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Central Administrative Tribunal
Principal Bench, New Delhi

OA No. 2510/2004

New Delhi, this the 31st day of August, 2005

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

Dr. Renuka Batra

...Applicants

(By Advocate Shri S.K. Gupta)

Versus

Union of India & others

...Respondents

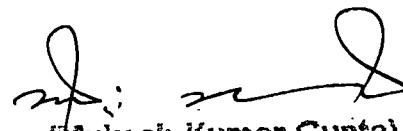
(By Advocate Sh. R.L. Dhawan)

1. To be referred to the Reporter or not.

Yes / No

2. To be circulated to other Benches or not.

Yes / No


(Mukesh Kumar Gupta)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2510/2004

New Delhi, this the 31st day of August, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Dr. Renuka Batra,
W/o Dr. Ashish Dhingra,
R/o C/o Dr. S.R. Dingra,
Jeevan Holy Clinic,
414/4, Jacob Pura,
Gurgaon-122 001

(By Advocate Shri S.K. Gupta)

... Applicant

VERSUS

1. Union of India
Through Secretary,
Railway Board,
Rail Bhawan,
Raft Marg, New Delhi

2. General Manager,
Northern Railway,
Baroda House, New Delhi

3. Medical Director,
Northern Railway,
Central Hospital,
Basant Lane, Connaught Place,
New Delhi

(By Advocate Shri R.L. Dhawan)

... Respondents

O R D E R (ORAL)

With consent of parties, I have heard both sides on merits.

2. The relief claimed in the present OA is to quash and set aside the order dated 9.10.2003 as well as order dated 11.3.2004 being annexure A-1/a and Annexure A-1 respectively, vide which the applicant was denied the benefit of maternity leave. A direction is also sought to respondents to grant her maternity leave with all consequential benefits like increments etc.
3. The admitted facts of the case are that the applicant, based on the recommendations made by the Committee after being interview, was selected and appointed as Senior Resident in the Department of Dentistry for the period of one

year and against the existing temporary post of Senior Resident vide order dated 26.2.2002. The terms and conditions of the appointment were laid down therein. However, on 3.2.2003, the respondent extended the aforesaid period by one more year, i.e. upto 25.2.2004. On 6.9.2003, she applied the maternity leave for a period of 135 days in total w.e.f. 15.10.2003 upto 24.2.2004, being the delivery date on 21.11.2003, which was rejected on 9.10.2003, but she was informed that her case for leave had been referred to Ministry. She submitted another representation dated 03.12.2003 followed by reminders requesting for grant of such maternity leave and benefits. After availing leave, the applicant reported for duty on 24.2.2004 in the office of respondent no.3. It is stated that that day, neither her joining report was received nor she was allowed to perform her duties and as such she was compelled to send the joining report through registered post. Thereafter the applicant received impugned order dated 11.3.2004 conveying her that: "the maternity leave was not sanctioned as it was not permissible within rules", which communication has been impugned in the present OA.

4. Shri S.K. Gupta, learned counsel appearing on behalf of the applicant contends that the respondent's action in denying the maternity leave was illegal, arbitrary and against the law laid down by the Hon'ble Supreme Court in JT 2000 (3) SC 13 [Municipal Corporation of Delhi vs. Female Workers (Muster Roll) & Anr.], wherein it has been held that a woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Maternity Benefit Act, 1961 that she would be entitled to maternity leave for certain periods prior to and after delivery. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. The Maternity Benefit Act, 1961 aims to provide all these facilities to

a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimized for forced absence during the pre or post-natal period.

5. Shri R.L. Dhawan, learned counsel appearing on behalf of respondents opposed the said claim and stated that terms and conditions for appointment were laid down vide communication dated 26.2.2002, which did not include any such benefit being accorded to a woman. Vide reply para 4.5 and 4.6 it was further stated that the respondents have made a reference to the Ministry of Railways for review of such decision and the applicant would be communicated such decision as and when such decision is taken.

6. I have heard both counsel for parties and have perused the pleadings carefully.

7. Learned counsel for the respondents has also raised the issue regarding maintainability of the present OA by stating that this Tribunal has no jurisdiction under Section 14 of A.T. Act 1985. On perusal of the provisions of said Act, I find that the Parliament by the aforesaid statutory Act has conferred the jurisdiction and power upon this Tribunal which is to be applied to all recruitment, and matter concerning recruitment, to any All-India Service or to any civil service. In view of the appointment letter dated 26.2.2002 issued by the respondents, I do not find substance and justification that the issue raised in the present OA will not fall within the provisions of Section 14(1) of A.T. Act. Merely because no such specific facility was included in the said appointment letter, this Tribunal cannot be precluded from examining the issue as to whether in the discharge of such civil service the applicant would be entitled to maternity leave benefit or not. The post of Senior Resident in the Department of Dentistry undoubtedly is a civil post. Accordingly, such objection raised by the respondents is over-ruled.

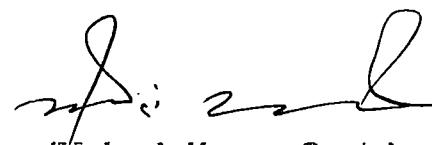
8. On bestowing my careful consideration, I am of the considered view that the aforesaid law and ratio laid down by the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi (supra) is squarely applicable to the facts of the present case. The terms and conditions mentioned and enumerated in the

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appointment letter cannot be read in a pedantic manner and also cannot be allowed to read therein the provision of Maternity Benefit Act, 1961, a beneficial legislation, though such provisions are not directly adopted by the respondents, but the object behind such statute cannot be ignored by the State. It cannot be argued by the State, a welfare State that a female would not be entitled to maternity leave merely because terms and conditions of appointment, in specific, did not include such benefits. This being a beneficial legislation, in my considered view, the State should refrain from raising such a contention. In my considered view, the nature of appointment, like ad hoc or temporary would not make any difference for applying and extend the benefits available to a woman, particularly of beneficial legislation, ~~and~~ to be read along with the terms and conditions of appointment, in the given facts and circumstances of the case. Accordingly I do not find any justification in the impugned orders dated 9.10.2003 and 11.3.2004 rejecting such request. Moreover, it is specifically stated by the respondents that a reference was made to the Railway Board and vide communication dated 12.12.2003 she was informed on such aspect. Though more than one and a half year has gone bye, but no decision has yet been taken by the respondents. Even today, when the Bench inquired from the learned counsel for respondents as to what decision has been taken by the Ministry, it was stated that no such final decision has yet been taken by the respondents. Be that as it may, I do not find any justification on the part of respondents to raise such a technical and pedantic plea and deny the woman employee such benefits.

9. The State is also under an obligation to provide just and humane conditions of work and maternity relief under Article 42 of the Constitution of India. Similarly, Article 39 (e) enjoins a State to direct its policy towards securing health and strength of workers and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. In the present age, when an employee has no power of bargaining, the State under the garb of contract employment cannot be allowed to achieve something, which is prohibited, by the mandate of the Constitution.

10. Following the law and ratio as laid down by Hon'ble Supreme Court in the case of Municipal Corporation (supra), I allow the present OA and quash & set aside the orders dated 9.10.2003 as well as 11.3.2004. Accordingly, respondents are directed to grant maternity leave for a period of 135 days or such leave in terms of the Rules in vogue and regularise her pay and allowances in terms of law within a period of two months from the date of receipt of a copy of this order. It is made clear that applicant would also be entitled to increment, if admissible under the law. No order as to costs.



(Mukesh Kumar Gupta)
Member (J)

/gkk/