

Central Administrative Tribunal, Principal Bench

O.A. No. 1529 of 2004

New Delhi this the 3rd day of May, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

1. Ms. Garima Seth
D/o Shri B.R. Seth
Ex-Data Entry Operator,
National Pharmaceutical Pricing Authority,
YWCA Cultural Centre,
Jai Singh Road, New Delhi-110 001.

R/o D-861, Mandir Marg, Peshwa Road, New Delhi.

2. Ms. Meena Ramchand
D/o Shri Ramchand
Data Entry Operator,
National Pharmaceutical Pricing Authority,
YWCA Cultural Centre,
Jai Singh Road, New Delhi-110 001.
R/o R-869, New Rajinder Nagar, 2nd Floor.
New Delhi-110 060.

3. Ms. Jagjit Kaur
D/o Shri Gurmukh Singh
Data Entry Operator,
National Pharmaceutical Pricing Authority,
YWCA Cultural Centre,
Jai Singh Road, New Delhi-110 001.
R/o B-1/193, Yamuna Vihar, Delhi-110 053.

4. Ms. Harjeet Kaur
D/o Shri Joginder Singh
Data Entry Operator,
National Pharmaceutical Pricing Authority,
YWCA Cultural Centre, Jai Singh Road, New Delhi-110 001.

R/o 121/1, Lane No.5,
Safdarjung Enclave, New Delhi.

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5. Ms. Gagan Singh
 W/o Shri Rahul Singh
 Data Entry Operator,
 National Pharmaceutical Pricing Authority,
 YWCA Cultural Centre,
 Jai Singh Road,
 New Delhi-110 001.

R/o A-4/J-10 Nav Bharat Appts.,
 Paschim Vihar,
 New Delhi-110 063.

6. Ms. Sonia Bathla
 D/o Shri Nand Lal Bathla
 Data Entry Operator,
 National Pharmaceutical Pricing Authority,
 YWCA Cultural Centre,
 Jai Singh Road,
 New Delhi-110 001.

.....Applicants

By Advocate: Shri K.N.R. Pillai.

Versus

1. Union of India through
 The Secretary,
 Ministry of Chemicals & Fertilizers,
 Shastri Bhawan,
 New Delhi-110 001.

2. National Pharmaceutical Pricing Authority,
 Through its Member Secretary,
 YWCA Cultural Centre,
 Jai Singh Road,
 New Delhi-110 001.

..Respondents

By Advocate: Shri Madhav Panikkar.

Arvind Kumar

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

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Short question that arises for consideration in this OA is whether the applicants, who are contract employees of the respondents, are entitled to the grant of benefit of maternity leave?

2. The applicants are female employees of National Pharmaceutical Pricing Authority (for short NPPA), which is functioning under the control of Ministry of Chemicals and Fertilizers. The Government of India issued the Drug Price Control Order, 1985 by prescribing 74 bulk drug prices, which are to be fixed by the Government based on certain criteria. The formulations using these bulk drugs also came under the purview of the Drug Price Control Order. The prices, therefore, were to be fixed by the Government and for this purpose, the NPPA has undertaken the prices of scheduled drugs, cost cum techno-economic studies. For change in prices of bulk drugs or any other inputs, the concerned manufacturer approaches the NPPA for fixation of the prices or alternatively sou moto exercise is undertaken by the NPPA wherever there is change in prices of inputs. For all this purpose, NPPA engaged staff for assisting its officers in performing their duties. Some Data Entry Operators young professionals were also engaged purely on temporary need basis to help the officers in the preparation of their reports. The respondent contended that the work was seasonal and once the study was complete and the prices of the bulk drug were fixed, the services of such employees were not needed as it will remain valid for three years. This Tribunal in OA 156/2002, which was filed by these very applicants and was disposed of vide order dated 28.1.2003 has found that the contractual services of these applicants were terminated after 89 days on

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the premise that their services were no more required but after 3 days, they were again engaged for short term on the premise that their services were needed. The Tribunal, as such, disapproved the practice of this 'hire and fire'. The applicants were engaged by the NPPA on monthly amount of Rs.5000/- They filed the aforesaid OA for grant of parity in the matter of pay scale and claimed pay scale of Rs.5000-8000 per month and also the benefit of leave and other service conditions at par with regular employees. The Tribunal disposed off the OA with the following order:-

(a) The applicants would be entitled to the allowances at the minimum of the pay scale, i.e., Rs.5000-8000.

(b) They would be entitled to one casual leave if they serve for full one month and;

(c) in the absence of any regular posts, the applicants shall be allowed to continue without a break so long as work requires. Of course, in case of discipline or any such act, the respondents would be at liberty to terminate their services".

