

8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A/T.A No. 100/2007

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet..... Pg. 1 to 7
2. Judgment/Order dtd. 29/05/2009 Pg. 1 to 5. *Allowed*
Common cause of 214/06
a 100/06 on 214/06
3. Judgment & Order dtd..... Received from H.C/Supreme Court in 214/06
4. O.A. 100/2007 Pg. 1 to 26
5. E.P/M.P. Pg. to
6. R.A/C.P. Pg. to
7. W.S. Pg. 1 to 6
8. Rejoinder..... Pg. to
9. Reply..... Pg. to
10. Any other Papers..... Pg. to
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Sakila
26/09/2017

ORDER SHEET1. Original Application No. 100/072. Mise Petition No. /3. Contempt Petition No. /4. Review Application No. /Applicant(S) Dr. Sabari Devi vs Union of India & OrsAdvocate for the Applicant(S) Mr. K. KaitheMr. B. Sharma, Mr. A. ChettriAdvocate for the Respondant(S) Railways Advocate....

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed C. P. for Rs. 10/- deposited vide O.P.O./D.D. No. 346/6531/94 Dated 30.4.07 Heena D. Registrar 30/4/07		1.5.07. The claim of the applicant is that the Respondent authority has not sanctioned her maternity leave. The applicant on 28.06.06 had preferred a representation for sanctioning the maternity leave but the respondents authorities refused to sanction her the said maternity leave. The applicant has approached this Tribunal by filing the O.A. No. 193 of 2006. This Tribunal has disposed of the O.A vide order dated 08.08.06 with directions to the applicant to prefer a comprehensive representation regarding admissibility of maternity leave to her and the respondent authorities were directed to dispose of the said application within a period of two months. The Respondents authorities has

Contd/-

2
O.A. 100/07

Steps taken
on 16/5/07.

Notice & order
Sent to D/Section
for issuing to
R- 1 to 4 day
regd. A/D post.

16/5/07. D/No-485,486
DL= 24/5/07

1.5.07

issued an order dated 17.08.06 to the applicant by which the respondent authorities issued notice of termination of her service as a Medical Practitioner on contract basis and also rejected the claim of the applicant for grant of maternity leave.

I have heard Mr. B. Sharma learned counsel for the applicant and Dr.J.L.Sarkar learned Railway counsel for the Respondents. The counsel for the respondent has also submitted that as per impugned order dated 08.09.2006 (Annexure -6) authorized absence without detriment to the terms shall be allowed at the rate of two days per month to be availed any time during the contract to the extent earned by the CMPs till such time. Therefore, the applicant is entitled to take the maternity leave.

In the facts and circumstances, I am of the view that issue notice on the respondents. Post the matter on 14.6.07.

Vice-Chairman

lm

14.6.2007

Let the case be posted alongwith O.A. 214/2006 as prayed by counsel for the parties. In the meantime Respondents are at liberty to file reply statement.

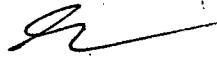
Vice-Chairman

Received for
Res. No-2,3
RCA/CPO's LC
18-05-07 N.F.Riley
1/bb/

Notice duly served
on R-2,3.

18/5/07. Notice duly served
on R. No-2&3.

12.05.2008 On the prayer of the learned Counsel for the parties, call this matter on 10.06.2008 for hearing alongwith O.A. No.214/2006.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

nkm


4.6.08

26. 9. 07
W/S filed on behalf
of the respondents. Copy
served.

10.06.2009 On the prayer of Mr.B.Sarma, learned counsel appearing for the Applicant(made in presence of Dr.J.L.Sarkar, learned counsel for the Railways) this case stands adjourned and to be taken up for hearing on 30.6.2008.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

lm

30.06.2008 Mr. B. Sarma, learned counsel appearing for the Applica

30.06.2008

30.06.2008 Mr. B. Sarma, learned counsel appearing for the Applicant is present. It is reported that Dr.J.L.Sarkar, learned Standing for the Railways is suffering from Typhoid.

