

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11515 of 2021

1. The Director, National Institute of Locomotor Disabilities (Divyangjan), Department of Empowerment of PwDs (Divyangjan), Ministry of Social Justice and Empowerment, Government of India, B.T. Road, Bon- Hooghly, Kolkata - 700090.
2. The Officer in - Charge, composite Regional Centre for Skill Development, Rehabilitation and Empowerment of Persons with Disabilities (Divyangjan) (CRC), Sheikhpura (Old Dharamsala) Near IGIMS Nursing College, Patna-800014.

... .. Petitioner/s

Versus

1. Dev Nandan Kumar S/o - Sri Shiv Chandra Singh Resident of Mohalla - Hanuman Gadhi Ward No. 45, P.O. Badalpura, P.S. - Begusarai Mufassil, District- Begusarai.
2. The Union of India through Secretary, Government of India, Ministry of Social Justice and Empowerment, Government of India, Department of Empowerment of the Persons with Disabilities, Pandit Deendayal Antyodaya Bhawan, CGO Complex, New Delhi - 110003.

... .. Respondent/s

Appearance :

For the Petitioner/s : Dr. K. N. Singh, ASG
For the Respondent/s : Mr. Ramakant Yadav, Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 26-07-2022

Heard learned counsels for the parties.

2. The present writ petition has been preferred on behalf of the petitioners, National Institute of Locomotor Disabilities (Divyangjan), Department of Empowerment of PwDs (Divyangjan), Ministry of Social Justice and Empowerment, Government of India (*henceforth for short* 'the N.I.L.D') through



its Director challenging the order dated 28.01.2021 in O.A./05/0435/2020 passed by the Central Administrative Tribunal, Patna Bench, Patna (*henceforth for short* 'the Tribunal') by which it directed the petitioner herein to allow the applicant-respondent to join service subject to the necessary action/steps as warranted under the Rule/Law against the employee they intent to take regarding his conduct in the matter of study leave.

3. The matrix of facts giving rise to present petition is/are as follows:

4. The applicant-respondent, namely Dev Nandan Kumar preferred the aforesaid O.A./05/00435/2020 before 'the Tribunal' for a direction to allow him to work against his post with all consequential benefits in terms of his application dated 01.10.2020. The case put forward by the applicant-respondent is/ was that:

(i) he was appointed against the post of Rehabilitation Officer vide office order dated 05.04.2011 issued by the Director Composite Regional Center for persons with disabilities under Ministry of Social Justice and Empowerment, Government of India,



Indian Red Cross Building, Gandhi Maidan,
Patna;

(ii) In March 2017, he submitted application before the appropriate authority to grant permission for study leave to clear Entrance Examination and study Ph.D in Amity University, Lucknow Campus, Uttar Pradesh which was allowed on 20.12.2017;

(iii) he executed the necessary bond on 21.12.2017 whereafter he was relieved on 29.12.2017 for pursuing Ph.D course at Amity University Lucknow campus;

(iv) on 13.07.2018, an order was passed with a direction to the applicant-respondent to join his duty with immediate effect with further information that the previous order dated 20.12.2017 stands withdrawn;

(v) on 14.07.2018, the applicant-preferred appeal before the administration with a request to allow him to continue with the



earlier order dated 20.12.2017 so that he can complete his higher studies;

(vi) it is the case of the applicant-respondent that he did not receive any order pursuant to his representation dated 14.07.2017. However, on 29.08.2018, reminder letter was received by him with a direction to join his post immediately;

(vii) he preferred C.W.J.C. No.19447 of 2018 before the Patna High Court (later withdrawn);

(viii) meanwhile his Ph.D course was completed on 10.08.2020 whereafter he submitted his application before the Officer-in-charge, CRC, Patna, but could not pursue the same as he was detected Corona Positive whereafter he remained isolated;

(ix) on recovery, he submitted his joining on 01.10.2020 along with Medical Fitness Certificate dated 28.09.2020 issued by the Central Government Health Scheme, Lucknow (for short 'CGHS');



(x) In between, 'the Tribunal' had decided the jurisdiction over the department of the applicant-respondent in OA/ 050/ 00709/ 2018 (disposed of on 24.08.2018) and OA/050/00245/19 (disposed of on 04.06.2019).

(xi) Accordingly, the present O.A./05/0435/2020 was preferred before 'the Tribunal' with the aforesaid relief for allowing him to join the post.

5. The petitioners herein filed their written statement before 'the Tribunal' stating therein that:

(i) the applicant-respondent was appointed on temporary basis on 05.04.2011 which was renewed/extended from time-to-time. As such, CCS Rules, 1965 is/was not applicable to him;

(ii) although the study leave was sanctioned vide CRC/ PAT/ Off.Ord./ 41/10/ 544(4) dated 20.12.2017 but he was not entitled for it being appointed on temporary basis;



(iii) accordingly, an order was passed on 13.07.2018 recalling the earlier order with the further direction to immediately join the office, which he ignored.

6. 'The Tribunal' vide an order dated 28.01.2021 directed the petitioners to allow the applicant-respondent to join. The O.A. was accordingly disposed of.

7. Aggrieved, the respondent-petitioners preferred the present writ petition.

8. Dr. K.N. Singh, learned A.S.G. appearing for the writ petitioners submitted that as the applicant-respondent was in temporary service and not a regular employee, no study leave could have been sanctioned to him and authorities after realising the same, withdrew it with clear direction to the applicant-respondent to report to the duty.

