer should have relevance to the IAF and the officer should be gainfully utilised in the IAF on completion of the course.”

7. Paragraph 6 Of the Policy provides that study leave would normally be granted for the following research subjects/topics, which have been recommended by the concerned branch specialist directorates air headquarters based on post course utilisation in the air force:-

- “(a) Aviation
- (b) Engineering and Technology
- (c) Administration
- (d) Finance and Accounting
- (e) Management and other allied subject
- (f) Defence Studies”

8. In such cases, the maximum period of study leave would ordinarily be 24 months. However, if justified, the period could be extended by a period of 4 months comprising 2 months annual leave of the year in which the study leave had commenced (if not already availed) and 2 months' furlough leave entitlements in a three-year cycle spanning the study leave period. The period of study leave including annual leave and furlough leave was not to exceed 28 months during the entire service of an officer.

9. There can be no doubt as argued by Ms. Arora that no leave can be claimed as a matter of right. The respondents have the right to refuse leave to any officer or employer.
10. In this case, however, leave has been declined on the sole ground that study leave can only be granted to permanent commissioned officers and not to airmen. Leave has not been declined on the ground of any administrative or operational exigencies.
11. The concept of equality before law means that among equals the law should be equal and should be equally administered and likes should be treated alike. Article 14 guarantees similarity of treatment. The guarantee of equal protection of law and equality before the law does not, of course, prohibit reasonable classification. Equality before law does not mean that things which are different shall be treated as though they are the same. However, the classification has to be reasonable.
12. While the principle of equality does not absolutely prevent the State from making differentiation between persons and things

and the State has the power to have a classification, this classification has to be on the basis of rational distinctions. The classification has to be founded on intelligible differentia, which distinguishes persons or things that are grouped from others, who are left out of the group and the differentia must have a nexus between the basis of classification and the object sought to be achieved by such classification.

13. If any classification is based on a rational basis and all persons falling in the same class are treated alike, there is no violation of Article 14. If there is equality and uniformity within each group, the law cannot be condemned as discriminatory, though due to some fortuitous circumstances arising out of a peculiar situation, some included in the class get an advantage over the others, so long as they are not singled out for special treatment.
14. When a provision is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by the provision and having ascertained the policy and object of the Act, the

Court has to apply the dual test of whether the classification is rational and based upon an intelligible differentia, which distinguishes persons or things that are grouped together from others and that are left out of the group, and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects.

15. It is very difficult to appreciate the rationale behind differentiation between officer and airmen in the matter of granting study leave. It is, in our view, preposterous to assume that only officers would have aspirations of improving their knowledge and educational qualifications, and not the airmen.
16. Equality before the law is fundamental to the concept of the rule of law. Equality and good conscience should be at the core of all the governmental functions. The executive cannot interfere with the rights and liabilities of any person, particularly his right to equal treatment.
17. It is true that unequals cannot be clubbed together. Article 14 does not forbid different treatment of unequals. However,

every classification would be decided against the rule of rationality.

18. In ***Praveen Singh Vs. State of Punjab*** reported in AIR 2001 SC 152, the Supreme Court held that the administrative or quasi administrative power ought to be left unfettered in adaptation of procedural aspect, but that does not mean and imply that the same would be made available to an employer at the cost of fairplay, good conscience and equity.
19. The academic records of the petitioner are outstanding. The petitioner has done his B.Tech Course from a reputed engineering institution. The petitioner was awarded a gold medal for his performance in the B. Tech Course.
20. The petitioner appeared for the Graduate Aptitude Test in Engineering (GATE) and secured admission in the M.Tech Course in I.I.T. Dhanbad. Many of the superior officers, under whom the petitioner was posted recommended that the petitioner be granted study leave to pursue the M. Tech Course at the I.I.T., Dhanbad.

21. The respondents should appreciate intellect and erudition, and encourage the talented and the meritorious by giving them adequate opportunity to improve their knowledge skills, and their educational qualifications and not deny them equality by refusing them leave to pursue higher studies only on the ground of their rank and status.
22. There may be restrictions and conditions imposed for grant of study leave. Study leave may be refused, if exigencies do not permit release of an airman on long leave. However, an airman cannot, in our view, be denied study leave by framing discriminatory leave rules which do not provide for study leave for airmen. Discriminatory leave rules, which purport to treat officers and airman differently for grant of study leave, without explaining the reason for differentiation offend Article 14 of the Constitution.
23. In *State of Bihar Vs. Upendra Narayan Singh* reported in (2009)5 SCC 65, the Supreme Court held as under:-

“67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner.”

24. It is true that policy decisions are not ordinarily interfered with under Article 226 of the Constitution. However a policy decision which is arbitrary, unreasonable, discriminatory and violative of Article 14 of the Constitution of India may be interfered with. Reference may be made to the judgments of the Supreme Court in *Brij Mohan Lal v. Union of India & Ors.*, reported in (2012) 6 SCC 502 and in *Natural Resources Allocation Re Special Reference* reported in (2012) 10 SCC 1.
25. There can be no doubt that Article 14 envisages equality amongst equals. Reasonable classification is permissible. However such reasonable classification is required to have a reasonable nexus with the object sought to be achieved by such classification.
26. We see no rational nexus in the differentiation between airmen and commissioned officers for the purpose of grant of study

leave. We see no reason why an airman should be discriminated against, if he chooses a course of study specified in the policy for officers and M.Tech is such a course of study.

27. The discrimination between Airmen and Officers for grant of study leave is in our view totally discriminatory and violative of Article 14 of the Constitution of India.

28. The impugned order is set aside. The respondents are directed to frame non-discriminatory leave rules and reconsider the application of the petitioner for study leave in the light of the observation made above.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

February 20, 2017/ n