

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

(order reserved on 10.3.2021)

O.A.No.060/0724/2020

Chandigarh, this the 15th day of March, 2021



CORAM: HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Geeta aged 41 years Group C w/o Sh. Rajiv Narayan D/o Sh. Hari Mohan, resident of 225/B1 Bazaar, Lal Kurti Bazaar, Ambala Cantt. (Haryana) Pin-133 001 working as Vocational Instructor (Group C) under respondent No.4.

Applicant

(BY ADVOCATE: MR. KARNAIL SINGH)

Versus

1. Union of India through Secretary, Ministry of Skill Development & Entrepreneurship, Shram Shakti Bhawan, Rafi Marg, New Delhi-110 001.
2. Director General, Ministry of Skill Development & Entrepreneurship, B-2 Kaushal Bhawan, Pusa Road, Karol Bagh, Delhi-110005.
3. Head of the Deptt./RDSD&E, ITI (Women) Sec. 59, Phase 5, SAS Nagar(Punjab)-PIN 160062.
4. Principal, National Skill Training Institute (NSTI) (Women), GT Road, Panipat(Haryana) Pin-132103.

(BY ADVOCATE: MR. SANJAY GOYAL)

.. Respondents



ORDER
HON'BLE MRS.AJANTA DAYALAN, MEMBER(A)

1. The present OA has been filed by the applicant Geeta seeking setting aside of the order dated 8.9.2020 (Annexure A-1) and to issue direction to respondent no.2 to grant her Child Care Leave for 260 days due to her for treatment of her son abroad.
2. The applicant was appointed as Vocational Instructor and is a regular employee of the respondents. During the year 2015 to 2019 the applicant has stayed in USA. She has availed CCL for 466 days at the time of birth of her child on 14.6.2019 in USA. She has a balance of 264 days of CCL at her credit.
3. The applicant has stated that her son Varun Narayan, aged 3 years has been suffering from Severe Combination Plagiocephaly and Brachycephaly, Slopping to Forehead and Severe posterior head height by birth and was under treatment in USA. Medical report and certificate in this regard are annexed as Annexure A-4.
4. The applicant pleads that being employee of the respondents, she had to come back to India to join her duties. However, Civil Hospital, Panipat has advised her to continue treatment of her son in USA. In this regard copy of medical certificate is annexed as Annexure A-5.
5. The applicant submits that her husband is permanent resident of USA. Due to health reasons of her son, she had to go to USA to continue treatment from the same hospital



there for which she also applied for CCL for 260 days from 8.9.2020 to 25.5.2021.

6. The applicant further submits that there is no male member capable of taking care of the child. However, her request has been declined by incompetent authority i.e. the Principal vide order dated 8.9.2020 (Annexure A-1). She has subsequently made a representation dated 9.9.2020 (Annexure A-3) to the Director General but there has been no response. Hence, the O.A.
7. The case of the applicant is that she is entitled for Child Care Leave for a total of 730 days. As her son is suffering from severe diseases and was undergoing treatment in USA, she had to continue treatment of her son in the same hospital in USA. She has already availed a total of 464 days of CCL. So, she is entitled to 266 days of balance CCL.
8. The applicant has relied upon the judgment passed by the Hon'ble Apex Court in the case of **Kakali Ghose versus Chief Secretary Andaman & Nicobar Administration & Ors. C.A.No.4506 of 2014** decided on 15.4.2014, judgment of Hon'ble Punjab & Haryana High Court in the case of **Kanchan Bala versus State of Haryana** (CWP No.21506 of 2017) and order passed by the Principal Bench of the Tribunal in **O.A.No.3460 of 2012** decided on 16.1.2014.
9. In view of all above, the applicant has concluded that the respondents have wrongly delayed her legitimate and genuine claim. She therefore submits that she is entitled



for the relief sought in the OA and the same deserves to be allowed.

