

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1086 of 2002

New Delhi, this the 25th day of April, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Dr.(Mrs.) Vinita Gupta,
W/o Dr.Arun Gupta,
A-268, Sector-19, Noida-201301.
Dist. Gautam Budh Nagar, U.P.
Working as Senior Resident,
Department of Obst. & Gynec.,
GTB Hospital, Delhi-110095.

-APPLICANT

(By Advocate: Shri R.V. Sinha)

Versus

1. Govt. of NCT of Delhi,
Secretariat Building,
New Delhi-110002.
(Through : The Secretary)
2. The Medical Superintendent
G.T.B. Hospital,
Delhi-110095.

-RESPONDENTS

(By Advocate: Shri Vijay Pandita)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

This OA has been filed against the order dated 24.4.2001 (Annexure A) whereby the respondents had denied the maternity leave benefits to the applicant contrary to the rules, constitutional protection as well as the Apex Court decision titled as MCD of Delhi Vs. Female Workers (Muster Roll) and another, reported in 2000 (3) SCC 224.

2. The facts in brief are that the applicant who is a Doctor, holding a MD degree, was appointed as a Senior Resident by the respondents on 1.1.2000 for 44 days. The said period expired on 13.2.2000 after a technical break of one or two days, the applicant was

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re-appointed on 15.2.2000 for another term of 44 days upto 29.3.2000. However, on 17.2.2000 itself, the applicant applied for maternity leave. The said leave had not been granted. The benefits of the said leave had been rejected on the ground that since the applicant has not rendered minimum period of service in G.T.B Hospital i.e. 160 days as required for considering for grant of maternity leave in case the Govt. servant appointed on contract/temporary/adhoc and emergent basis so the benefits could not be extended.

3. Thereafter the applicant made another representation which was rejected on 24.4.2001 repeating the same pleas.

4. Assailing the same, the applicant submitted that the service benefit like PF etc. is applicable to Senior Resident Doctors employed with the respondents and the same leave rules as applicable to the Central Govt. employees is applicable in the case of Senior Resident Doctors as well. It is further submitted that Chapter V Rule 43 which deals with the special kinds of leave other than the study leave as per in the Swamy's compilation of FR SR Part III which provide for grant of maternity leave and the same does not prescribed any restriction of minimum working days. Any stipulation by the respondents contrary to the provisions of the Leave Rules is arbitrary, discriminatory and liable to be struck down.

5. The respondents in support of impugned order submitted that as far the Maternity Benefit Act, 1961 as amended from time to time Section 5 prescribed the right

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to payment of maternity benefits. Sub Section (2) makes it mandatory that in order to be entitled to the maternity benefits, an employee had to actually work in an establishment of the employer from whom she claims the maternity benefits for a period of not less than (80 days) immediately preceding the date of her expected delivery (word 80 days have been substituted w.e.f.10.1.1989 earlier it was 160 days).

6. Besides that the respondents have also taken the plea that the OA is barred by time since there was an earlier rejection of the leave application vide order dated 5.4.2000 and the OA has been filed on 22.4.2002 so the same is barred by time.

7. I have heard the arguments of the learned counsel for the parties and perused the material on records.

8. Learned counsel appearing for the applicant referred to Chapter V Rule 43 of FRSR which prescribes for special kinds of leave other than study leave and submitted that as per FRSR there is no restricting for grant of leave for 80 days.

9. The counsel for the applicant further submitted that since a Senior Resident has to work for a period of three years and the applicant is likely to continue for three years so even as an ad-hoc employee the applicant was entitled to maternity leave.

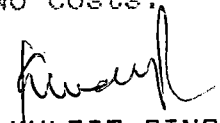
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10. The counsel for the applicant then referred to judgement in the case of MCD of Delhi Vs. Female Workers (Muster Roll) and another reported in 2000 (3) SCC 224 where the provisions of maternity benefits Act, 1961 came to be considered by the Apex Court. The question before the Hon'ble Apex Court was whether the female workers working on muster roll should be given any maternity benefit? If so what directions are necessary in this regard. The Industrial Tribunal had allowed the claim of female workers and had directed the corporation to extend the benefits under the Maternity Benefit Act, 1961 to muster roll female workers and the Hon'ble Supreme Court had also given the directions to the corporation to take necessary steps under proviso sub section (1) of Maternity Benefit Act, 1961 to be extended the benefit to the women muster roll employees of the corporation. Section 5 as it stands in the Maternity Benefit Act, 1961 has also been considered by the Hon'ble Supreme Court and the Hon'ble Supreme Court after setting out section 5 (2), the Hon'ble Supreme Court in para 27 has held that "what would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other articles, specially Article 42." Thus, no fault was found in the provisions of Section 5 (2) of the Act. So condition of serving of minimum number of 80 days stood as it is. So to avail of the benefit of maternity leave, a woman employee working on adhoc basis is required to work for 80 days to avail the benefits of the Act and the maternity leave and in this case admittedly the applicant, who was an adhoc

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employee had not worked for 80 days so I am of the considered opinion that the claim of the applicant had been rightly rejected.

11. In view of the above, OA does not call for any interference and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh