CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the day 21st day of June Two Thousand And Twenty One

PRESENT:
THE HON'BLE SHRI S.N. TERDAL, MEMBER(J)
THE HON'BLE SHRI C.V. SANKAR, MEMBER(A)

O.A.310/01531/2017

Mrs. D. Parimala (P.No. 6965291)
W/o. N. Srinivasa Raghavan,
Senior Material Assistant,
Ordnance Depot, Avadi,
Chennai- 600 055. .....Applicant

(By Advocate:M/s. G. Elanchezhiyan)

Vs

1. The Union of India Rep. by its
Secretary to Government,
Ministry of Defence,
New Delhi- 110 001;

2. The Commandant,
Ordnance Depot,
Avadi,
Chennai- 600 055;

3. The Controller of Defence Accounts,
618, Anna Salai,
Teynampet,
Chennai- 600 018;

4. The Personnel Officer (Civilian),
O/o. The Commandant,
Ordnance Depot,
Avadi,
Chennai- 600 055.

...Respondents

(By Advocate: Mr. K. Rajendran)

CAV On :03.06.2021

ORDER

(Pronounced by Hon'ble Mr. C.V. Sankar, Member(A))

The relief prayed for in this OA is as follows:-

> "For the reasons stated above, the applicant prays that this Hon'ble Tribunal may be pleased to call for the records connected No. 3007/623/2017/Est., dated 05.09.2017 of the 2nd respondent and quash the same and pass such other orders as this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case and thus render justice."

2. The brief facts of the case of the applicant are as follows:-

The applicant has been working with respondents since 1984. She is eligible to avail Child Care Leave (CCL) for 730 days as per Rule 43C of the relevant Leave Rules and also eligible to avail Child Care Leave on various spells depending upon her exigencies. The applicant had two minor children of school going age and she had availed of Child Care Leave on several occasions during the years 2008 to 2010. The applicant states that she had submitted applications to her superior officers and the Child Care Leave had been sanctioned periodically by the competent authority. The applicant submits that after a long delay, based on Audit Report, the applicant

was informed on 22.08.2013 that the Child Care Leave availed between 3.11.2008 to 25.6.2010 is ordered to be recovered for not obtaining prior permission from the leave sanctioning authority and also for availing such Child Care Leave in more than three spells in a calendar year. The applicant contends that the leave was requested for sanction by her without fail, and finally based on the recommendations of the Group Level Officers, the Personnel Officer, did sanction the Child Care Leave without any objection. Without considering her detailed representation explaining the facts of the case, the second respondent has passed an impugned order of the recovery on 15.4.2017. Challenging the said order, she had filed OA 623/2017 wherein this Tribunal by its order dated 20.04.2017 directed the respondents to pass a reasoned and speaking order. Thereafter, the respondents had passed a speaking order dated 05.09.2017 without considering the further DOPT letter dated 30.12.2010. This speaking order dated 05.09.2017 is challenged in this O.A. seeking the aforesaid relief.

3. In the impugned order, the respondents have taken two grounds viz., that CCL cannot be demanded as a matter of right and under no circumstances can any employee proceed on CCL without prior proper approval by the leave sanctioning authority. In this case, the respondents state that the applicant had availed CCL for 101 days without prior approval of the leave by the leave sanctioning authority. The second ground taken by the respondents is that as per DoPT letter dated 7.9.2010 which had effect from 1.9.2008, CCL may not be granted for more than three spells in a calendar year whereas the applicant had availed CCL for more than three spells.

4. Regarding the first point, the applicant has consistently stated that all her leave applications were properly recommended to the Group Officers and finally sanctioned by the Personnel Officer. She also has stated that during the relevant periods between the years 2008 to 2010 when she availed the CCL, she was not informed about these procedural irregularities at any point of time. The respondents have also not stated anything in this regard except stating that the

applicant has availed her leave without prior permission for 101 days. Nowhere has it been stated that before being pointed out by the Audit Party, they had either refused the CCL or informed the applicant that leave had not been sanctioned by the appropriate sanctioning authority.

5. The second point relates to the availing of the CCL for more than three spells in a calendar year. To support their claim for recovery, the respondents have cited Annexure-A1 wherein the DOPT in its Office Memorandum dated 07.09.2010 has stated that with effect from 01.09.2008, CCL may not be granted in more than three spells in a calendar year. It is obvious that the said orders for not granting CCL in more than three spells in a calendar year were passed on 7.9.2010 whereas the applicant had availed of this leave between 3.11.2008 to 25.06.2010 even though the said OM states that the date of effect of the order is from 1.9.2008.

