

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/00679/2017****Dated Thursday, the 2nd day of January, 2020****PRESENT****Hon'ble Mr. T. Jacob, Member (A)**

Smt. V. Panimalar,
Office Supdt./CBS/FUR/P.B.,
Integral Coach Factory,
Perambur, Chennai – 600 038.

....Applicant

(By Advocate M/s. Ratio Legis)

Vs

1. Union of India rep by,
The General Manager,
Integral Coach Factory, Perambur,
Chennai – 600 038.

2. The Chief Personnel Officer,
Integral Coach Factory, Perambur,
Chennai – 600 038.

....Respondents

(By Advocate M/s. Dr. D.Simon)

ORDER**(Pronounced by Hon'ble Mr. T. Jacob, Member (A))**

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“i. To quash the Impugned order No. P/SIB/200/6 Vol.II dated: 21/23.01.2017 (Annexure A1, Page-5) of Chief Personnel Officer, ICF/Chennai, the 2nd respondent together with earlier reply No.PB/SIB/200/6 Vol.II dated: 05.12.2014 (Annexure A-5, Page-II) and to direct the 2nd respondent to allow the applicant to avail the balance Child Care Leave at her credit to take care of her second son and thus render justice.”

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant was appointed as Clerk Grade -II in ICF on 16.03.1995 on Compassionate Grounds consequent on the demise of her husband. The applicant is working as Office Superintendent in the Office of Chief Personnel Officer, Integral Coach Factory, Chennai. She had a son at the time of appointment. The applicant got remarried to Mr.G.Ravi who had a girl child at the time of marriage. Subsequently, her second marriage also ended in Divorce. The same has also been informed to the Railway Administration. The applicant has applied for Child Care Leave (CCL) on 06.11.2014 to look after her second son born on 22.09.2003 through her second husband and the Chief Personnel Officer has rejected the same treating the child as her 3rd child. The applicant has submitted her appeal to Chief Personnel Officer on 21.09.2016 for grant of Child Care Leave to take care of her second son. The 2nd respondent has rejected the same. Hence, this O.A is filed before this Tribunal to quash the Impugned Order dated 21/23.01.2017 and to direct the 2nd respondent to

grant Child Care Leave to the applicant for her second son, *inter alia*, on the following grounds:-

- i. In terms of Railway Board's Letter No.E(P&A)I-2008/CPC/LE-8 DATED 23.10.2008 "Women employees having minor children may be granted Child Care Leave by an authority competent to grant leave for a maximum period of two years (i.e., 730 days) during their entire service for taking care of upto two children whether for rearing or to look after any of their needs like examination, sickness etc.".
- ii. The applicant has not availed any leave for her first son as she was appointed on Compassionate ground due to the death of her first husband.
- iii. The applicant on humanitarian grounds availed 225 days of CCL to look after the step daughter of the second husband. But the marriage also ended in divorce.
- iv. The applicant without any help from anyone left alone to look after her second son.
- v. Since the applicant has availed Child Care Leave for only one child (step daughter) she is entitled to avail Child Care Leave for her second son as the Rule provides that women employees can avail child care leave up to two minor children.

3. Per contra, the respondents in their reply statement have stated that at the time of appointment, the applicant had declared that she has a son by name S. Rathish born on 17/09/1985 and included his name in all official documents. After her 2nd marriage with Sri. G. Ravi in the year 2002, she got a male child on 22-09-2003 and she had included the names of 2nd husband, 1st son, step daughter and the child born through her 2nd husband in Form 6. After marriage with Sri.G.Ravi, she had included the step daughter Ms. R. Sagithya in the statement showing the details of the members of the

family for the purpose of family pension, Gratuity/DCRG. In the sterilization certificate she had also shown Mr.Rathish as the 1st child, Ms.R.Sagithya as 2nd child and Herish Jaya Surya as 3rd child. After including in the family and other declarations, she had availed 210 days of Child Care Leave for the 2nd child viz. Ms.R.Sagithya since her 1st child Mr.Rathish had already attained 18 years of age. As per the Railway Board's letter No.E(P&A)I-2008/CPC/LE/8 dated 23/10/2008 women employees having minor children may be granted Child Care Leave by a Competent Authority for a maximum of 730 days up to the children attaining the 18 years of age. It further clearly states that Child Care Leave is admissible for two eldest surviving children only. After divorce from her 2nd husband Sri.G.Ravi on 18/7/2014, she had deleted from family declaration and other nominations submitted by her earlier the names of Sri.G.Ravi 2nd husband and Ms.R.Sagithya step-daughter and the same had been noted by the Administration. After deletion she had submitted a new family declaration and nomination dated 17/09/2014 incorporating her first son Mr. Rathish born to her 1st husband and Master R.Herish Jaya Surya born to her 2nd husband. After including she had given representation dated 06/11/2014 for grant of Child Care Leave and Education Allowance, for which a reply was given on 05/12/2014, that she is not eligible for the same as it could be availed only for two eldest surviving children as per Railway Board Order No.E(P&A)I-2008/CPC/LE/8 dated 23/10/2008. She had already availed Child Care Leave for the 2nd step daughter for 210 days from 29-10-2008 to 03-12-2009 till the step daughter completed the age of 18 years. She submitted another representation dated 21-09-2016 for grant of Child Care Leave and

