

6:3- Leave/Deputation--

- (vi) Absence before completing 3 years of service in NEHU following Sabhatical Leave - Case of Prof.M.N.Karna Sociology Department, NEHU.

In furtherance of the 89th Executive Council of 8.3.96 which constituted which the Committee consisting of the following persons to look into the grant of increment vis-a-vis the Ordinances -

1. Prof. A.C.Sinha - Chairman
2. Finance Officer
3. Internal Audit Officer
4. Deputy Registrar/A.R, Estt.II.

The Committee accordingly met on 27.6.96 in the Office chamber of the Finance Officer, only with persons Sl. No.1, 2, & 4 above. This Committee finalised the Minutes which is placed at Annexure - I dated 27.6.96 for perusal by the Council.

The Internal Audit Officer, who had not attended the meeting has also preferred to submit the letter Confidential dated 4.7.96 enclosing his examination of the case of Prof. M.N.Karna which is placed as Annexure - II for favour of perusal by the Council before arriving to a decision on the above issue.

No.F.17-31/Estt.II/82-

(Prof. A.C. Sinha)
Chairman

MINUTES OF THE MEETING OF THE
THE EXECUTIVE COUNCIL HELD ON

27.6.1996.

MEMBERS Present :-

1. Prof. A.C.Sinha - Chairman
2. Shri L.Nampui - Member
Finance Officer
3. Shri K.M.Deb - Convener
Dy.Registrar

The Chairman welcomed the members and initiated discussion on the basis of the Executive Council resolution NO:EC:89:96:6:3:(1). The meeting also discussed the circumstances under which Prof.M.N.Karna was granted E.O.L for the period from 13.5.91 to 1.5.94 during which he was holding the post of Director, A.N.Sinha Institute of Social Studies Patna.

The Committee then discussed the nature of duties to be performed by the Director of A.N.S.I.S.S with reference to the documents available. After a threadbare discussion, the Committee was of the opinion that Prof.Karna while functioning as the Director, ANSISS, was engaged in academic and Research activities and therefore, his case falls within the ambit of Sub-Clause vi(d) of OE.-8.

The Committee, therefore, decided to recommend that the period of E.O.L i.e from 14.5.91 to 1.5.94 in respect of Prof.M.N.Karna be counted for the purpose of increments under Sub-Clause Vi(d) of OE.8.

The meeting ended with a vote of thanks to the Chair.

Sd/-
(Prof.A.C.Sinha)
Chairman

ANNEXURE - II

NORTH-EASTERN HILL UNIVERSITY
NEHU CAMPUS, SHILLONG.

C O N F I D E N T I A L

- To,
1. The Chairman,
Executive Council, 9th E.C
2. The Vice-Chancellor
NEHU, Shillong.

Sir,

As desired by the Vice-Chancellor (on 27.6.96) I examined the matter relating to "absence before completing 3 years of Service after Sabbatical leave" in respect of

- (1) Prof. H.Ila
and
(2) Prof.M.N.Karna,

E.C was kind enough to include as one of the members off the Committee to be Chaired by Prof.A.C.Sinha to examine the case of Prof.M.N.Karna. A meeting of the Committee was held on 27.6.96 in my absence. On the same day I submitted a note containing my view in the matter to the Chairman E.C. The note was drafted very fast as I wanted to submit my note the same day of the meeting chaired by Prof.A.C. Sinha.

I had the occasion to see the recommendation made by the Committee. Its recommendation goes diamnolly opposite to the provision of the NEHU Ordinance & Regulations and is solely intended to grant Prof.Karna the inadmissible benefits.

I have examined the case of Prof. H.Ila also.

My view on the subject, both ⁱⁿ the cases is submitted herewith in the form of an agenda for the next E.C. meeting.

If V.C calls me, I am ready to show all the relevant documents as available in their respective files. The materials for the agenda are collected from the files only.

Yours faithfully,

Sd/-
(R.S.Raychaudhuri)
Audit Officer,

Dated 4.7.96.