In the aforesaid premises, call this matter on 11th August, 2008 for hearing before Division Bench.

W/S filed.

8.08.2008

lm

(M.R. Mohanty)

W/S filed.

11.08.2008 On the prayer of learned counsel appearing for both the parties, call this matter on 04.9.2008

3.9.08

lm

(M.R. Mohanty)
Vice-Chairman

04.09.2008 Dr. J. L. Sarkar, learned Standing Counsel for the Railways is on accommodation. Mr. B. Sarma, learned counsel appearing for the Applicant seeks an adjournment of hearing of this case.

Call this matter on 31st October 2008 for hearing.

W/S filed.

30.10.08.

lm

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

W/S filed.

2.12.08.

31.10.2008 Call this matter on 03.12.2008 for hearing.

(S.N. Shukla)
Member(A)

(M.R. Mohanty)
Vice-Chairman

03.12.2008 Call this matter on 5th January, 2009.
for hearing.

W/S bilal.

Z
21.09.

lm

SN
(S.N. Shukla)
Member(A)

MR
(M.R. Mohanty)
Vice-Chairman

05.01.2009 None appears for either of the parties.

Call this matter on 07.01.2009 for hearing.

nkm

MR
(M.R. Mohanty)
Vice-Chairman

07.01.2009 Prayer has been made on behalf of Mr.B.Sarma, learned counsel appearing for the Applicant seeking an adjournment up to 9th February, 2009. Dr.J.L.Sarkar, learned Standing Counsel for the Railways has no objection.

In the aforesaid premises, call this matter on 9th February, 2009 for hearing.

W/S bilal.

Z
6.2.09.

nm
nm

MR
(M.R. Mohanty)
Vice-Chairman

Rejoinder not
filed.

Z
25.3.09.

09.02.2009 Call this matter on 26.03.2009 for hearing.

nkm

MR
(M.R. Mohanty)
Vice-Chairman

6
SA-100/2007

26.03.2009 As prayed for by Mrs. U.Dutta holding brief of Dr.J.L.Sarkar, learned standing counsel for the Railways, case is adjourned to be taken up on 14.05.2009.


(Khushiram)
Member (A)


(A.K.Gaur)
Member (J)

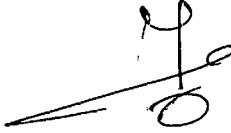
/bb/

14.05.2009 Call this matter on 20.05.2009 for hearing.

Reps in order not
bileel.

10.5.09

lm


M.R.Mohanty
Vice-Chairman

Mr. B. Sarma, learned counsel appearing for the Applicant is present. Dr. J. L. Sarkar, learned Standing Counsel for the Railways, has sought accommodation for today.

Call this matter to-morrow on 21st May 2009.


(N.D.Dayal)
Member(A)


M.R.Mohanty
Vice-Chairman

lm

21.05.2009 Heard Mr B. Sarma, learned Counsel appearing for the Applicant, and Dr J.L. Sarkar, learned Standing Counsel for the Railways.

Hearing concluded. Orders reserved.

(N.D. Dayal)
Member(A)

(M.R. Mohanty)
Vice-Chairman

nkm

29.05.2009 Judgment pronounced in open Court. Kept in separate sheets. Application is allowed. Cost of Rs.2000/- should be paid (by the Respondents) to the applicant.

(N.D. Dayal)
Member(A)

(M.R. Mohanty)
Vice-Chairman

lm

12.6.09

order dt. 29.5.09
in O.A 100/09 send to the
DSC for issuing the same
to the Respondents and also
to the Applicant.

