

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 445/87.  
T.A. No.

198

DATE OF DECISION 12.11.1987.

Smt. Manjeet Kaur Shah

Petitioner Applicant

Sheri R.K. Kamal, Advocate.

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents

Mrs. Avnish Ahlawat,

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *No*
2. To be referred to the Reporter or not ? *Ab*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

*12/11/87*  
(BIRBAL NATH)  
Member.

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PRINCIPAL BENCH  
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DATE OF DECISION:

REGN. NO. C.A. 445/87.

Smt. Manjeet Kaur Shah ... Applicant

VS.

Union of India & Ors. ... Respondents.

CORAM:

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant: Shri R.K. Kamal, Advocate.

For the respondents: Smt. Avnish Ahlawat, counsel.

JUDGMENT

Per this Application (C.A. No. 445/87) filed in March, 1987 in the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the applicant, Shrimati Manjeet Kaur Shah, who is working as a Staff Nurse in the G.B. Pant Hospital, New Delhi, has prayed that the order passed by the Medical Superintendent of the said Hospital treating the period from 10.4.1986 to 14.9.1986 as dies non in respect of the applicant be quashed and the respondents be directed to treat the said period as on medical leave or other leave due to the applicant. She has further prayed that the respondents should treat the period from 11.1.1986 to 21.2.1986 as maternity leave under the

Central Civil Services (Leave) Rules.

2. The facts leading to the application are that the applicant had joined the service as Staff Nurse in the G.B. Pant Hospital on 25.2.1978. The applicant avers that in the fourth month of her pregnancy, she had to undergo abortion which was preceded by heavy bleeding and pain. In the emergency, there was no time to approach a Government hospital and she had, accordingly, approached her family doctor Jagwanti, M.B.B.S. working in Jindal Clinic and Hospital located in Kishanganj, Delhi. On resumption of duties after the aforesaid abortion, the applicant applied for maternity leave for the said period of absence. The medical leave application was supported by a medical certificate of the said clinic. She was denied maternity leave ~~on~~ on the ground that she should have produced a medical certificate of a Government hospital.

The applicant had suffered mental break-down and manic depressive psychosis which necessitated a second spell of treatment under Dr. M.K. Jindal from 26.4.1986 to 14.9.1986. The Medical Superintendent, G.B. Pant Hospital passed the following orders on 10.10.1986:

"The period of absence from duty w.e.f. 10.4.86 to 14.9.86 of Smt. Manjeet Kaur Shah, Staff Nurse will be treated as dies-non under F.R. 17 for all purposes.

She has joined duty on 15.9.86." The applicant averred that this was in violation of the provisions of Rule 19 of the C.C.S. (Leave) Rules, 1972 under which leave is admissible even on production of a medical certificate from a registered medical practitioner.

3. In their counter, the respondents averred that the applicant was a regular absentee and her leave/absence position from 3rd December, 1985 to 14th September, 1986 was as follows:- (paras. 2,4 and 5 of the counter are reproduced below for ready reference)

"2. That the petitioner had initially obtained 11 days leave from 3rd December, 1985 to 13th December, 1985. From 14.12.85 to 28.12.85 she was granted 15 days earned leave due to her mother's sickness and extension was again sought in the leave with effect from 29.12.1985 to 7.1.1986 on the ground of the petitioner's sickness. She joined the duty on 8.1.1986 and then vide her application dated 13.1.1986 sought for 42 days abortion leave with effect from 11.1.1986 to 21.2.1986. Since with this application a medical certificate of a private doctor was attached, the Administrative Officer vide his letter dated 21.1.86 asked the petitioner to submit a certificate from a Government Hospital/Dispensary to this effect within three days of the receipt of the memo failing which no leave would be sanctioned to her.

4. That the petitioner again submitted an application for extension of leave from 22.2.86 to 15.3.86 with the certificate from a private medical practitioner. However, since no certificate was earlier submitted from the Government Hospital/Dispensary, the Administrative Officer again vide his letter dated 3.3.86 directed her to produce a certificate, otherwise the leave of the kind due will be sanctioned. Again on the ground of her sickness, the extension of leave was sought with effect from 16.3.86 6.4.86 and the certificate from the private hospital was again attached. Since no medical certificate from the Government Hospital/Dispensary or the G.B. Pant Hospital was produced by the petitioner, her leave account was credited as follows:-

1. Earned leave	49 days	11.1.1986 to 28.2.86
2. Commuted leave	13 days	1.3.86 to 13.3.86
3. Half pay leave	1 day	14.3.86
4. E.C.L. with pay	23 days	15.3.86 to 6.4.86.