Enlo : - 2 sets .

An agenda note for 90th E.C due on 18.7.96.

Subj :- ABSENCE BEFORE COMPLETING 3 YEARS
OF SERVICE IN NEHU FOLLOWING
SABBATICAL LEAVE.

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1. Case of Prof.M.N.Karna .

The factual position of the case in brief is as under :-

Prof.Karna was on Sabbatical leave for one(1) year from 1.8.89 to 31.7.90. He resumed duty on the expiry of the said leave on 1.8.90 and was in the service of NEHU from 1.8.90 to 13.5.91 i.e for a period of nine(9) months and 13 days and thereafter he left for A.N Sinha Institute Social Studies, Patna to serve and earn there without any formal approval/or release from the University.

As per terms and conditions of Sabbatical leave vide Ordinance OE-6:11(iii) Prof.Karna executed a bond to the effect that after the expiry of Sabbatical leave he would return to the services of the University and serve thereafter at least for three years failing which he would refund to the University :-

Leave Salary and allowances and other expenses, if any, spent on him, or on his behalf together with interest at the rate of 6% per annum to be calculated from the date of such payment.

The 76th E.C held on 14.8.92 considered his case and resolved that since his application/request for deputation was neither placed nor considered by the Council he should resume duties in NEHU and abide by the conditions stipulated in the bond executed by him failing which he would have to refund to the University the pay and allowances paid to him for the period of Sabbatical leave.

The decision of the E.C was intimated to Prof.Karna vide letter dated 21.12.92 and he was asked to resume duty within one month from the date of receipt of the communication or to refund the pay and allowances with interest for the said period of Sabbatical leave. A reminder was also issued to him on 15.3.93.

He was asked vide Memo of Explanation dated 5.10.93 to submit written explanation as to why his services should not be terminated w.e.f 14.5.91 for act of misconduct and indiscipline and why he should not refund forthwith the full amount of Pay and allowances paid to him for the period of Sabbatical leave.

The 82nd E.C held on 29.3.94 considered his explanation submitted under his letter dated 28.10.93 and resolved that the same could not be accepted. The E.C further resolved that Prof.Karna should resume duties at NEHU latest by 2.5.94 and refund the Leave Salary

paid for the period of Sabbatical leave failing which the post held by him would be deemed to have been vacated with effect from 14.5.91.

The above decision was conveyed to him and Prof. Karha resumed duties in NEHU from 2.5.94 (FN) but he did not return the leave salary and allowances paid to him for the said period of Sabbatical leave with interest as per conditions of the bond and provisions of NEHU Ordinance OE-6.

The matter was again taken to the E.C and the 84th E.C held on 18.12.94 resolved to regularise the period of unauthorised absence for the period from 14.5.91 to 1.5.94 by granting E.O.L.

E.O.L without pay under the Ordinance in such circumstances can be granted under OE-6:8:(viii) which reads follows : -

The authority empowered to grant leave may commute retrospectively period of absence without leave into Extra Ordinary Leave.

Accordingly Prof. Karna was granted E.O.L for the period from 14.5.91 to 1.5.94. E.O.L may also be granted under OE-6:8:(ii) and 8(iii) only after three years from return from Sabbatical leave subject to fulfilment of the conditions mentioned therein such as :-

- (1) on the request of the Institution concerned and on application of the teacher when such leave does not prejudice the interest of the University (OE-6:8:(ii)
- (2) At the discretion of the E.C when the teacher has been selected for teaching or research assignment, when the application of the teacher had been sent beforehand through and forwarded by the University (OE-6:8:(iii))

Prof. Karna did not fulfil any of these conditions and therefore the 84th E.C, could recommend grant of E.O.L only under the provisions of OE-6:8(viii) as mentioned above.

Such E.O.L without pay will have as much effect as 'Dies Non'. In other words :-

- (i) The period from 14.5.91 to 1.5.94 will not count for pensionable service and for earning increment.
- (ii) There will be no break in service and the past service alongwith the service after E.O.L count for pension.
- (iii) The pay he had been drawing before E.O.L will be restored after E.O.L.