D No 3473 to 3477

dt 25/6/09

72 P 6/109

9

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

O.A No.214/2006 & O.A.No.100/2007

Dated **29.5.2009**

Dr. Sabari Devi

Applicant

By Advocate Mr B. Sharma

Versus

The Union of India & others

Respondents

By Advocate Dr. J.L. Sarkar

**Present: The Hon'ble Mr. Manorajan Mohanty, Vice-Chairman
The Hon'ble Mr. N.D. Dayal, Member [Administrative]**

**1. Whether reporters of local newspapers may be
allowed to see the Judgment?**

Yes/No

**2. Whether to be referred to the Reporter
or not?**

Yes/No

**3. Whether their Lordships wish to see the
fair copy of the judgment?**

Yes/No

4. Circulate to all Benches ✓


Vice-Chairman

(0)

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

O.A.No.214/2006 & O.A.No. 100/2007

The 29th day of May 2009

Present: The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman
The Hon'ble Mr. N.D. Dayal, Member, Administrative

Dr. Sabari Devi,
wife of Dr. Partha Sarathi Chakrabarty,
Resident of Ambikagiri Nagar,
House No.18, Zoo Road,
Guwahati-24.
By Advocate Mr. B. Sharma

Applicant

Versus

1. The Union of India, represented by the
General Manager Secretary,
N.F. Railway,
Maligaon, Guwahati.
2. The General Manager(P)
N.F. Railway,
Maligaon, Guwahati.
3. The Chief Personnel Officer,
N.F. Railway,
Maligaon, Guwahati.
4. Chief Medical Director,
N.F.Railway Hospital,
Maligaon, Guwahati.

Respondents

By Advocate Dr. J.L. Sarkar

ORDER

Manoranjan Mohanty, Vice-Chairman:-

Universal Declaration of Human Rights, adopted by the United Nations on 10th of December, 1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of Conventions. On 18th of December, 1979, the United Nations adopted the "Convention on the Elimination of all forms of discrimination against women". Article 11 of this Convention provides as under:-

Article 11 (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the

field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular;

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.
- (f) The right to protection of health and to satisfy in working conditions, including the safeguarding of the function of reproduction.

Article 11 (2) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States 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;*
- (c) *To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*

✓

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

Article 11 (3) Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary."

2. The Constitution of India, in its Preamble, promises social and economic justice. Fundamental Rights have been contained in Chapter III of the Constitution. Article 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Dealing with this Article, the Apex Court, in the case of Hindustan Antibiotics Ltd. v. Workmen, (reported in AIR 1967 SC 948; 1967 (1) SCR 652), has held that labour, to whichever sector it may belong, in a particular region and in a particular industry will be treated on equal basis. Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race caste, sex, place of birth or any of them.

Clause (3) of this Article 15 provides as under:-

"(3) Nothing in this article shall prevent the State from making any special provision for women and children".

In the case of Yusuf Abdul Aziz v. State of Bombay (reported in AIR 1954 SC 321; 1954 SCR 930) it was held by the Apex Court of India that Article 15 (3) applies both to existing and future laws.

Part IV of the Constitution of India contains Directive Principles of State Policy. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life. Sub-Clause (2) of this Article mandates that the State shall strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39 provides, inter alia, as under:

"39 Certain principles of policy to be followed by the State – The State shall, in particular, direct its policy towards securing –

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(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) & (c)

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f)

Article 42 and 43 provides as under:

"42. Provision for just and humane conditions of work and maternity relief – The State shall make provision for securing just and humane conditions of work and for maternity relief.

43 Living wage, etc., for workers – The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."

3. Since Article 42 of the Constitution of India specifically speaks of "just and humane conditions of work" and "maternity relief", the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the acts complained of.

4. The Parliament of India has already made the **Maternity Benefit Act, 1961**. Benefits available under this Act are not being made available to the women employees on the ground that they are not regular employees. The Apex Court in the case of Municipal Corporation of Delhi v. Female Workers (reported in 2000 (L&S) 331) held that there is no justification for denying the benefit of the Maternity Benefit Act to casual workers or workers employed on daily wage basis.