She joined the duty on 7.4.1986 and availed day's off on 8.4.86 which in fact was not due to her meaning thereby she absented from duty on 8.4.86. She again came on duty on 9th April, 1986 at 10.10 A.M. and left a casual leave application for 10.4.86 at the counter without sanction by the competent authority. Again vide her application dated 12.4.86 she sought leave of 15 days for her sickness with effect from 11.4.86 to 24.4.86. Again an application for extension of leave for 7 days was sent with effect from 25.4.86 to 1.5.86. This application was attached with the Medical Certificate dated 14.4.86 & 25.4.86. Since the certificate was again not from a Government hospital or dispensary, she was asked to appear before the Staff Surgeon Lck Nayak Jayprakash Narain Hospital for medical check-up vide letter dated 8.5.86. In the meanwhile, she again asked for extension of leave on medical ground from 2.5.86 to 16.5.86 and she was asked to appear before the Staff Surgeon, LNJP Hospital for medical check-up vide letter dated 26.5.1986. Again, an application dated 22.5.86 for extension of leave

on medical ground for 15 days was received with effect from 17.5.86 and then vide application dated 4.6.86 for another 15 days with effect from 1.6.86 was received for leave on medical ground.

Since the petitioner did not care to examine herself from a government hospital or dispensary and she being a staff nurse did not even care to get herself examined from G.B. Pant Hospital itself in which she was working, the respondents vide their memo. dated 21.6.86 informed the petitioner that she has been absenting herself without any reason. She was directed to join duty immediately and to produce a medical certificate from the Staff Surgeon, LNJP Hospital in support of her sickness, failing which she will be liable to severe disciplinary action. In case, she does not join the duty by 30.6.86, she was given three months notice. Her services will be deemed to have been terminated with effect from 30th September, 1986.

5. That the petitioner again sought 20 days leave with effect from 16.6.86 on medical ground without any medical certificate. Again vide application dated 6th July, 1986 20 days leave was sought without medical certificate with effect from 6th July, 1986. Further vide three applications dated 27th July, 1986, 10th August, 1986, 30th August, 1986 leave was sought but without medical certificate. She joined duty on 15th September, 1986 with a private medical and fitness certificate with effect from 26th April, 1986 to 14th September, 1986. Since she failed to produce any medical certificate from a Government Hospital or Government dispensary, her absence from duty with effect from 10.4.86 to 14.9.86 was treated as dies non under FR 17 for all purposes."

4. The learned counsel for the applicant argued at length that under sub-rule (ii) of Rule 19 of the C.C.S. (Leave) Rules, a non-gazetted Government servant, which the applicant is, can apply for leave on a medical certificate issued by an authorised Medical Attendant. According to him, the competent authority to grant leave can get a second medical opinion but for this, he has to address the Government Medical Officer and not the Government employee. To appreciate this contention of the learned counsel for the applicant, sub-rule (3) of Rule 19 of the CCS (Leave) Rules is reproduced below:-

"(3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date."

The learned counsel for the applicant's contention was that the Government Medical Officer never approached the applicant nor wrote to her for medical examination. Even otherwise, the applicant having bled profusely and being in a state of mental shock, could not herself approach the Government Medical Officer and it was her entitlement to be visited by a Government Medical Officer. The Government Medical Officer had never visited her for medical examination purposes.

This argument was countered by the learned counsel for the respondents on the ground that the respondents had addressed a letter to the applicant on 8.5.1986 with copy to the Staff Surgeon, Lok Nayak Jayaprakash Narayan Hospital for information and necessary action and it was the duty of the applicant to have either approached the Staff Surgeon or the Medical Superintendent, G.B. Pant Hospital if she had any difficulty in getting herself medically examined from the Staff Surgeon, LNJP Hospital, New Delhi. It will be casting an unwarranted duty on the Government Medical Officer that he should seek out the persons who apply for leave or visit them, as argued by the learned counsel for the applicant. The very fact that the applicant had been asked to have her medical check-up from LNJP Hospital vide order dated 8.5.1986, filed as Annexure A-4 with the application, with copy to the Staff Surgeon, shows that the respondents had acted within sub-rule (3) of Rule 19 of the CCS (Leave) Rules. In case, the applicant had any difficulty, she should have either approached the respondents or the Staff Surgeon. She never replied this letter nor any averment has been made.

in this regard either in the main application or in the rejoinder and as such, this argument advanced at the bar cannot be sustained. Her averment in the rejoinder in response to the averment made in para. 6.8 of the counter that she being under medical treatment was not in a position to correspond with the respondents, cannot be lent credence even though she might have been under some shock after the abortion.

