

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

**WP(C) No. 329 of 2019 with
MC(WP(C) No. 200 of 2020**

Dr. Mohanlal Sharma, aged about 44 years old,
S/o (L) Babu Lal Sharma of Vill-Dayalpura,
PO Tasai, Alwar District, Rajasthan State
presently in the State of Manipur and now
residing at IGAR (South) Mantripukhri,
Imphal East District, Manipur State-795002

....Petitioner

-Versus-

1. The Union of India through the
Secretary (Ministry of Home Affairs),
Government of India, North Block,
New Delhi-110001.
2. The Director General Assam Rifles,
Shillong C/O 99 Army Post Office.
3. The Major General, IGAR (South) PO
Mantripukhri and P.S Heingang,
Mantripukhri, Imphal East-795002.
4. The Additional Director General
(Medical), CAPFs NSG and AR,
Level-I Wing-3, West Block-1,
R.K.Puram, New Delhi 110066.

....Respondents

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

For the Petitioner :: Mr. H.S Paonam, Sr. Advocate
Mr. S. Gunabanta, Advocate

For the Respondents:: Mr. Y. Nirmolchand, Sr. Advocate

Mr. L. Raju, Advocate &
Mr. S. Samarjeet, CGC

Dates of hearing :: 7.4.2021, 8.4.2021, 22.4.2021
29.4.2021 & 9.7.2021

Date of judgment :: 31.08.2021
& Order

JUDGMENT AND ORDER (CAV)

The petitioner was appointed as Medical Officer in the rank of Assistant Commandant in the Assam Rifles by an order dated 06.11.2003 and has reached the rank of Commandant w.e.f 17-11-2016. The petitioner from the status of Medical Officer (Assistant Commandant) has been serving at different difficult posting places. The petitioner was given promotion to the rank of Commandant and he assumed charge as Commandant by a Charge Assumption Report dated 12-7-2017. After his promotion to the rank of Commandant along with two others, the petitioner was posted as Commandant (Medical Specialist) at Assam Rifles Nodal Hospital, IGAR (South), Mantripukhri, Imphal East.

[2] Considering that many personnel of Assam Rifles were suffering from acute neurological disease/syndrome, the petitioner approached the authorities of Assam Rifles by preferring a representation dated 07-04-2018 wherein, he highlighted the circumstances leading to many neurological patients of Assam Rifles coming up every year and as there is not a single qualified Neurologist in the Assam Rifles organization, he requested for granting permission for appearing in NEET-SS and CET SS-2018 Examination. In the said representation, the petitioner also mentioned that the course would be for three years which can be granted under the provisions of Rule 32 (1)(b) of the CCS (Leave) Rules, 1972 and the expenditure on such

studies of the petitioner for the said course need not be borne by the Assam Rifles authorities and therefore, the case of the petitioner be considered for granting permission for appearing in the National Eligibility cum Entrance Test (Super Specialty) (NEET-SS) to be held in the month of May, 2018. The representation dated 07-04-2018 was also recommended by the Office of the Major General, IGAR (South) for permitting the petitioner to appear the National Eligibility cum Entrance Test (Super Specialty) (NEET-SS) to be held in the month of May, 2018 and in the National Board of Examination (CETSS) to be held in the month of December, 2018 and also sought permission from the competent authority for granting leave to the petitioner by recommendation letter dated 16-04-2018.

[3] Thereafter, the Director General of Assam Rifles by a communication dated 23-04-2018 replied stating that the permission for appearing in the National Eligibility cum Entrance Test (Super Specialty) (NEET-SS Examination) cannot be granted as the study leave for pursuing P.G Degree/Diploma will be granted only once in the entire service career.

By another letter dated 28-04-2018, the Head Quarters Inspector General, Assam Rifles (South) informed the Office of the Director General, Assam Rifles that the study leave for pursuing P.G Degree/Diploma will be granted once in entire service. However, the officer i.e., the petitioner wants to pursue Super Specialty Course on Extra Ordinary Leave (EOL) as permissible under the provisions of CCS (Leave) Rules 32 (1)(b).

As there was no positive response, the petitioner again approached the Director General of Assam Rifles by preferring a representation dated 25th May, 2018 requesting to allow him for pursuing 3 (three) years Neurological Super Specialty Course at his

personal expenditure on Extra Ordinary Leave as permissible under the provisions Rule 32 (1)(b) of CCS (Leave) Rule, 1972.

[4] The Office of the Major General, IGAR (South) again recommended the case of the petitioner by recommendation letter dated 13th June, 2018 for granting EOL for pursuing Super Specialty Course in Neurology subject to the following two conditions:

“(a) Reqmt of Neurologist in Assam Rifles may be reviewed by competent auth at HQ DGAR.

(b) Non-availability of med spl in AR for duration of three yrs during EOL of the offr may be addst.”

Thereafter, the Office of the Additional Director General (Medical) CAPFs, NSG & AR, Ministry of Home Affairs, Government of India informed the Director, Medical, Assam Rifles stating that the case of the petitioner for pursuing P.G entrance examination – 2018 has been received and after going through the case, the competent authority has desired to provide the following information:

“1. The application in r/o Dr. M.L Sharma, Medicine Specialist is required to be supported with specific recommendation of the HOD for granting permission to appear in NEET (SS) (CET-SS) 2018 Examination.

2. Data of personnel of AR who are suffering from neurological disease/syndromes reported in the last one year may be submitted along with the application for perusal.

3. It is also requested to intimate whether neurologist specialties facility are not available in NE Region i.e., Guwahati and Shillong etc. as the officer has intimated in his application that except at Regional Institute of Medical Science (RIMS), Imphal, there is no Neurologist facility is available.

4. AR is requested to intimate if the officer is permitted to undergo the PG Course, how AR propose to regularize the period of study.”

[5] By another letter dated 9th July, 2018, the Director General of Assam Rifles informed the Head Quarters Inspector General, Assam Rifles (South) stating that on scrutiny of application received from the concerned officer, the following details are required by the Directorate for further action.

“(a) The offr intimated vide para 2 of the personal application stating that more than 1500 patients are suffering from acute neurological disease/syndrome. You are requested to fwd the data of all 1500 neurological cases seen by the officer for our further action.

(b) The offr stated that the neurological cases of Assam Rifles personnel cannot be referred to Military Neuro Centre as the Army does not accept the AR personnel being under different Force Composition/Ministry. You are requested to fwd the authority/letters under which the patients of AR was denied treatment at Military Hospitals.

(c) You are also requested to obtain the details of cases where doctors of CAPF have been sanctioned leave/EOL to pursue higher studies/Super Spl.”

[6] Thereafter, the Office of the Head Quarters Inspector General Assam Rifles (South) wrote a letter dated 11th July, 2018 addressed to the petitioner for furnishing details as asked by the Head Quarter, DGAR at the earliest for further submission to Head Quarter, DGAR. By another letter dated 23rd July, 2018, a copy of the Head Quarter, DGAR letter dated 18-07-2018 was forwarded to the petitioner for information and necessary action. In the said letter dated 18.07.2018, it is indicated that that the study leave can be granted once in the entire service career for pursuing P.G Degree/Diploma

under the MHA Guidelines in Para – 2 (A) (g) (viii) dated 29-02-2012. It was further mentioned that only up to 24 (twenty-four) months EOL can be granted to an official where leave is required for the purpose of pursuing studies, certified to be in public interest under Rule 32 (2) (e).

[7] Not being satisfied, the petitioner again approached the authorities by another representation dated 25th July, 2018 clarifying that the leave applied is Extra Ordinary Leave and not study leave as quoted at para-1 (a) of the letter dated 18-07-2018 and also the Rule 32 (2)(e) as quoted at para-1 (b) of the said letter is wrong as it pertains to 'temporary employee' while the petitioner had sought the sanction under the CCS Rule, Rule 32 (1). Further, on the same date, i.e., 25-07-2018, the petitioner furnished details required from him by the competent authority and also requested for considering his representation for granting permission to appear in the CET-SS, 2018 and NEET-SS, 2019 to pursue Super Specialty in Neurology and also clarifying that he has not been asking for study leave but he is asking for EOL to pursue Super Specialty Course in Neurology.

Again, by another letter 07-08-2018, the petitioner was informed by the Head Quarter, Inspector General, Assam Rifles (South) for re-submitting his application along with the letter as sought by the DGAR which is not found attached with the application. The petitioner replied to the letter dated 07-08-2018 by re-submitting details/information by letter dated 09-08-2018. In the said letter, it was categorically mentioned that the Army has one Neuro Physician posted as on date at Command Hospital (EC), Kolkatta having 16 (sixteen) beds in Neurology Ward and the patients who are referred, have been transferred back to Assam Rifles Nodal Hospital despite patients being on DIL (Dangerously ill) for management at Assam Rifles Nodal Hospital. Further, the petitioner wrote another letter dated 14th August, 2018 for granting permission to pursue Super Specialist Course. The

Head Quarters Inspector General, Assam Rifles (South) by a letter dated 13.08.2018 wrote to the petitioner for furnishing suitable inputs/reply by clarifying that treatment was denied by CH, Kolkata as desired by Head Quarter Director General, Assam Rifles in their letter dated 09-07-2018. By another letter dated 25th September, 2018, Head Quarters Inspector General, Assam Rifles wrote to the Office of the Director General, Assam Rifles seeking clarification from the competent authority with regard to grant of permission for appearing in the National Eligibility Test cum Entrance Test (Super Specialty) (NEET-SS). The petitioner in the meantime received a letter dated 15th November, 2018 written by the Director (Medical), Assam Rifles informing that under the provisions for granting of EOL for pursuing studies, it has been clearly mentioned that such leave can be granted for a maximum of 2 (two) years only but the DM Course that the petitioner propose to undertake is for a period of 3 (three) years and hence the petitioner will not be in a position to undertake the Post Doctoral Course utilizing EOL and therefore, the Office of the Director General of Assam Rifles is not in a position to grant such leave to the petitioner for undergoing DM Course.

[8] The petitioner again approached the Director General, Assam Rifles by preferring an application dated 03-01-2019 stating that the permission sought by the petitioner was to grant EOL as per the CCS Rules 32 (1) for two years and the remaining period required to complete DM/ DNB Neurology, may be adjusted against his accumulated Earned and Half Pay Leave. As there was no positive response, the petitioner again approached the competent authority of the Directorate General, Assam Rifles requesting for personal interview by letter dated 15-02-2019. However, by letter dated 18-02-2019, the petitioner was informed by the Office of the Directorate General, Assam Rifles that the issue has been adequately clarified and

elaborated upon and it is again reiterated that as per the existing rules, the petitioner cannot be granted permission for appearing in the NEET-SS 2019 and CET-SS-2019 Examination even on EOL.

[9] Being aggrieved, the petitioner has filed the present writ petition for issuance of writ of mandamus or any other appropriate writ or direction directing the respondents to consider the case of the petitioner for granting permission to appear the upcoming National Eligibility cum Entrance Test (Super Specialty)(NEET-SS)Examination, 2019 so that the petitioner can pursue and complete Specialist Course in Neurology without any disturbance.

[10] Heard Mr. H. S Paonam, learned senior counsel assisted by Mr. S. Gunabanta, learned counsel appearing for the petitioner. Also heard Mr. Y. Nirmolchand, learned senior counsel assisted by Mr. L. Raju, learned counsel for the respondents.