5. Keeping the above parameters in mind now we proceed to examine the case in hand. The factual matrix leading the case in hand are as follows:-

(a) Applicant was engaged, on full-time contract basis, as a Specialist Doctor [under the Railways] for a fixed term of one year. Offer of engagement was issued to the Applicant on 12.09.2005. Some of the conditions of the contract disclosed at the time of engagement [which are relevant for these cases] are extracted herein below:-

1. The contract shall be entered into for one year or less from the date of entering into the contract. Period of contract is not extendable on any grounds. However, the Railway Administration shall reserve the right to enter into fresh contract with the Practitioner for another term.
2. The full-time contracted Medical Practitioner [hereinafter referred to as CMP] who enters into contract with the Railways will not have any claim or right for his/her continuity in service or automatic extension of the term of contract.
3. During the validity of the contract, the CMP will be at liberty to terminate the contract for betterment of his/her career or on any other grounds by giving 15 days notice to the Railways. The contract can also be terminated by the Railways at any time during the contract by giving 15 days notice without assigning any reasons whatsoever. Contract shall also be terminated if the CMP is found to be mentally or physically incapacitated.
4. The CMP shall undergo a medical examination, before the contract is entered into, for his/her fitness to perform the work awarded to him/her.
5. At the time of entering into contract, the CMP shall produce certificates of his/her character and antecedents from two gazetted officers of the Central/State Government.
6. At the time of entering into contract, the CMP shall produce original certificates for proof of his/her date of birth and educational qualifications.
7. The CPM shall have to undergo a brief orientation for a period of two weeks.
8. Normally Sundays and National Holidays will be off and in addition, authorized absence without detriment to the terms shall be allowed at the rate of two days per month to be availed any time during the contract to the extent earned by the CMP till such time. *J*

Provided this facility shall be available to the CMP subject to fulfillment of conditions stipulated in clause 14 and 15 of the terms and conditions. Any CMP leaving his place of work on leave of absence/national holidays should get prior permission of the controlling authority

xxx

xxx xxx

15. The CMP shall attend to all normal tasks which any medical practitioner is conventionally doing. He/she will also attend to emergencies and accidents."

(b) During subsistence of the said employment, the Applicant applied for grant of "Maternity Leave". Applicant submitted a leave application, on 28.06.2006, to the following effect:-

"I would like to inform you that I am in advanced stage of pregnancy and EDD is on 3rd July 2006. I shall be unable to continue my duties from 29/6/06 to 29/8/06.

So I request you to kindly grant me the maternity leave for the above period."

(c) Applicant gave birth to a female child at 2.40 PM on 29.06.2006; for which she was admitted to Gauhati Medical College Hospital on 27.06.2006 and was discharged therefrom on 01.07.2006. Maternity leave, as prayed for by the said Applicant, having not been granted to her, the said Applicant approached this Tribunal, with the following prayers, in O.A. No.193/2006;:-

"8.1 To direct the respondent authorities to grant to the applicant Maternity leave w.e.f. 29.06.2006 for 135 days as is admissible.

8.2 To direct the respondent authorities to pay to the applicant her full salary for the period of her absence on maternity leave.

8.3 To direct the respondent authorities not to disturb the services of the applicant and to allow her to continue in her services till persons are appointed against the post held by the petitioner on regular basis.

8.4 Costs of the application.

16

8.5 Any other relief/reliefs that the applicant may be entitled to."

(d) The said O.A. No. 193/2006 was disposed of on 08.08.2006, with grant of liberty to the Applicant to make a representation [to the Respondents] and the Respondents were asked to consider and dispose of the said representation [with special reference to the Rules and antecedents] within 2 months of submission of the representation.

(e) Applicant, who applied on 08.08.2006, could get a certified copy [of the order dated 08.08.2006 of this Tribunal] only on 17.08.2006 and submitted a representation [to the Respondents] on 18.08.2006 in terms of the direction of this Tribunal.