Prof. Karna was intimated of this decision of Finance deptt., and he wanted to refund the sum of Rs.14793/- which was paid to him erroneously on account of arrear for release of increment during the said period of E.O.L.

Prof. Karna represented against this on the ground that E.O.L granted under 8(ii) or 8(iii) (d) can grant him the benefit of increment and pension on payment of pension contribution.

The agenda note which was submitted to the 89th E.C (held on 8.3.96) shows that the section officer (Estt. II) drafted the agenda correctly pointing inter alia that the representation of Prof. Karna did not fall within the purview of E.O.L which could be granted under OE-6:8(ii) or 8(iii) (d). At the higher level, however, in the same agenda it was suggested as under :-

"Since the period of E.O.L does not cover any of the provision under OE-6:8(xi) (d) (there is nothing like 8(xi) (d) it might be 8(iii) (d)), the decision of the Finance Deptt., appears to be quite as per rule. But there is a scope to count the period of E.O.L for the purpose of pensionary benefit provided Prof. Karna pays the pension contribution etc."

The above note of Dy. Registrar did not point out the provision of the Ordinance which could provide for such a scope. His suggestions was misleading and untenable. Being thus misguided the 89th E.C held on 8.3.96 took the following resolution :-

"Resolved that as per clause 3(d) (which should be (iii) (d) of OE-6:8) of Ordinance OE-6 the period of his absence may be counted for the purpose of pensionary benefits provided that either he or the foreign employer remits the employee and employer's share of Provident Fund Contribution, Leave/deputation".

This resolution of the E.C goes Ultra-vires of the provisions of Ordinance OE-6:8: (ii) or 8(iii) (d) which say that no E.O.L can be granted under the aforesaid provisions for the purpose of assuming duty elsewhere unless and until one renders atleast three years of service in NEHU after enjoying Sabbatical leave. Neither Prof. Karna was granted any approval nor was he released by NEHU to join A.N. Sinha Institute of Social Sciences at Patna, nor can this approval be granted ex post facto as this goes against the provisions of Ordinance quoted above.

In other words NEHU Ordinances do not permit any teacher to leave the service of the University for the purpose of service and earning elsewhere with or without prior or ex post facto sanction of E.C, before he completes three years of service after Sabbatical leave. No provision of the Ordinance vests the E.C with any discretionary

power to act or modify or relax the aforesaid fundamental condition viz :-

"..... that after the expiry of Sabbatical leave he (the teacher) will return to the service of the University and serve thereafter at least for three years" - (OE-6:11(iii))

There cannot be any question of asking the foreign Employer or the employee concerned to remit pension contribution when the teacher was not allowed/released by the University to seek employment elsewhere.

Ordinance OE-6:11(iii) further says that failing which (failure of the above fundamental condition) -

" he (the teacher) will refund to the University the leave salary and allowances and other expenses, if any, spent on him, or on his behalf with interest at the rate of 6% per annum to be calculated from the date of such payment."

In pursuance of this provision of the Ordinance Prof. Karna executed a bond.

The above Ordinance, however, grant a limited power to the E.C to waive or reduce the amount refundable by a teacher under this Ordinance, only in exceptional cases, for reasons to be recorded. As already argued, the E.C has not been granted with any discretionary power to act arbitrarily to waive or reduce the amount refundable under this Ordinance (OE-6:11(iii)).

There occurred no exceptional circumstances which was beyond the means of Prof. Karna, to leave the service of the University like health or premature retirement.

The only reason for leaving the services of the University was to earn elsewhere. It is a matter of great surprise how the Govt. of Bihar could appoint a teacher of this University as an employee of their Govt., without the teacher being released by the University. This is a direct attempt to destabilize the academic atmosphere of the University. In the circumstances the E.C cannot afford to record such a reason to waive or reduce the amount refundable by the teacher under the Ordinance (OE-6:11(iii)).