[11] Mr. H. S Paonam, learned senior counsel for the petitioner submits that it is not in dispute that the petitioner has taken study leave for undergoing PG Course. However, in the instant case, the petitioner is seeking to undergo Super Specialty Course by taking leave under Rule 32 (1)(b) of the CCS, Leave Rules, 1972. However, instead of considering the case of the petitioner as applied by him, the respondents have wrongly construed his application by applying Rule 32 (2)(e) of the CCS Leave Rule. He submits that Rule 32 (2) provides that unless the President in view of the exceptional circumstances of the case otherwise determines, no Government servant who is not in permanent employ or quasi-permanent employ shall be granted Extra Ordinary Leave on any one occasion in excess of the following limits provided under Sub Rule (2) (a), (b), (d) & (e). He also submits that Rule 32 (2) (e) provides for 24 (twenty-four) months where the leave is

required for the purpose of persecuting studies certified to be in public interest, provided that the Government servant concerned has completed three years continuous service on the date of expiry of leave of the kind due and admissible under these rules, including 3(three) months EOL under Clause (a). It is submitted that the petitioner is a permanent employee and he has applied under Rule 32 (1)(b) which provides that EOL may be granted to a permanent employee (other than military officer) in special circumstances when other leave is admissible, but the Government servant applies in writing for grant of extraordinary leave. He also submits that when the petitioner has applied for EOL, under Rule 32 (1)(b) it was incumbent upon the respondents to have considered his leave under the relevant Rules as applied by the petitioner and not under any other rules.

[12] By referring to the guidelines of the Government of India, Ministry of Home Affairs dated 29th February, 2012, which provides for policy guidelines for pursuing PG Course/short term course and Fellowships/Super Specialty Courses by General duty Medical Officers/Dental Surgeons/Specialist Doctors of CADFS and Assam Rifles and grant of study leave, he has drawn the attention of this Court to Guidelines (g) (viii) which provides that study leave for pertaining PG Degree/Diploma will be granted only once in the entire service career. However, in the present case, the petitioner is seeking for undergoing study leave after taking EOL under the appropriate provisions of law i.e., Rule 32 (1) (b) of the CCS Leave Rules and therefore, application of Rule (g) (viii) does not arise. He has also drawn the attention of this Court to Annexure/1 attached to the Guidelines dated 29th February, 2012 which also provides for Specialty Course in 8 (eight) Departments wherein the DM in Neurology is a course provided therein. By referring to the case of **GJ Fernandez Vs State of Mysore & Ors**, reported in

AIR 1967 SC 1753. Mr. H. S Paonam, learned senior counsel for the petitioner submits that the Guidelines dated 29th February, 2012 has no statutory force inasmuch as the Guidelines has not been framed either under any statutory enactments or under any provisions of the Constitution and they are merely in the nature of administrative instructions and have been issued under executive powers of the State. In that view of the matter, the reference made by the respondents to the Guidelines dated 29th February, 2012 is without any basis and which would not help the respondents.

[13] He also submits that on the basis of the interim order dated 26-04-2019, the petitioner appeared in the NEET (Super Speciality) (NEET-SS) Examination, 2019 where he was successful and thereafter, by an interim order dated 09-07-2019, the respondents were also directed to permit the petitioner to appear for the counseling. Again, by interim order dated 22-10-2019, the respondents were directed to release/permit the petitioner to enable him to join Sir Ganga Ram Hospital, New Delhi which shall, however be subject to the outcome of the writ petition. In the meantime, the petitioner was posted to Shokhuvi, Dimapur, Nagaland and he had to return from Sir Ganga Ram Hospital, New Delhi as the said hospital was declared a containment zone. However, despite the interim order passed by this Court, the respondents were refusing to permit the petitioner to join Sir Ganga Ram Hospital, New Delhi and therefore, this Court had passed an exhaustive order on 25-02-2021 wherein, it has been clearly indicated that the authorities/respondents are trying to evade the orders passed by this Court by not permitting the petitioner to join Sir Ganga Ram Hospital, New Delhi by giving excuses after excuses which has become intolerable for this Court to accept the same. In that view of the matter, the personal appearance of 2 IC, Md. Akbar SO-1

(Health) Medical Branch, Head Quarter, DGAR, Shillong, was directed to appear in person before this Court on 04-03-2021. It was also directed that in the meantime, if the respondents permits/release the petitioner to join Sir Ganga Ram Hospital, New Delhi, the personal appearance of the said officials shall be dispensed with.