10. The respondents have contested the claim of the applicant. They have quoted the provisions of Child Care Leave Rules and have further relied upon the provisions of DOPT OM issued on 18.11.2008 which clarifies that period of CCL for female employees was to facilitate them to take care of their children in time of their need, but it does not mean that CCL disrupts the functioning of Central Government offices. It specifies that CCL cannot be demanded as a matter of right and under no circumstances, can an employee proceed on CCL without prior approval of the leave sanctioning authority. They further state that CCL can be availed only when the employee concerned has no earned leave at her credit. Therefore, it is abundantly clear that CCL is a sort of emergency relief to be resorted to when no other leave is due and there is an urgent need to care for a minor child. It is also implicit that this leave has to be granted with great caution since it is to be given only for a great need and should not be resorted to in general by all female employees which may disrupt the functioning of the Central Government offices.

11. The respondents have further stated that the judgment passed in the case of Kakali Ghosh is not applicable to the facts of the present case. In the said case, the Hon'ble Apex Court has held that CCL beyond 730 days can be granted by combining other leave, if due. It is also held that it shall not be open for the competent authority to alter the kind of leave due and applied for except at the



written request of the government servant. At the same time, under Sub-Rule 2 of Rule 7, leave can be reduced and revoked by the competent authority in case of exigencies of public service. However, in the present case, the applicant has not given any evidence proving that she applied for Child Care Leave as per rules and applicable OMs, whereas the respondents have clearly denied any such application having been made.

12. It is further submitted by the respondents that similar view was also taken by the Principal Bench of the Tribunal while dismissing O.A. No.1551 of 2018 in the case of **Neelam Sabharwal versus Union of India & Ors** decided on 14.10.2019.
13. The respondents have further submitted that National Skill Training Institute has been cooperative and kind to all staff including the applicant. It extends all possible help to needy when required. However, the applicant is taking unnecessary advantage of the lenient attitude of the respondents.
14. The respondents have further stated that the office is working with 50% of the sanctioned strength. So, shortage of staff is there and in the public interest, the shortage of staff is valid reason for refusal of leave. Moreover, the refusal of leave was also due to previous record as the applicant did not attend office for more than four years for one reason or the other.
15. Further, it is submitted by the respondents that basic clinical report on which the leave is demanded about is



four years old. It is to mis-guide the department and the Tribunal. The applicant had not attached the latest report knowingly and has concealed the recent facts.

16. The respondents have further averred that the applicant has remained continuously on leave/absent right from 19.5.2015 to 6.2.2020(AN). Considering her previous record of remaining absent from duty for four years for one reason or other, the leave applied for was rightly rejected by competent authority. Any government employee is appointed to work in an office for the public interest and not to remain absent from duty for long years. The respondents have behaved sympathetically and regularized leave period of the applicant under the hope that she will join her service and contribute for development of nation. However, it seems that she was still not willing to join the duty and she pre-planned going back to USA with malafide intentions.

17. The respondents have submitted that applicant arrived in India on 6.2.2020 and joined the office on same day. She got the US visa without taking prior permission from respondents. She never went to Doctor of Civil hospital for consultation of her ailing child which she should have done in the first instance on reaching India. The report is stated to be doubtful. The letter dated 4.9.2020 states that Hospital never referred the child for treatment in USA when expert doctors are available in India.

18. The respondents have also stated that applicant knows it well that two years old status report of the kid dated



25.9.2018 (Annexure R-19) states that medical history is unremarkable with no serious illness, hospitalization and surgery. She also betrayed the respondents by stamping her US VISA without any permission or information to the respondents.

19. The respondents further submit that the Principal who is also Deputy Director can sanction/refuse the leave. Surprisingly, the applicant had not objected to competence of same Principal—Ms. Shashi Mathur, when she sanctioned her leave dated 27.1.2016 (Annexure R-5). However, when the same authority refused the leave, the applicant is challenging competency, which is self-contradictory.

