

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**CHANDIGARH BENCH**

**(order reserved on 8.3.2021)**

O.A.No.060/0735/2020

Chandigarh, this the 10-3-2021.



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

Geeta w/o Sh. Rajiv Naryan d/o Sh. Hari Mohan, resident of 225/B1 Bazaar, Lal Kurti Bazaar, Ambala Cantt. (Haryana) Pin-133 001 working as Vocational Instructor under respondent no.3.

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. Under Secretary, Ministry of Skill Development & Entrepreneurship, Shram Shakti Bhawan, Rafi Marg, New Delhi-110 001.
3. Head of the Deptt./RDSD&E, ITI (Women) Sec. 59, Phase 5, SAS Nagar(Punjab)-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 directions to the respondents to grant her Child Care Leave and Maternity Leave as due to her as well as leave not due, along with all consequential benefits.
2. The applicant was appointed as Vocational Instructor in 2008 and is a regular employee of the respondents. In the year 2015, the applicant left for USA with prior permission of the respondents and after getting Earned Leave sanctioned from 19.5.2015 to 5.6.2015. As the husband of the applicant was residing in USA, the applicant extended her leave with prior permission of the respondents from time to time. She availed different kinds of leave including Maternity Leave from 2.11.2016 to 30.4.2017 and Child Care Leave from 1.5.2017 to 31.10.2017.
3. During the stay abroad, the applicant had a baby on 14.6.2019. Her son aged three years was suffering from Severe Combination Plagiocephaly and Brachycephaly, Sloping 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-2.
4. The applicant pleads that due to compelling circumstances, she had to stay abroad to continue treatment of her child



in USA as her husband was residing there and life of the newly born baby was safe and secure in USA.

5. The applicant further pleads that under serious condition of her small son and official circumstances, the applicant had to join her duties on 6.2.2020 immediately on coming back to India. She was allowed to join duties 'with passing any adverse order' against her with regard to extension of leave (Annexure A-6). The applicant submitted a detailed representation dated 21.2.2020 (Annexure A-3) to Ministry of Skill Development & Entrepreneurship. The respondents have, however, not decided her representation so far. Hence the OA.
6. The case of the applicant is that she is entitled for Child Care Leave for 730 days and 180 days of Maternity Leave twice in her entire service. As her son is suffering from severe diseases and was undergoing treatment in USA, she had to proceed on leave not due from 1.11.2017 to 31.10.2018. She had to continue treatment of her son in the hospital in USA. She has no option other than to remain in USA. As such, she applied for total 464 days of leave upto 6.2.2020. However, the respondents have not sanctioned Child Care Leave from 1.11.2018 to 13.6.2018 for 225 days and from 14.12.2019 to 6.2.2020 for 55 days. They have also not sanctioned Maternity Leave from 14.6.2019 to 13.12.2019 which is permissible under the rules being her second Maternity Leave. 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.

7. In view of all above, the applicant has concluded that the respondents are sitting over the legitimate and genuine claim of Child Care Leave, Maternity Leave and Leave not due, without any reason in an illegal and arbitrary manner. She has, therefore, submitted that she is entitled for the relief sought in the OA and the same deserves to be allowed.
8. The respondents have contested the claim of the applicant. They have quoted the provisions of Child Care Leave Rules and have further quoted 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 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.

9. 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.
10. 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.

11. 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. 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. Further, 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.
12. Further, it is submitted by the respondents that basic clinical report on which the leave is demanded is four years old. It is to mis-guide the department and the Tribunal. The applicant had not attached the latest reports knowingly and has concealed the recent facts.
13. The respondents have further averred that the applicant has remained continuously on leave/absent right from 19.5.2015 to 6.2.2020(AN). She has not joined duty even after issuance of many letters from the answering Institute. A letter from DGT, headquarter was also issued to her (Annexures R-2 and R-3). However, she did not join. The applicant went to USA after taking following leave:-



Sr.No.	Nature of leave	Period		No. of days
		From	To	
1.	Earned Leave	19.5.2015	9.9.2015	114
2.	HPL	10.9.2015	3.12.2015	85
3.	Extra Ordinary Leave	4.12.2015	18.12.2015	15

After that, the following leaves were also sanctioned on sympathetic grounds:

Sr.No.	Nature of leave	Period		No. of days
		From	To	
1.	Extra Ordinary Leave	19.12.2015	03.03.2016	76
2.	Extra Ordinary Leave	4.3.2016	1.11.2016	243
3.	Maternity Leave	2.11.2016	30.4.2017	180
4 .	Child Care Leave	1.5.2017	31.10.2017	184

But she remained absent for longer period upto 6.2.2020(FN) for the reasons best known to her. The leave taken by her was considered on sympathetic ground. The applicant only informed and did not take any pre-approval. She joined duty after issue of letter from DGT(HQ)(Annexure R-4) to the effect that if she does not attend the office, she will be liable for disciplinary action under CCS(CCA) Rules, 1965. In fact, she joined duty as her visa too was expiring and she came to re-stamp- her visa (Annexure R-7).



14. Further, it is submitted that clinical evaluation report is dated 11.2.2016 - that is more than four years old. Report dated 25.9.2018 states that medical history is unremarkable with no serious illness, hospitalization and surgery (Annexure R-5). As such, the applicant should have acquired recent clinical report which has not been submitted by her to mis-guide the Tribunal.
15. The respondents have further stated that the representation dated 21.2.2020 is also against the CCS (Conduct) Rules, 1964 as the applicant was informed about status of her leave and even then the applicant has approached the higher authorities for the same reason. As the status of leave was already informed to her, her representation is illegal and there is no question of any decision on her representation by higher authorities.
16. 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.
17. 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.
18. 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. 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-6) 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-4), 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-3) 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. 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.

19. 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-7. 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 earlier occasions 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 her period of absence needs to be regularized as leave of various kinds.

20. 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	19.5.2015	9.9.2015	114
2.	HPL	10.9.2015	3.12.2015	85
3.	Extra Ordinary Leave	4.12.2015	18.12.2015	15

Sr.No.	Nature of leave	Period		No. of days
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However, she remained absent for a period upto 6.2.2020.

21. 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, but 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 leave in her case by the respondent department is fully justified, as already discussed above.

22. 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-4 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. 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 that whether the Medical Officer himself examined the child or not. 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.

23. 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'.
24. In view of clear provisions of above OM, the applicant cannot claim the Child Care Leave and other kinds of leave as a matter of right which she seems to be doing.
25. 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.

26. 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.

27. In view of all above, I find no justification in the claim of the applicant.

28. The OA is devoid of merits and is dismissed.

29. There shall be no order as to costs.

**(Ajanta Dayalan)**  
**Member (A)**

Place: Chandigarh  
Dated: 10-3-2021.

KKS