

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.53/2009

Wednesday this the 4th day of February, 2009

C O R A M

**HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

A.G. Beena W/o Baji Abdul Kareem
Processing cum Quality Assurance Supervisor
National Institute of Fisheries,
Post Harvest Technology & Training, Cochin-16
residing at H.No. 35./364,
Shamiyana Sangamam Lane
Padivattom, Cochin-682 034

Applicant

By Advocate Mr. Shafik M.A.

Vs.

- 1 Union of India represented by Secretary
Department of Animal Husbandry
Dairying and Fisheries,
Ministry of Agriculture
New Delhi.
- 2 The Joint Secretary to Government of India
Department of Animal Husbandry, Dairying
and Fisheries, Ministry of Agriculture
New Delhi.
- 3 The Director
National Institute of Fisheries
Post Harvest Technology & Training
Cochin-16

Respondents

By Advocate Mr. Sunil Jose,ACGSC

The Application having been heard on 2.2.2009 the Tribunal delivered the following:



ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the refusal of the 3rd respondent to sanction her "Child Care Leave" in spite of the instructions of the 2nd respondent.

2 The applicant, a Post Graduate in Industrial Fisheries from Cochin University, is presently working as a Processing cum Quality Assurance Supervisor in the Processing Section of the National Institute of Fisheries Post Harvest Technology & Training at Cochin. While working as Lecturer in the Vocational Higher Secondary School under the State of Kerala, she was selected as a Processing Assistant in the Integrated Fisheries Project, Cochin in the scale of Rs. 1400-2300 on ad hoc basis in the year 1992 and was regularised in the year 1994. While working so she was selected for the post of Aquaculture Expert under the Department of Fisheries, State of Kerala on deputation from 21.3.1997 to 13.12.1999. In the year 2000 her services were terminated by the then Director of IFP which was challenged by the applicant in O.A. 345/2000. The O.A. was allowed by this Tribunal quashing the order of termination with consequential benefits (A-2). Thereafter the applicant was deputed to Aquaculture Authority of India as a Senior Technical Assistant for 3 years from 2002 to 2005. She also participated in the fellowship training course of Thailand Government and Japan International co-operation agency in the year 2003.

3 It is submitted that she is married to Sri Baji Abdul Kareem, a Naval Architect working at Doha, Qatar from August, 2005 onwards. She has two children aged 12 and 10 years. Before 2005 when her husband was working in the Shipyards at Vizag, Calcutta and Mumbai she has availed two years earned leave from 6.3.2006 to 12.2.208 to join her husband.

TY

Consequently, she has joined her husband along with her children at Doha, Qatar. The children were enrolled in the school at Doha also. From January, 2008 onwards she was under Extra Ordinary Leave with medical certificate for treatment for Sciatic Spasms in the lower back. She joined back IFP on 26.6.2008. When she reached back India the academic year for her children had already started and she was not in a position to obtain admission for her children. Moreover the 10 year son has a disease of losing hair from the head in patches for which he is undergoing a treatment of a foreign Doctor in Doha. Hence the applicant has sought for Extra Ordinary Leave from 1.9.2008 to 1.1.2008. Since no action was taken on the same and the children were alone in Doha, she has submitted a representation to the 3rd respondent on 19.8.2008 desperately seeking sanction of leave (A-5) which was rejected by order dated 25.8.2008 (A-5) When her son fell ill she has submitted one more leave application on 29.8.2008 seeking leave for four months from 30.8.2008. In the hope that her leave would be sanctioned she left for Doha. She returned on 10.12.2008 and reported for duty. It would appear that the leave was not sanctioned and that she was asked to report for duty by Memo dated 24.10.2008. On 10.12.2008 she submitted joining report in which itself she was directed to submit her explanation for unauthorised absence (A-9). She submitted the explanation on 11.12.2008 itself and has explained the genuine difficulties. Immediately the 3rd respondent issued a memo dated 12.12.2008 seeking an explanation to reach by 5 p.m. on the same day for her unauthorised absence from 1.9.2008 onwards and also for signing the attendance register without permission of her superior. Once again explanation was submitted (A-12). In the meantime the son of the applicant has fallen ill at

TM

the examination time and the doctors advised the presence of the mother. The applicant submitted leave for child care from 7.1.2009 to 15.5.2009. Since no action was taken she submitted a representation to the 3rd respondent (A-17). The applicant was served with Memos dated 3.1.2009 (A-18) and 5.1.2009 (A-19). The applicant met 2nd respondent at Cochin and submitted another representation. The 2nd respondent immediately wrote on her request letter that leave may be sanctioned. Immediately thereafter the applicant was served with another memo warning her that the period from 31.8.2008 to 10.12.2008 shall be treated as "Dies Non" (A22). The applicant is preferring an appeal against the order. The applicant has made travel arrangements and has obtained flight tickets also. Hence she filed this application to quash Annexure A-1 and A-23, to declare that she is entitled to child care leave and to sanction the same.

4 The main grounds urged in the O.A. are:

- (i) the rejection of her request for child care leave is highly illegal, arbitrary and is tainted with malafides.
- (ii) Ever since she filed O.A.345/2000 and got reinstatement so far no action is taken to regularise the leave period and no consequential benefits such as ACP etc. are given to her.
- (iii) The plea of shortage of supervisory staff in the section is an incorrect statement as there are six PQAS and that casual PQAS have been appointed in place of those who are on leave.
- (iv) The present action of the 3rd respondent in not sanctioning the child care leave is purely an act of vengeance for approaching the higher authority directly.
- (v) The presence of the applicant is utmost necessary near her children for the time being. The applicant herself being very much upset

11

by the action of the respondent has broken her collar bone in an accident and is recovering only.

5 The respondents have filed reply statement rebutting the averments and allegations in the O.A. They have submitted that the applicant being a temporary government servant, the retention of her lien in IFP during her temporary contract with the State Govt. was raised as a dispute by the Pay & Accounts Officer and accordingly the matter was referred to the Ministry. In accordance with the orders of the Ministry retention of her lien in IFP was not agreed to. A notice for termination of her service was issued which was challenged by the applicant in O.A. 345/200. However, the Ministry on humanitarian consideration approved eligible leave to her during the period of contract with State Govt. and was granted EOL without medical certificate during the period of contract. She was granted EOL for two years to join her husband at Doha, Qatar vide her request dated 22.2.2006. She was due to join duty on 13.2.2008. But after the said period instead of reporting for duty she sought extension of leave on medical grounds. She reported for duty only on 20.6.2008. Again she submitted application for EOL for 4 months from 1.9.2008 in order to proceed to Doha, Qatar vide her request dated 16.8.2008 on the ground that the school of her children would reopen in September and also assured that her sons would be brought back to India in January. Her leave application was rejected due to exigencies of service and she was informed accordingly. They refused the leave application dated 30.8.2008 for four months. According to the respondents she was absent from duty from 30.8.2008 onwards without any information or intimation. Though she was directed to report for duty forthwith vide A-7, A-8 of which A-7 was returned undelivered by the Postal authorities with the remark "Now no

h
u

such addressee" and A-8 was returned with the remark "Door locked on 29.10.2008", 30.10.08 and 31.10.08. and now no such addressee in this residence." Subsequent to joining of service on 10.12.08 and application for grant of child care leave for 4 ½ months for looking after her children at Doha and for permission to leave HQrs w.e.f. 7.1.2009 was rejected as there is extreme exigency of service and acute shortage of supervisory staff in the Section. They submitted that the applicant personally met the 2nd respondent at his place of stay and submitted an application for Child Care Leave. The 2nd respondent did not sanction the leave. Without knowing the back ground facts of the matter remarked "may be sanctioned." it was not a blanket grant of leave under CCL.D the 3rd respondent is the competent authority to sanction leave to the applicant Keeping in mind the applicant's past record of being away from duty unauthorisedly, it would not be in the interest of the Institute to grant leave. They submitted that the action of the respondents is perfectly in tune with the legal provisions and the guidelines contained in A-13, A-14 and A-15 and that the judicial interference of the Tribunal is unsustainable.

6 We have heard the learned counsel for the applicant Shri Shafik M.A. and Shri Sunil Jose, ACGSC for respondents. And perused the documents.

7 It is an admitted fact that the husband of the applicant is employed at Doha and her children are studying there. Prior to his taking up a job at Doha, he was working outside Kerala, in various Metro cities in India. Therefore, the applicant used to take leave to join her husband and children. The respondents did show sympathy and due consideration in granting leave asked for by the applicant. But when she left India without obtaining prior sanction of leave applied for by the competent authority

TY

she acted in a manner quite unbecoming of a Government servant which amounted to serious misconduct and bad precedence and this resulted in her being administered with a severe warning (A-22). Since she left the country without permission despite the orders of the competent authority rejecting her application for EOL, the period of absence could not be regularised and the same was treated as Dies Non.

8 Consequent on the acceptance of the Recommendations of the Sixth Central Pay Commission, the Government has notified as a welfare measure, grant of Child Care Leave upto 2 years for the women employees who have minor children below 18 years age w.e.f. 1.9.2008. Admittedly the applicant has two sons below the age of 18 years studying at the work place of her husband in Doha. Though leave cannot be claimed as of right when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority to alter the kind of leave due and applied for except at the written request of the Government servant. The Government of India further clarified that the employee before applying for the CCL should exhaust Earned Leave on credit. The relevant portion in DOPT Notification dated 11.9.2008 is extracted below:

(c) Women employees having minor children may be granted by an authority competent to grant leave, for a maximum period of two years (i.e. 730 days) during their entire service for taking care of upto two children whether for rearing or to look after any of their needs like examination, sickness etc. Child Care leave shall not be admissible if the child is eighteen years of age or older. During the period of such leave, the women employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. It may be availed of in more than one spell. Child Care Leave shall not be debited against the leave account. Child Care Leave may also be allowed for the third year as leave not due (without production of medical certificate). It may be combined with leave of the kind due and admissible.

A handwritten signature consisting of the letters 'TJ' with a horizontal line underneath.

9 In the clarificatory O.M. No. 13018/2/2008-Estt(L) dated 18.11.08, the DOP&T has clarified as under :

"2. Consequent upon the implementation of orders relating to Child Care leave, references have been received from various sections regarding the procedure for grant of this leave etc. In this connection, it is mentioned that the intention of the Pay Commission in recommending Child Care Leave for women employees was to facilitate women employees to take care of their children at the time of need. However, this does not mean that CCL should disrupt the functioning of Central Government offices. The nature of this leave was envisaged to be the same as that of earned leave. Accordingly, while maintaining the spirit of Pay Commission's recommendations intact and also harmonizing the smooth functioning of the offices, the following clarifications are issued in consultation with the Department of Expenditure (Implementation Cell) with regard to Child Care Leave for Central Government employees:-

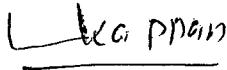
- (i) CCL cannot be demand as a matter of right. Under no circumstances can any employee proceed on CCL without prior approval of the leave by the leave sanctioning authority.
- (ii) The leave is to be treated like the Earned Leave and sanctioned as such."

10 Therefore, keeping in mind the compassionate nature of the case of the applicant where the well being and education of two young children are involved, the interest of justice will be met if the respondents are directed to grant Child Care Leave to the applicant. Accordingly we dispose of the O.A. with the direction to the respondents to grant CCL for four months from February, 2009 as requested by the applicant. It will be incumbent upon the applicant to get admission in the school in India for her children well before the expiry of CCL and join back for duty promptly.

Dated 4.2.2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER

kmn


JUSTICE K. THANKAPPAN
JUDICIAL MEMBER