20. The respondents have also stated that as per CCS (Conduct) Rules, no employee can approach the higher authority directly without any permission or information to her immediate superior. However, instead of joining office, the applicant approached the higher authority for grant of leave in violation of CCS (Conduct) Rules, which is unbecoming of a government servant.

21. In view of all above, the respondents have concluded that the applicant is not entitled for any relief being sought by her in the present OA and the same deserves to be dismissed.

22. I have heard the counsel of opposing sides and have also gone through the pleadings. I have also given thoughtful consideration to the entire matter.

23. First of all, I observe that the applicant is a Vocational Instructor with National Skill Training Institute. She was



appointed in 2008. In 2015, she left for USA as her husband was residing there. Her initial sanctioned leave was only Earned Leave for about 20 days from 19.5.2015 to 5.6.2015 (Annexure R-15). Since then, she has been continuously absent and joined duty only on 6.2.2020 that is after almost four years and eight months. She has been continuously applying for leave in short spells. Even on 6.2.2020, she joined only after issuance of numerous letters by the respondents and finally after issue of letter dated 5.11.2019 (Annexure R-17) stating that if she does not resume duty within one week, disciplinary action will be initiated against her. Prior to this, even vide DGT letter dated 20.9.2018 (Annexure R-16), she was directed to report for duty within 15 days failing which action will be taken as per provisions laid down under CCS(CCA) Rules, 1965. There is even earlier letter dated 8.8.2018 (Annexure R-12) whereby she has been intimated that the work of the institute is suffering and the institute is facing problem on day to day basis in the absence of regular staff. Hence, it is not possible to grant further leave. Therefore, she was advised to resume duty immediately within 15 days, failing which she was liable for disciplinary action. There are other references to the applicant intimating her about non-feasibility of sanction of further leave to the applicant and asking her to join duty immediately (Annexure R-10). Thus, it is clear and proved on record that the applicant has been absent continuously despite repeated letters issued by the department to join duty.



24. Further, it is clear that even on 6.2.2020, she has come to get her visa extended which was further issued on 6.3.2020 as per Annexure R-18. The respondents have already intimated that they were facing huge shortage of man power with 50% staff only working and had intimated her to join duty immediately on several occasions earlier as well. It is settled law that no leave can be demanded as a matter of right - whether CCL or any other leave. Thus, I do not find any ground in the claim of the applicant that she is entitled to balance leave for treatment of her son abroad.

25. It is also observed that the applicant has already been sanctioned the following kind of leaves by the respondents:-

Sr.No.	Nature of leave	Period		No. of days
		From	To	
1.	Earned Leave	19.05.2015	05.06.2015	18
2.	Earned Leave	06.06.2015	09.09.2015	96
3.	Half Pay Leave	10.09.2015	03.12.2015	85
4.	Extra Ordinary Leave	04.12.2015	18.12.2015	15
5.	Extra Ordinary Leave	19.12.2015	03.03.2016	76
6.	Extra Ordinary Leave	04.03.2016	01.11.2016	243
7.	Maternity Leave	02.11.2016	30.04.2017	180
8 .	Child Care Leave	01.05.2017	31.10.2017	184

However, she remained absent for a period upto 6.2.2020.

26. The above chart itself shows that the respondent department has been quite liberal in treating her period of absence and has continuously sanctioned leave applied by her even though all these leaves were not sanctioned prior to her proceeding on leave. This is even obvious from the fact that despite long period of absence which is yet to be regularized and despite many references from the department asking her to join duty immediately, she



has remained absent. Thus, this fact does not need further proof. This itself shows completely irresponsible behaviour of the applicant which cannot be encouraged by this Tribunal. Non grant of further leave in her case by the respondent department is fully justified, as already discussed above.

