

**'Employer Can't Act Arbitrarily On Grant Of Leave To Employee': Kerala High Court, Allows Postal Assistant To Take 1 Year Leave For PhD**

**2022 LiveLaw (Ker) 564**

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**  
**A.K. JAYASANKARAN NAMBIAR; J., MOHAMMED NIAS C.P.; J.**  
**O.P. (CAT) No. 44 of 2022; 1<sup>st</sup> November 2022**  
**ROUSHA P. ALI versus UNION OF INDIA**

Against the Order / Judgment in MA 348/2022 of Central Administrative Tribunal, Ernakulam Bench OA 134/2022 of Central Administrative Tribunal, Ernakulam Bench

*Petitioner / Applicant in OA by Advs. Shafik M.A., P.V. Saleem, K.E. Hadhik Jazar, Mohammed Rashid K.H.*

*Respondents / Respondents in OA by Advs. K.S. Prenjith Kumar, CGC Adv., P.C. Sasidharan (B/O) by S. Manu, DSGI*

**J U D G M E N T**

**Mohammed Nias.C.P. J.**

The petitioner, the applicant in OA No.180/134/2022 before the Central Administrative Tribunal, Ernakulam Bench has filed this original petition aggrieved by the dismissal of the original application filed by her challenging the order dated 21.03.2022 issued by the 4<sup>th</sup> respondent rejecting her request for extra ordinary leave for pursuing her studies to get a P.hD in Malayalam, citing acute shortage of Postal Assistants in the division as the reason.

2. In the original application, the Tribunal had earlier directed the third respondent to consider and dispose of Ext.P11 representation before 1.4.2022, but the same was rejected by the third respondent stating that there was no appeal against the order rejecting the application for leave. Thereafter, the petitioner submitted a representation to CPMG, the second respondent and produced the same before the Tribunal in MA No. 180/285/2022, which was allowed and the Tribunal directed the second respondent to dispose Annexure A15 representation. The Tribunal also disposed the original application itself with a direction to consider her representation. The second respondent however, directed the Post Master General northern region to dispose the representation. Thereafter the petitioner again moved by filing MA No.180/348/2020 dated 13.05.2022 for further orders to correctly implement its earlier orders. The said MA was rejected as per order dated 17.5.2022. These orders of the Tribunal are under challenge before us.

3. As stated earlier, the consistent stand of the respondents was that there is acute shortage of staff and granting extra ordinary leave for 36 months to the petitioner would seriously affect the functioning of the office in which the petitioner is working. Since this was a case where the petitioner wanted to pursue her higher studies, we had requested the Standing Counsel for the Calicut University to get instructions as to whether the petitioner can pursue her studies on part time basis. On instructions, the learned Standing Counsel for the University submits that the first year of the course involves course work and that a full time registration may be converted to part time only on the completion of one year or when the candidate successfully completes the course work. We thereafter, directed the respondents to find out whether they were willing to give a leave for 12 months so as to enable the petitioner to pursue her higher studies. The respondents have filed an additional affidavit sticking on to their earlier stand stating that there is acute shortage and therefore the petitioner cannot be given leave even for 12 months. The respondents would contend that at present the staff strength of the Ottapalam Division is 55% indicating a shortage of 45%, and therefore, they are not in a position to spare the services of the petitioner.

4. The petitioner, on the other hand submits that there are 117 posts of Postal Assistant available out of the sanctioned strength of 131 as on 29.06.2022. The petitioner also produced a chart showing the names of the employees and their designation. The petitioner also points out the earlier instances when the department has permitted the candidates by granting them leave for 36 months to pursuing their higher studies. The petitioner also contends that the vacancies are not being reported in time and that has led to delay in filling up the same. It is the petitioner's specific case that the respondents are finding out reasons to some how deny the request of the petitioner for extra ordinary leave. They also contend that statistics projected by the department are factually wrong and that there is no specific counter to Exts.A16 and A17 produced by the petitioner before this Court, wherein, even the names of the employees are shown in chart.

5. The respondents argued before us that no employee is entitled to get leave as of right and it is the prerogative of the employer. There cannot be any quarrel to the above proposition of law. However, in the instant case we note that the petitioner was given the NOC by the respondents for pursuing the Doctorate in Research and her track record also shows her academic abilities. We do not think that the respondents are in such a precarious position that they cannot make alternate arrangements so as to grant the petitioner extra ordinary leave for 12 months, instead of 36 months as sought for, in which event the petitioner will be able to complete the course work within such time and compete the rest of the course as a part time scholar. The respondents also admit to the several instances of permitting employees to take leave for pursuing higher studies but in the instant case the only reason put forth is shortage of staff. On the pleadings before us, we do not think that the respondents are placed in a situation where they are helpless to make alternate arrangement or to make stop gap arrangements to accommodate the petitioner's request for extra ordinary leave without pay. The petitioner has successfully got registration from the Calicut University and if this chance is lost, she may not get another chance to pursue her Doctorate Research. One of the endeavours of the State or its instrumentality is to promote education ideally by encouraging and facilitating higher studies. We also do not want the merit and academic ability of the petitioner becoming a casualty in view of the stubborn stand of the respondents.

6. Taking into account the entire circumstances emanating in the case, as also on perusing the records produced by the parties, we are of the firm view that the respondents can be directed to grant extra ordinary leave without pay to the petitioner for 12 months so as to enable her to pursue the P.hD course. While we are aware that the grant of leave to an employee in the prerogative of the employer it does not follow that an employer who answers to the description of 'state' under Article 12 of the Constitution can act arbitrarily and unfairly in such matters. The details produced by the petitioner regarding availability of Postal Assistants in the service not having been controverted by the respondents through any material produced before us, we find that the refusal of the application for leave, for the limited period of one year, cannot be legally sustained.

7. In the result, the original petition is allowed and the order rejecting the original application by the Tribunal is set aside. The respondents shall pass orders as directed above within a period of two weeks' from the date of receipt of a copy of this judgment so as to enable the petitioner to produce the same before the University of Calicut for further processing to commence the course without any further delay.

The original petition is allowed as above.