3. The service of the applicant No.1 was dispensed with when she applied for grant of maternity leave. The two applicants Ms. Sheeba Usha Rani and Ms. Sangeeta Chauhan then filed MA 1614/2003 for setting aside the termination of their employment and grant of maternity leave to them. The Tribunal disposed off observing that "both the prayers in the miscellaneous application are extraneous to the relief claimed in the Original Application and, therefore, we are not expressing on the merits of the matter. MA No.1614/2003 is rejected. Applicant No.2, if so advised, may file separate Original Application in accordance with law. OA No.398/2003 was dismissed as withdrawn with liberty to file Original Application seeking proper relief."

marked and filed

4. Now, the applicants have filed the present OA with the relief, as reproduced in the opening paragraph of the order. Their contention is that the applicant No. I applied for grant of maternity leave vide application dated 22.9.2003 (Annexure-A). It was recommended by the Director, but the Director (Administration) instead of sanctioning the maternity leave, passed the order dated 24.9.2003 (Annexure A-I) dispensing with her services. The termination order was arbitrary and illegal and was in contravention of the Tribunal's order whereby the respondents were directed to consider the applicants to continue in service so long as the work required. She had applied for her re-engagement vide Anneuxre A-5 but she has not been taken back although 9 of her juniors are still continuing in service and 4 more fresh entrants were appointed as Data Entry Operator. It was further alleged that 5 applicants, being young women, were likely to need maternity leave sooner or later and their apprehension is that if they applied for same, their services would also be summarily terminated. Hence, this OA.

5. The respondents in the counter-affidavit pleaded that the services of the applicant No.1 Ms. Garima Seth have already been terminated and she is no more working as DEO in the NPPA, therefore, she has no right to file this OA. It is further stated that DEOs at the time of engagement were informed that the engagement was purely on temporary basis on a fixed sum of honorarium without any perks, such as allowances etc. They were also told that they were not entitled to any kind of leave. According to them, the Scheme of engaging DEOs/YPs had been inherited by the NPPA from the erstwhile BICP (Bureau of Industrial Cost and Prices), now the Tariff Commission, where the nature of job and contents are similar. In the similar OA No.1611/1998 filed by DEO of BICP, titled, S/Shri Girish Kandpal, Abid Ali and Iftakhar Wasi Vs. U.O.I., the Tribunal

Leave to answer

held that the applicants were not entitled to regularisation of their services but it was directed that their services would not be terminated till the work was available for them. ② It was submitted that DEOs and Young Professionals were engaged by NPPA on temporary contract basis depending upon the exigency of work. Some of them continued for long period. Earlier these applicants filed OA 156/2002 for a direction that they should be granted pay scale of Rs.5000-8000 at par with regular DEOs and they should also be granted leave and other service benefits at par with regular employees etc. The Tribunal, however, directed that they would be entitled to the allowances at minimum of pay scale of Rs.5000-8000 and to one casual leave if they serve for full one month and they would be allowed to continue without break so long as the work was available. But they can be terminated for indiscipline. It was submitted that the applicants, who are contract workers, would not be entitled for grant of additional benefits as are admissible to regular government employees. There is no regular post of DEOs in NPPA. The terms and conditions offered to the applicants are specifically and clearly brought out in their appointment letters and there could not be any scope of grant of additional benefits, which are admissible to other government employees nor could they be extended the benefits as of regular employees. The NPPA had filed a Writ Petition No. 6441/2003 in the High Court of Delhi which is still pending. The DEOs have filed a Contempt Petition bearing No. 350/2003. It was stated that the applicants were not entitled to the benefits of maternity leave and the OA should be dismissed.

6. The applicants have reaffirmed their case in the rejoinder.
7. We have heard the learned counsel for the parties and we have also gone through the record.

Maneesh Chaturvedi

8. The learned counsel for the applicants has strongly relied upon the judgment of the Hon'ble Supreme Court in Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another, JT 2000 (3) SC 13 wherein the Hon'ble Supreme Court had held that muster roll workers of the Municipal Corporation of Delhi were entitled to the benefit of grant of maternity leave under the Maternity Benefit Act, 1961. The learned counsel for the applicants has argued that if muster roll employees are held to be eligible for grant of maternity leave, the applicants, who are working with the respondent NPPA for long, should also be held entitled to such benefit. It is submitted that pregnancy is a natural phenomenon with the female employees and the United Nations has adopted the Convention on the Elimination of all forms of discrimination against women. Referring to paragraph 36 of the judgment of the Hon'ble Supreme Court in MCD (Supra), it was held that the respondents ought to have introduced the maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances and that the termination of the service of these applicants on the ground of their becoming pregnant during the tenure of their working with NPPA should not be a ground for dismissal. It is, therefore, submitted that respondents NPPA should allow them the maternity leave.