27. Further, I observe that the applicant is pleading sickness of her son for extension of leave. During arguments, counsel for the applicant focussed on the medical certificate annexed as Annexure A-5 which states that the treatment of her baby needs to be continued in USA. I observe that the Certificate is issued by the Medical Superintendent, Civil Hospital, Panipat. It states as follows:-

"As per record produced, the child is suffering from Plagiocephaly and Brachycephaly with speech involvement. For which he is under treatment at USA. It is advised to continue treatment from USA hospital".

Thus, the certificate advises continued treatment from USA hospital. I am clear that such certificate cannot be accepted by Government of India as there is no record to prove that such treatment is not possible in India. The certificate itself is very smartly drafted by stating that "As per record". Thus, it is not even clear whether the Medical Officer himself examined the child or not. Even the name of USA hospital is not mentioned. If such certificates are accepted in the Government, it will have wide implications. Employees may then claim cost of treatment taken from abroad, which will be huge as compared to treatment taken within the country. In any case, I cannot accept that such treatment is now not available within India



without there being a proper proof by the medical experts in this regard, which is totally lacking in the instant case. In fact, the Medical Superintendent, Civil Hospital, Panipat, himself has made it clear vide his letter dated 27.10.2020 (Annexure R-2) that the certificate was issued only on the basis of medical reports shown by the applicant and he never referred for treatment there.

28. Further, it is observed that medical certificate dated 28.9.2018 (Annexure R-19) clearly states that "Medical history has been unremarkable with no serious illness, hospitalization or surgeries". Even earlier evaluation report dated 5.7.2017 annexed by the applicant herself clearly stated 'no prior serious illness' and 'Surgery-None'. Thus, the claim of the applicant about sickness of her child requiring treatment only abroad is to say the least quite farfetched and with the sole aim of getting sympathy and getting her continuous leave for years sanctioned at the cost of public service which is her duty as a public servant.
29. As regards the Rule position, the Rules regarding Child Care Leave have been followed by DoPT instructions issued vide OM dated 18.11.2008. This OM has not been challenged in the OA. This OM clearly states that the Child Care Leave should not disrupt the functioning of Central Government Offices. It 'cannot be demanded as a matter of right. Under no circumstances can any employee proceed on CCL without prior proper approval of the leave by the leave sanctioning authority'.



30. In view of clear provisions of above OM, the applicant cannot claim the Child Care Leave as a matter of right which she seems to be doing.
31. I also observe that the applicant seems to be in the habit of proceeding on leave without prior sanction. This is a pre-condition of every leave. Without such basic discipline, the offices cannot function smoothly and Government cannot discharge its sovereign and other functions.
32. The applicant is in clear defiance of these orders and has in fact remained absent for over four and a half years continuously. Even now, she is not pleading guilty or expressing remorse, but is blaming the respondent department for not sanctioning leave. This itself shows her basic indifferent attitude towards work and neglect for her duties.
33. The counsel for the applicant relied upon Office Memorandum dated 27.7.2015 to plead that the claim of applicant for grant of CCL could not be rejected by the Principal as competent authority would be Head of Department. I find that this O.M. is not relating to CCL at all. Rather, it is with regard to taking prior permission for leaving station/headquarters for going abroad while on leave. Thus, reliance placed by applicant on the O.M. in question is totally misconceived. On the other hand, the respondents have categorically stated that Principal, who is also Deputy Director can sanction or refuse leave,. They have also pointed out that the applicant has not objected



when the same Principal sanctioned her leave dated 27.2.2016 (Annexure R-5) and she objects only when leave is refused.

34. The applicant has also filed an O.A.No.060/0735/2020 against action of respondents in not sanctioning Child Care Leave and Maternity Leave from 1.11.2017 to 6.2.2020. That O.A. has been rejected by a detailed order dated 10.3.2021 mainly on the same grounds as discussed above.
35. In view of all above, I find no justification in the claim of the applicant.
36. The OA is devoid of merits and is dismissed.
37. There shall be no order as to costs.

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh
Dated: 15.03.2021

HC*