[14] He also submits that on 04-03-2021, the said 2 IC Md. Akbar, SO-1 (Health) Medical Branch HQ, DGAR, Shillong had appeared before this Court in person and submitted that the petitioner may be granted earned leave as and when he applies. However, the release order cannot be issued. Along with the 2 IC, another officer namely Capt. Subhangi Gupta also appeared before this Court and submitted that the petitioner at an early point of time had taken study leave as per the Rules and further submitted that under the Rules, an officer is granted only one time study leave and no study leave can be granted to the petitioner. She further submitted that as the petitioner had already taken study leave earlier, the respondents would not be in a position to issue release order to the petitioner to go and join Sir Gangaram Hospital. This Court after considering the statements made by the officials concerned directed the respondent to file an affidavit indicating that they will not be able to release the petitioner to join Sir Ganga Ram Hospital, New Delhi despite the order passed by this Court on several occasions. He submits that consequent to the order dated 04-03-2021, the respondents had filed an additional affidavit dated 15th March, 2021, wherein, it is stated that the Office of the respondent No. 2 had considered the application of the petitioner in the light of the relevant provisions and had accordingly rejected the application by letter dated 9th September, 2019 by taking into consideration that the same will not be in public interest inasmuch as Neurology patients of Assam Rifles are being managed by the Medical Colleges in North

East, Civil Government Hospitals and Neurology Centre at Commandant Hospital (Eastern Commandant) Kolkata and the petitioner is one of the three medical specialist presently working in Assam Rifles and posted to the Composite hospital of Assam Rifles at Shokhuvi, Dimapur, Nagaland where he is looking after the ART Centre and Medical Ward at Sukhovi. Further, the Medical Specialist at Mantripukhri and Laitkor has applied for MOSB-2018 as a specialist officer and is likely to move out of the Force by January/February, 2020. Therefore, if the petitioner who is posted at Shokhuvi is allowed to proceed for higher studies, the Force will be left with only one medical specialist at Assam Rifles, MH, Laitkor, Shillong. The other ground taken by the respondents in the additional affidavit is that the petitioner has requested for 36 (thirty-six) months EOL for pursuing his higher studies in Neurology. Further, as per Rule 7 of the Leave Rules, leave of any kind cannot be claimed as a right and when exigencies of public service so require, leave of any kind may be refused/revoked by the authority competent to grant leave. It is also stated that as per Rule 32 (2)(e) of Leave Rules, EOL may be granted for a period of 24 (twenty-four) months where leave is required for the purpose of prosecuting studies certified to be in public interest. He therefore submits that the respondents are taking a stand not to release the petitioner to undergo his studies at Sir Ganga Ram Hospital, New Delhi, despite the interim order passed by this Court, basing only on the Guidelines and on wrongly applied Leave Rules. He therefore, submits that the respondents are totally ignoring the interim order passed by this Court and are giving importance to the Guidelines instead of the Court's order. In support of his case, he has placed reliance in the case of **Ravi S. Naik Vs Union of India & Ors** reported in **(1994) Supp (2) SCC 641**.

[15] Learned senior counsel for the petitioner has also drawn the attention of this Court to the Misc Case No. 117 of 2021 filed by the petitioner wherein, the petitioner by Message dated 14-06-2021 has been posted to 9th Assam Rifles, Changlang at Arunachal Pradesh. He submits that this is a deliberate action on the part of the respondents to frustrate the order of the Court for releasing the applicant/petitioner to join and resume at Sir Ganga Ram Hospital, New Delhi. At this stage, he also brings to the notice of this Court that in all the affidavits filed by the respondents, they have taken one common ground that in the Assam Rifles, there are 3 (three) numbers of hospitals at (1) Shokhovi, Dimapur, Nagaland, (2) Mantripukhri at Imphal and (3) Laitkor at Shillong and these three hospitals act as a major referral centers for Assam Rifles. Therefore, if the petitioner is allowed to proceed for three years EOL, it will severely compromise the provision of the Specialist cover in General Medicine in one of the three 50 (fifty) bedded hospitals. However, when the petitioner is now presently posted to Changlang, Arunachal Pradesh, it belies the statements made by the respondents in all their affidavits filed before this Court inasmuch as their very action clearly indicates that he is not required to function in any of the three 50 (fifty) bedded hospitals at Shokhuvi, Nagaland, Mantripukhri, Imphal and Laitkor, Shillong. This clearly indicates that the respondents are only trying to frustrate the order passed by this Court in order to avoid releasing the petitioner to join Sir Ganga Ram Hospital, New Delhi.