In pursuance of the E.C Resolution No. EC:89:96:6:3:(i) a Committee meeting was held on 27.6.96 under the Chairmanship of Prof. A.C. Sinha. All members were present except Audit Officer, NEHU.

From its report it is seen that the Committee discussed the duties and responsibilities associated with the post of Director A.N. Sinha Institute of Social Studies and opined and recommended that Prof. Karna while functioning as the Director of ANSISS, Patna, was engaged in academic and Research activities within the

the meaning of OE-6:8(vi) (d) which enable the teacher to earn increment during E.O.L i.e., E.O.L granted under OE-6:8(ii) or 8(iii) (a).

The above recommendation of the Committee is quite misleading fabricated and untenable for the following reasons:-

- (I) E.C cannot grant E.O.L under (E-6:8(ii) or 8(iii) (a) which requires at least 3 years service to be rendered after Sabbatical leave, which Prof.Karna did not perform.
- (ii) The duties and responsibilities assigned to the post of Director, ANSISS, Patna is irrelevant since Prof.Karna was not released by NEHU to assume duty there.
- &(III) He was found guilty of unauthorised absence, a case of misconduct and indiscipline which was not condoned by any E.C resolution.

Therefore, the question of granting increment during the period of E.O.L does not arise.

If the above recommendation made by Prof.A.C.Sinha, Chairman, is accepted it will embolden other teachers of the University to leave this service of the University before completing 3 years of service after Sabbatical leave at his will and seek appointment elsewhere and also ask for all service benefits as in the case of Prof.Karna. E.C, may like to think twice before accepting such a recommendation.

Therefore, in order to regularise the period of unauthorised absence from 14.5.91 to 1.5.94, the following resolutions in supercession of all other resolutions on the subject, may be taken:-

- (1) The period of unauthorised absence from 14.5.91 to 1.5.94 may be commuted into Extra Ordinary leave without pay under Ordinance OE-6:8(viii).
- (2) Amount refundable as per provisions of Ordinance OE-6:11(iii) should be re-aised in one instalment in cash or by deduction from pending dues including accumulated balance in GPF.
- (3) The amount overpaid due to grant of increments by mistake during the period of E.O.L should be recovered immediately.
- (4) Prof.Karna be warned not to act in such irresponsible manner in future.

2. Case of Prof. H.Ila.

Prof.H.Ila had been on Sabbatical leave for the period

from 15.2.95 to 30.6.95, on the expiry of which she resumed duty in NEHU on 3.7.95. As per terms and conditions of OE-6:11(iii) she executed a bond to refund to the University the leave salary and allowances and other expenses, if any, spent on her or on her behalf alongwith interest in case she fails to return to the services of the University after availing Sabbatical leave and thereafter renders at least three years service to the University.

Before she could complete the mandatory period of three years' service after return from Sabbatical leave i.e., for the specific period from 1.7.95 to 30.6.98, she was released by the University on 23.12.95 (AN) after she had been selected by IIT Kanpur (her application had earlier been duly forwarded by the University) to enable her to join IIT, Kanpur, for a period of one year with lien - on the express condition that she will have to refund the leave salary paid to her in respect of the period she spent on sabbatical leave in case she desires to be absorbed permanently at IIT Kanpur.

'Lien' means the right /title of a Govt. servant to hold a regular post, whether permanent or temporary, either immediately or on the termination of the period of absence.

A person absent from duty or a regular post on account of E.O.L or on deputation to hold a post elsewhere retains his/hern lien on the post from which he/she proceeds on E.O.L or deputation for the period of absence till he/she is permanently released from the post or deemed to have vacated the post.

Ordinance OE-6:11(iii) does not make any distinction between a person on E.O.L and a person on deputation with lien. Lien is retained by the person in both circumstances.

The Assistant Registrar's suggestion dated 21.12.95 at P/30^N of Personal file viz.