6. It is obvious that at the time when the applicant took leave, there was no such condition. At the time when the applicant applied for leave in many spells between the years

2008 to 2010, there was no stipulation relating to the leave being not eligible to be granted in more than three spells in a calendar year. Similarly, the dictum that the CCL may not be granted for less than 15 days also came into being vide the same Memorandum in September 2010 i.e. after availing of the leave by the applicant. The applicant also cites the DOP&T, O.M. dated 30.12.2010 in support of her contention wherein in Para-3, the DOP&T has stated as follows:-

> ***"Whether those who have availed Child Care Leave for more than 3 spells with less than 15 days can avail further Child Care Leave for the remaining period of the current year?***
>
> ***No. As per the OM of even number dated 7.9.2010. Child Care Leave may not be granted in more than 3 spells. Hence, CCL may not be allowed more than 3 times irrespective of the number of days or times Child Care Leave has been availed earlier. Past cases may not be reopened."***

The respondents have given a very narrow interpretation to the specific sentence in the para stating that past cases may not be reopened, stating that this particular sentence will apply only with regard to those who have availed CCL for more than three

spells with less than 15 days and want to avail leave for the remaining period of the current year.

7. We cannot accept the contention of the respondents for the simple reason that the main point considered in this para relates to grant of CCL in more than three spells. The OM clarifies that CCL may not be allowed more than three times irrespective of the number of days or times CCL has been availed earlier. However, it has been stated that the past cases may not be reopened. In other words, the DOP&T vide its memorandum dated 30.12.2010 has clarified that CCL should not be allowed more than three times irrespective of the number of days or times the CCL has been availed earlier. The logic behind the decision that past cases may not be reopened is only to ensure that the guidelines relating to such leave do not adversely affect the earlier cases when the said guidelines were not in force. As we have already seen, the O.M. relating to not granting CCL in more than three spells in a calendar year and also prohibiting CCL for less than 15 days came into existence only in September 2010 but was made to have retrospective effect from 01.09.2008. However, in the case of

the applicant, she had already availed of the leave before the issuance of this OM.

8. The only point remaining is whether she had obtained prior permission before proceeding on leave. Even though it is stated that the designated competent authority to sanction such leave had not sanctioned the same, it is clear that the applicant had availed of such leave only with the permission and knowledge of her superior officers and none of these officers had either rejected her application or had pointed that there were certain irregularities in the sanction of the leave, till such time the Audit mentioned about it citing the OM of the DOPT of September 2010. The applicant had all along been granted salary and other allowances based on her availing of the leave and no action has been taken by the respondents at the time of taking of leave either to reject it or to point out any irregularity in the sanction. It is also seen that the Annexure-A/1 order, based on which the respondents have ordered for the recovery, was issued mainly to review the decision to allow CCL only if the employee had EL at her credit. The CCL is basically granted to enable an employee to take care of the

minor children, thereby, providing an opportunity to the women employees to under-take their responsibilities as mothers. It is more in the nature of a welfare measure providing for greater participation of women in employment. Certain conditionalities are prescribed only to ensure that the said welfare measure is not misused by the employees in their personal interest overriding public interest. However, in this case, it is clear that the said provision relating to the leave not being taken in more than three spells came into effect only in the year 2010 i.e. after availing of the leave by the applicant even though the order was said to come into effect from 1.9.2008 and, subsequently, in December, 2010, the same issue of taking CCL in more than three spells in a different context was examined and it was once again clarified that CCL leave may not be sanctioned in more than three spells in a calendar year with a condition that the past cases may not be reopened, apparently in view of the fact that this is a welfare measure.

9. Nowhere have the respondents stated that the leave had been taken by misrepresentation or suppression of the facts by

the applicant. She was eligible for the said leave and any internal irregularity in the procedure of the prior sanction was not pointed out to her or made explicit by the respondents at any time during the availment of the leave till the same was pointed out by the Audit authority later.

10. The applicant has also argued that the recovery is impermissible since she is a Group –C employee. The respondents have contended that wrongful excess payment if it is detected within five years can always be recovered. In this case, as we have already seen, except for the procedural irregularity, there is no illegal excess payment made to the applicant and the DoPT OM of 30.12.2010 specifically stated that the past cases of sanctions which are not in tune with the orders issued in Sept 2010 need not be reopened.

11. For all the above reasons, the impugned order dated 5.9.2017 is set aside and the O.A. is allowed. No costs.