9. It was further submitted by him that despite the letter issued to him followed by reminder, he defied the order for more than two years and tried to join the same according to his convenience which was rightly denied to him.

10. The above act of the applicant-respondent tantamounts to disobedience, dereliction of duty and violation of



his service norms. As such, he was rightly not allowed to join the duty.

11. However, he conceded that the applicant-respondent was neither removed nor any termination order was passed and further that rightly or wrongly, it was accepted on behalf of the petitioners herein before 'the Tribunal' that the applicant-respondent will be allowed to join service reserving their rights to take appropriate steps in accordance with law for his alleged misconduct.

12. It is important to quote the observations made by 'the Tribunal' in its order which read as follows:

"2. On 20.01.2021, when this matter was pressed for by the counsel for applicant, this Tribunal passed a comprehensive order and Para 3 of said order relates to inquiry made from counsel for respondents and learned counsel sought adjournment to answer the query, for sake of brevity said Para 3 of proceeding order dated 20.01.2021 is reproduced herein below:

"3. It is inquired from learned counsel for the respondents whether the applicant has been removed or terminated from service and if he has not been removed or terminated, what is



the legal impediment for non accepting of joining report of the applicant and learned counsel for the respondents submits that he may be given some time so that he may ascertain true situation in the matter and make submission.

3. Today learned counsel for respondents gave written reply about query raised on 20.01.2021 stating that applicant has not been removed or terminated from the service. Reply filed is also re-produced herein below : -

"Reply to the order dated 20.01.2021, in the matter of "Reply OA/50/435/2020 before the CAT Patna Bench.

Whether the applicant has been removed or terminated from service ?

Our submission: No, he has not been removed or terminated from the service.

What is the legal Impediment for non accepting the joining report of applicant?

*Our submission:-Shri Dev Nandon Kumar was appointed '**purely on temporary basis**' at CRC Patna (No. CRC-PATNA/PF O5/58/2011/315) on 05.04.2011. Accordingly, he was not entitled for Sturdy Leave.*

But the Study Leave was sanctioned by the then Officer-in charge CRC -Patna vide Order No. Ref:CRC/PAT/Off.Ord/41/10/544(4) on 20.12.2017 Subsequently, his study leave was cancelled Order No. Ref: CRC/Pat/Off.



Ord/41/10/133(5) on 13.07.2018. Through the said order the employee concerned was also advised to join duty. But he did not join the duty.

The employee concerned has also ignored the reminder letter bearing No. CRC-Pat/PF-05/58/2011/206(3) dated 29.08.2018, advising him to join duty.

On 14" September, 2018 he moved Hon'ble Patna High Court and filed a Writ Petition (CWJC-19447 of 2018) for setting aside the impugned order dated 13.07.2018 Ref:- Pat/Off.Ord/41/10/133(5).

Now after lapse of more than 2 years from the date of cancellation of the study leave he requested the authority to allow him to join duty w.e.f. 01.10.2020 vide his letter dated 01.10.2020.

Since the matter of cancellation of study leave (Order No. Ref CRC-Pat/Off.Ord/41/10/133(5) on 13.07.2018) is sub-judice, the authority is waiting for the direction by the Hon'ble High Court, Patna.

13. Before 'the Tribunal' as stated above, the matter was finally taken up on 28.01.2021 and 'the Tribunal' passed the following order:

"4. Learned counsel for respondents submits orally that respondents may allow the joining



subject to reserving of their right to take necessary action/steps as warranted under Rule/ Law against the applicant regarding his conduct in the matter of study leave. He request that giving such liberty, OA may be disposed of. Counsel for applicant is having no objection and submits that if respondents allow the joining, the applicant would not press the OA, however, he added that there is no necessity for seeking liberty, there is no impediment for the respondent to act & proceed as per Rule. He also informed that Writ Petition (CWJC-19447 of 2018) is being withdrawn from the file of Hon'ble High Court, with liberty to move before appropriate Forum.

5. Having considered the entirety of the matter, the OA is disposed of with direction to the respondents to allow the applicant to join the duty, if he reported to join. Applicant is suggested to report for duty, if he wishes so, till 01.02.2021. The OA stand disposed of accordingly.”

14. From the aforesaid fact, it is clear that before ‘the Tribunal’, the averments of the petitioners was/were that:

(i) the services of the applicant-respondent was not terminated;



(ii) as he was appointed purely on temporary basis the study leave could not have been extended/sanctioned to him;

(iii) however, the respondents conceded before 'the Tribunal' that the applicant-respondent will be allowed to join subject to their rights to take necessary action/steps in accordance with law regarding his conduct in study leave;

(iv) accordingly, 'the Tribunal' disposed of the matter on 28.01.2021 with a direction to the respondents to allow the applicant-respondent to join the duty, if he reports there by 01.02.2021.

15. Thus, when the applicant conceded before 'the Tribunal' that the applicant-respondent will be allowed to join, (if he wishes to join by 01.02.2021, subject to their rights to proceed against him in accordance with law for his conduct in not reporting to the duty despite cancellation of his study leave), they cannot be allowed to challenge the order passed by 'the Tribunal'.

16. Needless to say, 'the Tribunal' already granted them liberty to take steps in accordance with law against the



appellant-respondent for his conduct in not reporting to the duty despite cancellation of his study leave.

17. In that view of the matter, this Court holds that the writ petitioners after conceding before ‘the Tribunal’ cannot be allowed to assail order dated 28.01.2021 passed in O.A./05/0435/2020.

18. The present appeal thus stands disposed of.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2022
Transmission Date	NA

