

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.584/95

Tuesday, this the 23rd day of January, 1996.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR,, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Sujatha.P.P.

Branch Post Master,
Kara Paravoor(via),
Mattannur.

- Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. Union of India represented by
Secretary to Government,
Department of Posts,
New Delhi.
2. The Chief Post Master General,
Kerala Circle,
Trivandrum.
3. Superintendent of Post Offices,
Tellicherry Division. - Respondents

By Advocate Mr S Radhakrishnan, Additional Central Government
Standing Counsel

The application having been heard on 23.1.96 the Tribunal
on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant a woman Extra Departmental Agent, seeks a
declaration that she is entitled to maternity leave. A batch of
applications came up before us earlier, seeking identical reliefs
and by orders in O.A-1116/93 we observed:

"The issues canvassed have far-reaching
consequences..the Government of India should consider
the issues raised."

The Government considered the matter and issued an order(A4) dated 21.12.95 rejecting the claim. According to applicant the Government did not advert to the core question, whether a distinction could be made between a female Extra Departmental Agent and a female Government employee(including an Apprentice), in the matter of grant of maternity leave. Much of the order is devoted to the characteristics of an Extra Departmental Agent. For example, paragraphs 5 to 12 deal with the salient characteristics of this class of employees making out a distinction between regular employees and Extra Departmental employees. That is not what was required to be considered. There may be affinities and disparities in certain matters. But the precise matter with respect to which consideration was ordered related to maternity. The Government had to consider whether for purposes of maternity and maternity leave, there was any justifiable difference between a departmental and Extra Departmental employee. An Extra Departmental employee may work for 3 or 4 hours while a regular employee is supposed to work for 8 hours. This seems to be the touch stone on which differentiation is justified. As rightly pointed out by counsel for applicant, Rule 43 of the Central Civil Services(Leave) Rules grants the benefit of maternity leave even to an apprentice. It reads:

"A female Government servant(including an apprentice) with less than two surviving children may be granted maternity leave.."

The logic in the impugned order is too transparent to stand scrutiny. If an Extra Departmental Agent is disentitled because she puts in only 3 or 4 hours of work, we must say that an apprentice does not even put in that much of work. Again the Government fell into a serious error in rejecting the claim. In

paragraph 7 of A4 it is said:

"ED Agents are a class apart. They have not much in common with Departmental employees.."

The comparison ought not to be between Extra Departmental employees and regular employees. The comparison should be between female Extra Departmental employees and female departmental employees, in the context of maternity, and in that context alone. This aspect has been missed altogether. Again the decision of the Supreme Court in Superintendent of Post Offices Vs. PK Rajamma (AIR 1977 SC 1677) has been misread by the department. In paragraph 9 of A4 it is said:

By the judgement dated 22.4.77 of the Hon'ble Supreme Court, the ED Agents have been declared as holders of Civil Posts..only for the purpose of availability of protections and safeguards in Article 311(2)".

We find no warrant for reading a restriction into the declaration of law in Rajamma's case and limiting it to Article 311. The declaration is that Extra Departmental Agents are holders of civil posts.

2. The Government did not come into focus on the real issue namely, whether a valid distinction could be made between departmental and Extra Departmental female employees in the context of maternity and grant of maternity leave.

3. Government of India argued that Justice Charanjit Talwar Commission is looking into the matter. That is no reason for the Government to avoid its own responsibility, pursuant to the directions of this Tribunal. The Report may or may not be

accepted and it is only recommendatory in character. What the Government has been asked to decide, it must decide. It cannot shelve. It will do so within four months from today. We quash A4 and direct such consideration. We may also point out that a matter touching on a similar issue was disposed of by us(O.A.1637/94).

4. Application is allowed with costs of Rs.1000.00(Rupees one thousand) payable to applicant.

Dated, the 23rd of January, 1996.

P V Venkatakrishnan

P V VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

Chettur Sankaran Nair

CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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