"Since Prof. Ila has applied for lien for one year, perhaps, the provision of Ordinance OE-6 does not become effective at this stage in her case",

is not in conformity with the provision of OE-6 and Fundamental Rules regulating lien and is, therefore, misleading and untenable.

In these circumstances, Prof. Ila is obliged to refund to the University the Leave Salary with allowances and other expenses, spent on her with interest in due discharge of the conditions of Ordinance OE-6:11(iii) & bond executed by her, whether she is permanently absorbed in the IIT Kanpur or return to NEHU after one year of service there.

Before her application was forwarded to IIT Kanpur, this aspect should have been considered and specific condition laid down that her release would be subject to refund of the amount that become payable under Ordinance (OE-6:8:11(iii)). The mistake lies with the office and cannot be attributed to Prof. Ila. Her case is thus distinct and separate from that of Prof. M.N. Karna who was not released from the University and found to be absent unauthorisedly and guilty of misconduct and indiscipline.

There had been no exceptional circumstances which compelled her to leave the services of the University except that she wanted to take up job elsewhere. Therefore, the E.C cannot waive or reduce the amount refundable under this Ordinance (OE-6:11:(iii)), as the Ordinance does not grant E.C any discretionary power to act arbitrarily.

Whether the teacher is absent after being released or not being released or unauthorised, whether the absence is authorised or unauthorised, if he/she fails to render at least 3 years service after return from Sabbatical leave recovery on account of Leave Salary and allowances and other expenses become inevitable save in respect of extra-ordinary circumstances beyond the control of the teacher.

In view of the position explained above, it is proper to ask Prof. Ila to refund the full amount refundable under Ordinance OE-6:11(iii) and improper not to do so as it will create a precedent and other teachers may like to have the same benefit.

It may, therefore, be resolved as under :-

Prof. Ila should refund the full amount of leave Salary and allowances and other expenses if any, spent on her or on her behalf plus such amount as may be decided by the ~~Vice-Chancellor~~ since the teacher was allowed to go abroad for Sabbatical leave together with interest at the rate of 6% per annum to be calculated from the date of such payment as per Ordinance of OE-6:11(iii) and bond executed by her.

- (iii) Sabbatical Leave in respect of Prof. K.Chatterjee, Zoology Department for three months and 13 days with effect from 9.9.96 to 21.12.96.

No:EC:90:96:6:3:(iii) The Council considered the grant of Sabbatical leave with effect from 9.9.96 to 21.12.96 to Prof. K. Chatterjee and RESOLVED to approve the same.

- (iv) Sabbatical leave - Case of Dr.S.Homchoudhuri, Senior Lecturer, Education Department, Pachhunga University College, Aizawl.

No:EC:90:96:6:3:(iv): The Council considered the grant of Sabbatical leave to Dr.S.Homchoudhuri, Senior Lecturer, Education Department, Pachhunga University College and RESOLVED that the sabbatical leave may be granted for a period of one year only, with effect from April, 1996.

- (v) Lien for a period of one year in respect of Dr.A.K. Mishra, Lecturer, Pachhunga University College, Aizawl.

No:EC:90:96:6:3:(v): The Council considered the grant of lien to Dr.A.K.Mishra, Lecturer in Commerce, Pachhunga University College and RESOLVED that he may be granted lien for a period of one year with effect from 18.5.96 to enable him to take up an assignment in the Nagaland University.

- (vi) Absence before completing 3 years of service in NEHU following Sabbatical Leave - Case of Prof.M.N.Karna, Sociology Department, NEHU.

No:EC:90:96:6:3:(vi): The Council considered the case of Prof. M.N. Karna and RESOLVED to defer taking a decision in the matter and further RESOLVED that the existing Committee with the Officer on Special Duty as an additional member may go into the history of the case including the Sabbatical leave availed by the teacher and recovery of leave salary thereof, the Committee may also examine the Sabbatical leave case vis-a-vis the proceeding on lien of Prof.(Mrs) H.Illa.