5. The next argument advanced by the learned counsel for the applicant was that the infliction of the punishment of dies non under F.R. 17 on the applicant was in violation of the principles of natural justice as she was given no opportunity to defend herself and that in view of the judgment of the Chandigarh Bench of the Tribunal in the case of Ramji Dass Vs. Union of India & Ors.<sup>1</sup>, where, according to him, in a similar case, the impugned order imposing the punishment of dies non was set aside, it was held that the authorities should have issued a notice to the plaintiff before declaring the period of absence as dies non, the impugned order in respect of the applicant in this case cannot be sustained. The learned counsel for the respondents argued that the circumstances of the case relied upon by the applicant's counsel need to be distinguished. In the said case of Ramji Dass Vs. Union of India & Ors (supra) the applicant's case was that the medical certificates submitted by him were neither rejected nor he was ever informed of the fate of the leave case and the applicant had remained under the impression that the leave had been sanctioned. But this was not

the case with the applicant who had been informed repeatedly that she must appear for examination by a Government Medical Officer. It was further argued on behalf of the respondents that so far as the leave for the period 11.1.1986 to 21.2.1986 was concerned, the applicant was served with an order dated 21.1.1986 asking her to submit a medical certificate of a Government Medical Officer, by registered post. She was again directed to produce a similar certificate vide another registered letter on 3rd March, 1986. The notice of 8.5.1986 filed by the applicant at Annexure A-4, was also sent by registered post. The applicant joined duty on 15.9.1986 when she was issued a memo. on 21.6.86 to the effect that if she did not join duty, her services will be deemed to have been terminated with effect from 30.9.1986.

It is clear that the facts in the above cited case of Ramji Das Vs. Union of India & Ors., are of totally different nature than the facts contained in the instant case.

6. It was further argued by the learned counsel for the applicant that the notice dated 8.5.1986 that action will be taken against the applicant under the provisions of F.R. 17 was not specific and in the absence of any reply from the applicant, passing of the impugned order on 10.10.1986 treating the period from 10.4.86 to 14.9.1986 as dies non under F.R. 17 was in violation of the principles of natural justice.

He further argued that the impugned order of 10.10.1986 also suffers from non-application of mind because in the notice of 8.5.1986, it is stated that the applicant was on leave from

(A)

8.4.1986 to 1.5.1986 but in the impugned order of 10.10.1986, it was stated that she was absent from duty from 10.4.1986 to 14.9.1986. He further argued that the respondents displayed bias as they considered her to be a habitual absentee and referred to her past absences and violated the right of the applicant to get maternity leave, as provided under the Rules. This argument of the learned counsel for the applicant has to be accepted. The notice of 8th May, 1986 (Annexure A-IV) clearly indicated that the applicant was on leave from 8.4.1986 to 1.5.1986 and she was absent from duty with effect from 2.5.1986 only. In view of this position given in the notice, the impugned order of 10.10.1986 (Annexure A.III) treating the entire period from 10.4.1986 to 14.9.1986 as dies non is illegal and cannot be sustained as such. In view of this infirmity found in the impugned order, the same is quashed and the applicant will be treated as on leave till 1.5.1986. So far as her absence from 2.5.1986 to 14.9.1986 is concerned, the respondents will be at liberty to take action against her as permissible under the Rules by giving her an opportunity of hearing or take disciplinary proceedings against her under the Central Civil Services (Classification, Control & Appeal) Rules.

7. The next prayer of the applicant is that the respondents be directed to adjust the period from 11.1.1986 to 21.2.1986 against the maternity leave to the applicant according to the C.C.S. (Leave) Rules. The respondents have sanctioned earned leave to the applicant for the aforesaid period, as per averment made in para. 4 of the counter-affidavit.

(D)

The respondents in their reply have not clarified why the maternity leave was not sanctioned to the applicant. It has come out that the applicant had been in a state of pregnancy for four months when she claimed to have suffered mis-carriage.

Rule 43 of the C.C.S. (Leave) Rules deals with the sanctioning of maternity leave to female Government servants. Sub-rules (1), of Rule 43 (2) and (5) are quoted below to bring out the import of this Rule:-

"(1) A female Government servant (including an apprentice) may be granted maternity leave by an authority competent to grant leave (for a period of 90 days from the date of its commencement). During such period she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(2) Maternity leave may also be granted in case of miscarriage, including abortion, subject to the conditions that-

(a) the leave does not exceed six weeks; and

(b) the application for the leave is supported by a medical certificate as laid down in Rule 18 or Rule 19, as the case may be.

(5) The maternity leave shall not be debited against the leave account."

Since it has come out that the applicant had been pregnant for four months and since the respondents have already sanctioned her earned leave for the period from 11.1.1986 to 21.2.1986 and they have not deduced any reason for not treating this period as maternity leave and instead granted earned leave to the applicant, it is directed that the leave sanctioned for this period will be treated as maternity leave and not as earned leave.

The application stands disposed of with the above directions, with no order as to costs.

12/11/87  
(BIRBAL NATH)  
Member  
12.11.1987.