9. Conversely, the learned counsel for the respondents has stated that the MCD is an industry and the muster roll female workers in the cited case were held to be industrial workers, therefore, they were held to be entitled to the benefit of Maternity Benefit Act, 1961. There is no regular post of DEOs in the establishment of the respondents and the applicants' services have been engaged on contract basis for a short term which is need based in the peculiarity of the nature of the work, which the officers of the NPPA are

Prakash Chandra

doing. It is submitted that the nature of the work done by the NPPA is not of regular nature. It is fervently argued that the terms and conditions of the engagement of the applicants are contained in the letter of their appointment and they cannot be treated as regular employees nor could they be granted the benefit of leave at par with other regular government servants. In fact, it is argued that applicant No.1 is no more working with the respondent and her services had already been disengaged in September, 2003, therefore, she is not entitled to file the present OA and she cannot be granted any relief prayed in this application. It is further argued that in the previous OA, the applicants had not only claimed parity in the pay scale but also wanted parity in the matter of grant of leave with other regular employees of NPPA and the Tribunal had rejected both these claims but had granted them only one day's casual leave if the applicants had served for one full month. It is submitted that the respondent had filed a Writ Petition which is pending before the Hon'ble High Court. According to them, the applicants were not entitled to any leave and the Tribunal has not granted them leave of any kind other than one day's casual leave. It means that the claim of maternity leave was also included in the leave prayed for in the earlier OA but the same has been refused by the Tribunal, so the present OA cannot be filed for this reason also.

10. On the other hand, the learned counsel for the applicants submitted that the Tribunal by subsequent order dated 12.12.2003 (Annexure A-IV) has held that maternity leave was not included in the relief claimed in the said OA 156/2002 and the applicants were free to file a fresh OA, so they have filed it.

11. Anyhow, the applicants have not claimed grant of maternity leave under Maternity Benefit Act, 1961. Even otherwise it does not apply to them. MCD Vs.

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Female Workers (Muster Roll) and Another (Supra) was a case which was filed by the muster roll female workers in the MCD. MCD is an industry and it is covered by the provisions of Industrial Disputes Act. The female muster roll workers were held to be industrial workers who were entitled to maternity leave benefit under the Maternity Benefit Act, 1961. The Hon'ble Supreme Court has also taken note of the decisions taken at United Nation Convention on 18.12.1979 on the elimination of all forms of discrimination against women which, inter alia, have provided as under:-

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“(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

12. In the present case, the Tribunal by order in OA 156/2002 & MA No.130/2002 decided on 28.1.2003, had rejected the claim of the applicants for their parity in the pay scale and other conditions of service including leave, but has allowed one day's causal leave, if for one full month work is performed by these applicants. The engagement of the applicants other than applicant no.1 in accordance with their order has been renewed for short term. We refrain from dwelling into this order further since the order of this Tribunal has been challenged in a Writ Petition before the Hon'ble High Court.

13. But the fact remains that the Central Civil Service (Leave) Rules, do not apply to

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the applicants. No such claim has been made by the applicants. The applicants are working on contract basis in a need based service. They are not regular employees. They have not been even conferred temporary status. Therefore, the question of grant of maternity leave at par with regular employees does not arise. This Tribunal by order dated 28.1.2003 had directed that the applicants would be allowed to continue without a break so long as the work required. Of course, their services could be dispensed with in case the applicants were guilty of indiscipline.

14. The pregnancy is a natural phenomenon and terminating of the services of the applicants on the ground that the applicants had applied for the maternity leave, does not seem just and fair practice. Indeed the applicants could not have been granted paid maternity leave but they could have, at least, been re-engaged after the termination of the pregnancy, if the work was still continuing. In this case, though we do not find that the applicant No.1, whose services have been terminated, could have been granted the relief claimed in the OA, but still we may observe that after the applicant's confinement period was over and she wanted to be re-engaged by the respondents, her request should be considered in the light of the directions given in the previous OA in preference to engaging new hands. The stand of the respondents, in view of the order of the Tribunal dated 28.1.2003, cannot be appreciated.

15. Anyhow, we do not find that the applicants were entitled to the grant of paid maternity leave under service contract or any other law or rules applicable to them. The convention of UN, does not give a legal right to the applicants for grant of maternity leave.



16. The result is that the OA has no merit and the same is dismissed. No costs. *26*

S.A. Singh
(S.A. Singh)
Member (A)

M.A. Khan
(M.A. Khan)
Vice Chairman (J)

Rakesh