[16] Mr. Y. Nirmolchand, learned senior counsel for the respondents on the other hand submits that the petitioner has failed to disclose the Guidelines dated 29th February, 2021 in his writ petition. He also submits that the petitioner has enjoyed PG Course from 2011 to 2014 by taking study leave. Therefore, when the Guidelines provides that study leave for pursuing PG/Diploma will be granted only once in

the entire service career, and as the petitioner has also enjoyed one study leave to pursue his studies during his entire service for post-graduation IMT, General Medicine from Armed Forces Medical College, Pune from 02-05-2011 to 01-05-2014, he cannot be granted a second study leave. He also submits that there is no provision under the Guidelines for undergoing Super Specialty in Neurology inasmuch as in the Annexure/1 appended to the Guidelines dated 29th February, 2012, Neurology subject/Course is not available. He also submits that the petitioner has failed to challenge the Government of India Policy/Guidelines dated 29th February, 2012 and in absence of such challenge, no relief can be granted to the petitioner. Learned senior counsel for the respondents has also drawn the attention of this Court to Rule 7 of the CCS Leave Rules which provides that leave cannot be claimed as a matter of right and therefore the petitioner cannot claim for taking study leave as a matter of right. He has placed reliance on **Manohar Lal Vs Ugrasen & Ors** reported in (2010) 11 SCC 557, ((*Sanjoy Kumar Vs Chairman, UPSC and Ors* reported in (2006) 8 SCC 42)) and **State of Punjab & Ors Vs Dr. Rajeev Sarwal** reported in (1999) 9 SCC 240.

[17] I have considered the submission forwarded by the learned counsel appearing for the parties.

[18] The first consideration that comes before this Court is under what provision of law the petitioner has applied for taking his EOL for pursuance of his further studies. The first application dated 7th April, 2018 made by the petitioner clearly states at para 6 that he may be granted leave under the provisions of Rule 32 (1)(b) of the CCS (Leave) Rule, 1972. In his second application dated 25th May, 2018, he has again reiterated to accord sanction to pursue the three year Neurology Specialty Course on his personal expenditure on EOL under

the provisions of Rule 32 (1)(b) of the CCS (Leave) Rule, 1972. In his third application dated 25th July, 2018, he has again clarified at para No. 3 that the leave applied by him is EOL and not study leave and that his application is made under Rule 32 (1)(b) of the CCS (Leave) Rule. Again, by a letter dated 25th July, 2018, at para No. 5, he has clarified that he has not been asking for study leave and he is asking for EOL to pursue Super Specialty Course in Neurology. Further, by another letter dated 03-01-2019 at para No. 2, he has stated that he is not requesting for grant of study leave and at para No. 3, he submits to grant him EOL as per Rule 32 (1) (b) of the CCS (Leave) Rule for 2 years and the remaining period required to complete DM/DNB in Neurology maybe adjusted against his accumulated Earned and Half Pay Leave.

[19] A consideration of his application would clearly indicate that he has been requesting the competent authority to grant him EOL under Rule 32 (1) (b) of the CCS (leave) Rule, 1972. However, what is noticed on record is that the respondents have been considering his application on the premise that he is seeking for study leave under Rule 32 (2) (e) and also under the Guidelines of the Ministry of Home Affairs dated 29th February, 2012. This would clearly indicate that the respondents have been considering the case of the petitioner under a wrong provision of law for which he has never applied.

In my considered opinion, when the request for grant of EOL made by the petitioner is under Rule 32 (1) (b) of the CCS (Leave) Rule, 1972, the respondents are required to consider his leave under the rules applied by the petitioner and not under any other provisions of law which is not applicable to him.