Education Allowance, which had been examined thoroughly and reply was given vide this Office Letter No.PB/S1B/200/6 Vol.II dated 05-12-2014. Her appeal dated 21-09-2016 was rejected by the respondents vide order dated 21/22.1.2017 based on Indian Railway Establishment Code Vol-I 1985 (Leave Rules) and based on opinion of the Legal Department of ICF. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. Having regard to the peculiar facts and circumstances of the case, the crucial point for consideration in this OA is whether the privileges and facilities in the name of second child availed by the step daughter can be nullified by the applicant by submitting letter for deletion of the name of the step daughter from the family composition consequent on divorce with second husband.

6. It could be seen on perusal of the records that the applicant Smt V. Panimalar, who was initially appointed on compassionate grounds had subsequently re-married Shri G.Ravi and begot a son R. Herish Jay Suriya on 22.09.2003. It is also seen that at the time of her second marriage, she took second husband's daughter as step-daughter and included her along with her second husband in the family composition for purposes of issue of PTOs. The applicant has availed Maternity Leave from 22.09.2003 to 03.02.2004 and availed more than 200 days Child Care Leave from 01.09.2008 to 04.12.2009 which was stated to have been allowed to take care of the step daughter R.Sagithya. Now, she has contented that the relationship with the step daughter became null and void due to divorce with her second husband Shri G.Ravi

and she has also requested for Child Care Leave and Children Education Allowance to the son born to her through second marriage.

7. The claim of the applicant is that she should be permitted to avail the balance Child Care Leave at her credit to take care of her second minor son.

8. Admittedly, there are three children to the applicant, eldest being Rathish, born of the deceased husband, next step daughter Ms.Sagithya who was the daughter of Ravi, the spouse of the applicant through second marriage and youngest R. Herish born to her in the conjugal bond with her spouse Ravi. Divorce, thereafter, had taken place with Mr.Ravi. Of the three children for one (Step Daughter Ms.Sagithya) she had already availed of one Child Care Leave to the extent of 200 days. Even PTO passes had been taken in her name. This means that Ms.Sagithya has been recognized as the child of the applicant. Thus, in the order of birth of Master Herish is the third. This order of birth of the children would not change by virtue of the divorce of the applicant from her spouse Mr.Ravi or separation of her step daughter Ms.Sagithya. Here, Rathish is the eldest, who had already attained majority and hence, there is no provision for child care leave in respect of major son. As such, in view of the fact that the child (Master R. Herish)for whose child care the applicant claims child care leave does not fulfil the condition of being the one of the first two children, there is no question of any child care leave being available in respect of that child. That after divorce, the relationship of the daughter is no longer there is of no consequence. She had not applied for education allowance and child care leave for 3rd child from the year 2007 to till the age of 11 years (i.e., the date of her representation dated

25/09/2014.). She had availed all the facility to her step daughter from the date of re-marriage to the date of divorce and now she cannot deny the facilities that she had availed for step-daughter due to divorce with her 2nd husband. Since both the children have been covered for all purposes, the male child born of Sri. G. Ravi, should be treated as third child, for whom Child Care Leave and education allowance cannot be granted since she had already exercised the option in favour of her step daughter (i.e., R.Sagithya) as a second eldest child.

9. In the conspectus of the above facts and circumstances, I am of the view that this case does not come within the ambit of the entitlement prescribed by the Railway Board on the subject and hence the applicant is not entitled for the grant of Child Care Leave and Shri Herish Jey Surya should be treated as a third child. In the circumstances, the OA is liable to be dismissed and is accordingly dismissed as devoid of merit with no order as to costs.

(T. JACOB)
MEMBER (A)
-01-2020

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