

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAMMU BENCH, JAMMU**

Hearing through video conferencing

**O.A. 61/991/2020**



**Pronounced on: This the 10th day of January 2022**

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)**  
**HON'BLE MR. ANAND MATHUR, MEMBER (A)**

Dr. Ruhi Age 32 years, D/o Sh. Satish Kumar, R/o H. No. 140-P,  
Sector-3, Upper Roop Nagar, Jammu.

.....Applicant

(Advocate: Mr. Abhinav Sharma, Sr. Advocate assisted by Ms. Saba Atiq)

**Versus**

1. Union Territory of J&K, through Financial Commissioner, Health and Medical Education Department, Civil Secretariat, Jammu-180001.
2. Director, Indian Systems of Medicines, J&K, UT-180001.
3. Medical Superintendent, Govt. Ayurvedic Hospital, Jammu-180001.

.....Respondents

(Advocate: Mr. Rajesh Thappa, learned D.A.G.)

**(ORDER)**

**(Delivered by Hon'ble Mr. Anand Mathur, Member-A)**

Learned counsel for the applicant submits that the applicant is aggrieved of Govt. Order No. 559-JK (HME) of 2020 dated 24.07.2020 to the extent the aforesaid order treats the period w.e.f., 07.02.2017 to 03.12.2018 as 'Dies Non' for which period the applicant was undergoing MD course from Post Graduate College of Ayurveda Paprola (Himachal



Pradesh) and to the extent the same does not treat the aforesaid period as study leave, the applicant is also aggrieved of the aforesaid order to the extent that the same denies the arrears of salary to the applicant w.e.f., 01.10.2018 upto 24.07.2020, in as much as the applicant had physically joined/resumed her duties as Medical Officer (Ayurveda) on 01.10.2018 itself, after completing her MD course from Post Graduate College of Ayurvedic Paprola (Himachal Pradesh).

2. Learned counsel for the applicant has filed the instant O.A. seeking the following reliefs:-

- “a. allow the instant Original Application;
- b. quash Govt. order No. 559-JK (HME) of 2020 dated 24.07.2020 passed by respondent no. 1 to the extent that the period w.e.f. 07.02.2017 to 03.12.2018 has been treated as ‘Dies-Non’.
- c. quash Govt. Order No. 559-JK (HME) of 2020 dated 24.07.2020 passed by respondent no. 1 to the extent it accept the rejoining of the applicant w.e.f. 04.12.2018 instead of 01.10.2018;
- d. quash Govt. Order No. 559-JK (HME) of 2020 dated 24.07.2020 passed by respondent no. 1 to the extent that the same accepts the joining of the applicant notionally w.e.f., 04.12.2018 instead of 01.10.2018 and monetarily with immediate effect i.e., w.e.f., 24.07.2020 instead of accepting the joining of the applicant monetarily w.e.f., 01.10.2018;
- e. direct the respondents to treat the period w.e.f., 07.02.2017 to 01.10.2018 as study leave and to further

direct the respondents to release the arrears of the salary of the applicant w.e.f., 01.10.2018 till 24.07.2020;

- f. Any other order or direction which this Hon'ble Court may deem fit or proper in the facts and circumstances of the case."



3. Learned counsel for the applicant further pleads that the decision conveyed by Government Order dated 24.07.2020 has incorrectly treated the period from 07.02.2017 to 03.12.2018 as dies non. Hence, the impugned Government Order dated 24.07.2020 deserves to be set aside and quashed.

4. The respondents have filed a detailed counter affidavit in which it has been stated that the applicant herein was appointed as Medical Officer (Ayurvedic) in the Health and Medical Education Department and she was posted at ISM Dispensary, Jakhade, Udhampur against available vacancy, in terms of Government Order No. 48-HME of 2017 dated 30.01.2017. The applicant joined the Department and left the ISM Dispensary on 07.02.2017 by submitting her departure report to ADMO Office, Udhampur to pursue higher studies. After completion of the MD (Ayurvedic) from P.G. College of Ayurveda Paprola (Himachal Pradesh), the applicant submitted her joining report to the Administrative Department on 01.10.2018 which was later forwarded to the Director, Indian Systems of Medicine for comments.



The applicant also submitted her joining report to the Director, Indian Systems of Medicines, J&K Jammu on 04.12.2018. The Directorate vide letter dated 28.03.2019 sought instructions of the Administrative Department for acceptance of the joining report as well as settlement of the unauthorized absence of the applicant from 07.02.2017 to 04.12.2018. The proposal passed through various stages of examination and eventually, it was decided by the authorities to place the matter before a designated Committee. The said Committee also has the mandate to settle the cases with regard to re-joining of officers after unauthorized absence as well as settlement of the period of absence. Accordingly, the proposal was forwarded to the Director Finance, Health and Medical Education Department (Chairman of the Committee) for further orders. The Committee, however, vide letter dated 13.03.2020 advised the Director, Indian Systems of Medicines, J&K, Jammu to furnish the details of the officer on the prescribed format so that the case can be further examined by the Committee to come to a conclusion. The Director, Indian Systems of Medicines, J&K, Jammu furnished the requisite information, which is reproduced below:-

1.	Name of the Doctor	Dr. Ruhi
2.	Post against which initially appointed	Medical Officer,



		Ayurvedic
3.	Qualification at the time of 1 <sup>st</sup> appointment	BAMS
4.	Date of initial appointment (Government order and date)	Govt. Order No. 626- HME of 2016 dated 02.12.2016
5.	Initial date of actual/physical joining	Joined on 06.12.2016
6.	Any higher post against which appointed later on	Nil
7.	Period of absence (authorized/unauthorized to be settled (from & to)	07.02.2017 to 04.12.2018
8.	Whether the doctor applied through proper channel prior to undergoing such higher course of study if so, documentary evidence thereof	She submitted departure to ADMO Udhampur and informed that she was undergoing PG Course and requested to



		<p>ADMO Udhampur to take up the matter with the higher authorities for her study leave. The same was forwarded by the ADMO Udhampur to on 09.02.2017 which was accordingly forwarded to the Administrative Department further action vide letter No. DISM/Est/564 dated 31.5.2017.</p>
9.	<p>Whether prior NOC/permission/leave has been given by the then Administrative Department, If so, for what period (from and to) alongwith communication No. and date</p>	<p>Nil</p>



10.	If un-authorizedly absent, what action has been initiated by the concerned HoD against delinquent doctor. If intimated, outcome thereof alongwith documentary evidence.	Nil
11.	Date of re-joining after authorized/unauthorized absence	04.12.2018
12.	Authority who allowed the rejoining of the doctor alongwith documentary evidence thereof	She joined physically in the office of 04.12.2018 after completion of higher studies (MD) from PG College of Ayurveda Paprola (Himachal Pradesh) District Kangra and the joining report of the said doctor was forwarded to the Administrative



		<p>Department vide letter No. DISM/Estt/5847-48 dated 11.12.2018 for necessary direction/instruction in the matter and Dr. Ruhi, Medical Officer, ISM was directed to report to Government Ayurvedic Hospital Jammu at her own risk and responsibility till further directions/instructions are received from the Administrative Department in her case.</p>
13.	Documentary evidence with regard to undergoing any of the higher course. Viz.	MD Degree course completion certificate





	qualification/marks certificate/course completion certificate	enclosed.
14.	Documentary evidence for authorized/unauthorized absence due to medical grounds of any other	Proceeded to higher study course (MD)
15.	If rejoining has been allowed, what status of his/her posting alongwith specific mention as to whether salary is being drawn and disbursed in favour of that said doctor against the lien free post	She submitted joining report to the office of Directorate of Indian Systems of Medicines on 04.12.2018 after completion of higher studies (MD) from P.G. College of Ayurveda Paprola (Himachal Pradesh) District Kangra and her joining report was forwarded to the Administrative Department vice letter



		<p>No. DISM/Estt/5847-48 dated 11.12.2018 for necessary direction/instruction in the matter and Dr. Ruhi, Medical Officer ISM was directed to join to Government Ayurvedic Hospital Jammu at her own risk and responsibility till further directions/instructions are received from the administrative Department (H&amp;ME).</p> <p>Further all post graduate doctors including her, working</p>
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		<p>in Government</p> <p>Ayurvedic Hospital,</p> <p>Jammu were deputed to</p> <p>Government Ayurvedic</p> <p>Medical College,</p> <p>Jammu vide letter No.</p> <p>DISM/Estt/10414-18</p> <p>dated 07.01.2020.</p>
16.	<p>Concerned HoD shall furnish a detail that</p> <p>during the period of absence</p> <p>(authorized/Unauthorized) the doctor was</p> <p>not involved in any activity contravening</p> <p>the service rules</p>	<p>It is certified that as per</p> <p>records the doctor was</p> <p>not involved in any</p> <p>activity contravening</p> <p>the service rules during</p> <p>the period of absence</p> <p>either authorized or</p> <p>unauthorized.</p>
17.	<p>Whether doctor has filed any writ</p> <p>petition, if so, any clear direction/interim</p> <p>directions passed by the Hon'ble High</p>	<p>No writ petition has</p> <p>been filed by Dr. Ruhi</p> <p>in any Court of law as</p>



	Court	per records available.
18.	The direction of the Hon'ble Court be mentioned	Nil
19.	Action taken by the concerned HoD with respect of filing objection in the said SWP, if not reasons thereof	Nil
20.	Consideration orders issued by the HoD on the directions/interim directions passed by the Hon'ble High Court, if so, documentary evidence thereof.	Nil

On the basis of above facts, the case was placed before the designated Committee and on the basis of the decisions taken by the forum, vide Government Order No. 559-JK (HME) of 2020 dated 24.07.2020, the joining report of Dr. Ruhi was accepted w.e.f., 04.02.2018 and monetarily with immediate effect viz. 24.07.2020, the period of undergoing higher studies w.e.f., 07.02.2017 to 03.12.2018 was treated as 'Dies Non' subject to the condition the said officer was not involved in any subversive activities as



well as not employed in any private sector for which an affidavit authenticated by the 1<sup>st</sup> Class Judicial Magistrate was to be furnished by the officer. Furthermore, Director Indian Systems of Medicine, J&K, Jammu was advised to fix responsibility who were dealing hand in the Directorate and did not initiate any action against the doctor. Dr. Ruhi itself was also warned not to leave her place of posting unauthorizedly in future for any occasion. Thus, the plea of the applicant is devoid of any merits and thus deserves no consideration.

5. Heard Mr. Abhinav Sharma, Sr. Advocate assisted by Ms. Saba Atiq for the applicant and Mr. Rajesh Thappa, learned D.A.G. for the respondents and perused the records.

6. The applicant was appointed vide Government Order dated 30.01.2017 and was posted at Udhampur vide a separate order dated 03.02.2017. She joined at Udhampur on 03.02.2017 itself. After working for just a few days i.e., on 07.02.2017 she submitted her departure report in order to complete the Post Graduate course which she was already pursuing and further requested for sanctioning of study leave in her favour till



October 2018. It is obvious from this that the applicant worked for merely a few days i.e., from 03.02.2017 to 07.02.2017 and left on her own requesting for sanction of study leave. It is clear from this that she was already pursuing a PG course and during that period she concurrently joined Government Service for five days and went back to rejoin the PG course. this action is highly questionable. A Government Servant is supposed to be aware of the basic rules of the service and the applicant was supposed to know that study leave cannot be granted to a person who has put in barely a few days of service. Therefore, leaving her duty without any permission was certainly inappropriate on her part.

7. Further, her claim is that she reported back for duty on 01.10.2018 (which is after 1 year and 8 months) and reported to Respondent No. 1 (Financial Commissioner). Here again, as she had been originally posted at Assistant District Medical Hospital ISM, Udhampur why did she not report back at her original place of posting. It was incorrect on her part to report in the office of Respondent No. 1. She further claims that Respondent No. 1 directed her to report in the office of Respondent No. 2 after two months in December 2018 where she submitted her joining report on 04.12.2018. Respondent No. 2 vide letter dated 11.12.2018 directed her to report to

Government Ayurvedic Hospital, Jammu till further orders. She joined Government Ayurvedic Hospital on 12.12.2018. Therefore, she claims that she has been continuously working at Government Ayurvedic Hospital Jammu from 12.12.2018 onwards.



8. From the impugned order 24.07.2020, it is clear that the respondents have decided to accept the joining of the applicant notionally w.e.f., 04.12.2018 and monetarily with immediate effect (24.07.2020) and treat the period of undergoing higher studies w.e.f, 07.12.2017 to 03.12.2018 as dies non.

9. As may be seen from the aforementioned details, there is a need to decide the period from 01.10.2018, when the applicant reported to Respondent No. 1 to 04.12.2018 as also the justification for denying monetary benefit to her from 04.12.2018 to 24.07.2020 (date of issuance of impugned order). Strictly speaking, the applicant should have reported back to Udhampur where she has been originally posted and had departed on her own without any permission from the Government, however, she chose to report to Respondent No. 1 for reasons best known to her. In any case, in as



much as she did report for duty on 01.10.2018, it was for the respondents to immediately give her a posting so that she could start working. Therefore, the period from 01.10.2018 to 04.12.2018 has to be treated as 'waiting for orders' as this delay cannot be attributed to the applicant. Further, in as much as the applicant had started working from 12.12.2018, there is no reason for denying payment after this date in as much as she had actually been working since then. Accordingly, the impugned Government Order No. 559-JK (HME) of 2020 dated 24.07.2020 is set aside and quashed. We hereby direct the respondents to treat the periods as under:-

- (i) From 01.10.2018 to 04.12.2018 as 'Waiting for Orders', the applicant should be paid salary as this delay cannot be attributed to her.
- (ii) The period from 04.12.2018 to 24.07.2020 (date of issuance of impugned order) is to be treated as on duty provided she had actually performed duty during this period. This period needs to be checked with her attendance.
- (iii) As far as the period from 07.02.2017 to 01.10.2018 is concerned, it obviously cannot be treated as study leave as she had put in only few days of service and was not eligible for





grant of study leave. However, use of the term ‘dies non’ carries a negative connotation and should normally be used only after affording an opportunity to the employee to give her explanation. Therefore, this period should be decided only after affording an opportunity for the applicant to explain her absence. At the same time, it is also a fact that the applicant has exhibited indiscipline as well as breach of rules and regulations by joining a Government Service simultaneously during the period of her pursuing a PG course and leaving her duty on 07.02.2017 without any prior approval from the Government.

The respondents may take a suitable view on these issues.

10. The complete period from 07.02.2017 to 24.07.2020 be reviewed in view of our directions given above. This exercise be completed within four weeks from the date of receipt of a certified copy of this order.

11. With the above directions, the O.A. is disposed of. No order as to costs.

**(ANAND MATHUR)**  
**MEMBER (A)**

**(RAKESH SAGAR JAIN)**  
**MEMBER (J)**

*Arun/-*