[20] The next question that comes before this Court is whether Rule 32 (2) (e) is applicable to the petitioner or not. A perusal of Rule

32 (2) (e) clearly indicates that the same is meant for Government servants who is not a permanent employ or quasi-permanent employee and such employees can be granted EOL in exceptional circumstances for 24 (twenty-four) months where leave is required for the purpose of prosecuting studies certified to be in the public interest, provided the Government servant concerned has completed three years continuous service on the date of expiry of leave of the kind due and admissible under these rules, including 3 (three) months EOL under Clause (a). it is undisputed that the petitioner is a permanent employee and he is not a military officer. It is also undisputed that the petitioner's application is made under Rule 32 (1) (b) of the CCS Rules which provides that EOL may be granted to a Government servants (other than military officer) in special circumstances when other leave is admissible but the Government servants applies in writing for grant of EOL. In the case in hand, the materials available on record would clearly indicate that the petitioner has applied in writing for grant of EOL under Rule 32(1)(b) of CCS (Leave) Rule, 1972.

[21] This Court has also taken into consideration Rule 7 of the CCS (Leave) Rule as pointed out by the learned counsel for the respondents. Rule 7 provides for right to leave and Rules 7(1) provides that leave cannot be claimed as a matter of right. However, this Court also cannot ignore the provisions of Rule 7 (2) of the CCS Leave Rules which provides that when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant. In the present case, when the petitioner had applied under Rule 32 (1)(b), the competent authority is not authorised to alter the kind of leave due to the petitioner unless the petitioner in writing does so. As already discussed above, the respondents were all

along considering the leave application of the petitioner under Rule 32 (2)(e) which is not at all applicable to the petitioner inasmuch as the petitioner is a permanent employee.

[22] The Guidelines of the Ministry of Home Affairs, Government of India dated 29th February, 2012 has also been considered by this Court. Under para 2(A)(g) (viii) it is provided that Study Leave for pursuing PG Degree/Diploma will be granted only once in the entire service career. The respondents in their affidavits filed before this Court have all along been relying upon the Guidelines dated 29th February, 2012 particularly para 2(A) (g)(viii). A clear perusal of the Para 2A(g)(viii) provides for pursuing PG Degree/Diploma Course only, it does not provide for Super Specialty Course. Further, this Court has taken into consideration the argument made by the learned counsel for the respondents that there is no Super Specialty Course provided for Neurology under the Guidelines. However, the Guidelines dated 29.02.2012 which is annexed to the reply affidavit dated 30th July, 2019 filed by the respondents at Annexure-R/1 clearly indicates that there are 8 (eight) Courses for Super Specialty and DM in Neurology is one of the said course at Sl. No. 3 of Annexure A/1. Therefore, in my considered opinion, DM in Neurology is a Super Specialty Course provided under the Guidelines.

[23] The other ground taken by the learned counsel for the respondents is that the petitioner is not challenging the Government of India Policy. In the instant case, the application made by the petitioner for grant of EOL is made under Rule 32 (1)(b) of the CCS (Leave) Rule and not under the Guidelines dated 29th February, 2012. In that view of the matter, when there is no demand by the petitioner under the Guidelines dated 29th February, 2012 there is no necessity to challenge the Guidelines dated 29th February, 2012.

[24] The other question that comes before this Court is the primacy of this Court's order over the Guidelines of the Ministry of Home Affairs. This Court by various judicial orders had directed the respondents to allow the petitioner to join Sir Ganga Ram Hospital, New Delhi. However, the respondents by relying on the Guidelines dated 29th February, 2012 are not permitting the petitioner to join the said Hospital, which is not applicable to the case of the petitioner in hand. The application of the Guidelines dated 29th February, 2012 is only meant for granting study leave for pursuing PG Degree/Diploma only once in the entire service career. However, it is also important to bear in mind that the application made by the petitioner for grant of EOL is made under the CCS (Leave) Rule or Rule 32 (1)(b). The respondents have miserably failed to construe and consider the application made by the petitioner in its proper perspective and instead has been trying to defy the judicial order passed by this Court.

[25] In the case of Ravi S. Naik Vs Union of India & Ors reported in (1994) Suppl 2 SCC 641, the Hon'ble Supreme Court has held as under:

“..... It is settled law that an order, even though interim in nature, is binding till it is set aside by a competent court and it cannot be ignored on the ground that the court which passed the order had no jurisdiction to pass the same. Moreover the stay order was passed by the High Court which is a superior Court of Record and “in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.”

In the opinion of this Court, the respondents are guilty of trying to evade the interim order passed by this Court on one ground or the other. If the respondents were not satisfied with the interim order passed by this Court, it was incumbent on them to either file an application for vacating the interim order or file an appeal against the said interim orders. None of these steps were taken by the respondents and instead they were trying to evade the orders passed by this Court.

[26] Another important fact in the present writ petition which cannot be ignored by this Court is the ground taken by the respondents in the affidavits that in the Assam Rifles there are 3 (three) numbers of 50 (fifty) bedded Hospitals at Shokhuvi, Dimapur, Nagaland, Mantripukhri at Imphal and Laitkor, Shillong and these three hospitals act as a major referral centres of Assam Rifles. The Force currently has only three ARMOs with PG qualification in General Medicine, of whom the petitioner happens to be one. If in case, the petitioner is allowed to pursue a three years course, it will severely impact availability of the specialist cover in General Medicine in one of the three 50 (fifty) bedded hospitals thereby adversely affecting the specialist medical cover to the personnel of the Forces. However, despite the statement made by the respondents in their affidavit they have again posted the petitioner to 9th Assam Rifles, Changlang, Arunachal Pradesh by Message dated 14th June, 2021 and which is annexed as Annexure M/6 in Misc Case No. 117 of 2021 filed by the petitioner.

[27] During the course of hearing, learned senior counsel for the petitioner has also brought to the notice of the Court that the movement order with regard to the petitioner was also issued in the first week of July, 2021. The very action of the respondents to post the petitioner to 9th Assam Rifles, Changlang, Arunachal Pradesh would

clearly indicate that the statements made in the affidavit that the petitioner is required to look after one of the 50 (fifty) bedded hospitals at Sukhovi, Dimapur, Nagaland, Mantripukhri, Imphal and Laitkor, Shillong is belied by their very action. This clearly brings out the arbitrary and malafide intention of the respondents to post the petitioner to 9th Assam Rifles, Changlang, AP on the sole objective of evading the interim orders passed by this Court. However, as no prayer has been made in the misc case for quashing the Message dated 14th June, 2021, this Court is refraining from setting aside the Message dated 14th June, 2021.

[28] This Court has also considered the cases of **State of West Bengal Vs Subhas Kumar Chatterjee** reported in **2010) 11 SCC 694**, **Sanjay Kumar Manjul Vs Chairman, UPSC & Ors** reported in **(2006) 8 SCC 42** and **State of Punjab & Ors Vs Dr.Rajeev Sarwal** reported in **(1999) 9 SCC 240** relied upon by the learned senior counsel for the respondents. However, the reliance upon by the authorities are found not applicable to the present case.

[29] On a consideration of the facts and circumstances of the case as well as the materials available on record, the respondents are hereby directed to consider the case of the petitioner for availing EOL under Rule 32 (1)(b) of the CCS Leave Rule, 1972 within a period one month from today by taking into consideration the observations made by this Court in the foregoing paragraphs and thereafter, pass an appropriate order. If the petitioner is found to be eligible for granting EOL under Rule 32 (1)(b) of the CCS Leave Rules, 1972 the same shall be granted to him and thereafter permit him to join Sir Ganga Ram Hospital, New Delhi. Till the consideration is made as directed herein above, the Message dated 14th June 2021 posting the petitioner

to the 9th Assam Rifles, Changlang, Arunachal Pradesh and the Movement Order shall remain suspended.

[30] With the above observations and directions, writ petition stands disposed of.

No cost.

JUDGE

kim

**CHONGNUN
KIM GANGTE**

Digitally signed by CHONGNUNKIM GANGTE
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