(f) On 17.08.2006, however, the Applicant received a communication dated 07.08.2006 from the Respondents to the following effect:-

“Sub: Sanction of Maternity leave.

Ref: Your letter No. nil dated 28.06.2006.

In reference to your letter quoted above, it is intimated that there is no provision for granting Maternity leave to the Contract Medical Practitioners, as mentioned in the terms and conditions. Hence, your absence from duty w.e.f. from 29.06.06 is hereby treated as un-authorised one and you are given 15 days notice for terminating your services as a full time Contract Medical Practitioner [specialist], Central Hospital, Maligaon as per item No.3 of the said terms and conditions.

This is for your information.”
(Emphasis supplied by us)

(g) Thus, while rejecting the prayer [of the Applicant] to grant her “Maternity Leave”, the Respondents/Railways gave her 15 days notice of termination by treating her to be absent unauthorisedly.

(h) Applicant, in the above premises, approached this Tribunal [with the present O.A. No. 214 of 2006 on 21.08.2006] with the following prayers:-

“8.1 To set aside and quash the order dated 07.08.2006 [Annexure-5]

8.2 To direct the respondent authorities to grant to the applicant Maternity leave w.e.f.29.06.06 for 135 days as is admissible.

8.3 To direct the respondent authorities to pay to the applicant full salary for the period of her absence on maternity leave.

8.4 To direct the respondent authorities not to disturb the services of the applicant and to allow her to continue in her services till persons are appointed against the post held by the applicant on regular basis.

8.5 Cost of the application.

8.6 Any other relief/reliefs that the applicant may be entitled to.”

(i) Applicant obtained an interim order, on said 21.08.2006, in the present O.A. 214/2006 to the following effect;-

“In the interest of justice, the order dated 07.08.2006 will be kept in abeyance till the next date.”

(j) On the next date [i.e. 21.09.2006] the case [O.A. 214/06] was admitted. On said 21.09.2006, the Respondents intimated that “the services as full time contract Medical Practitioner has already expired on 15.09.06. Hence the service of the Applicant stands automatically terminated.”

(k) Since the notice of termination was issued on 07.08.2006 [giving 15 days time] and the same was received by the Applicant on 17.08.2006 [as disclosed by the Applicant in her O.As.]; the interim order dated 21.08.2006, virtually, stayed the operation of the termination notice dated 07.08.2006.

(l) Despite the prayer from the Respondents side, on 21.09.2006, to vacate the interim order; this Tribunal turned down the said prayer. Relevant portion of the Order-sheet dated 21.09.2006 in the present O.A.214/2006 reads as under:-

✓S

"The learned Counsel for the respondents pray that the interim order passed by this Tribunal dated 21.08.06 keeping the order dated 07.08.2006 to be kept in abeyance should be vacated. No interference is required at this stage."

(m) While taking time to file written statement in O.A.No.214/2006, the Respondents/Railways passed an order on 08.09.2006 disposing of the representation dated 18.08.2006 of the Applicant. Relevant portion of the said order dated 08.09.2006 reads as under:-

"Sub: Compliance of the Hon'ble
CAT/GHY's order dt.08-8-2006 in
OA No.193/2006.

Dr. Sabari Devi

-Vs-
UOI & Ors
Ref: Your letter No.Nil dt.18-8-2006.

In compliance to the Hon'ble Central Administrative Tribunal/Guwahati Bench's judgment/order dt.08-8-2006 in OA No.193/2006, I have gone through your representation dt.18-8-2006 along with your original application and Hon'ble Tribunal's judgment/order dt.08-8-2006. I have also gone through the relevant rules & antecedents and after due consideration dispose of the same as under:

At the time of engagement as a Medical Practitioner on Contract Basis on this Railway vide letter No.E/227/III/178-IX (O) dated 12-9-2005 [offer letter], the clear terms and conditions applicable for Contract Medical Practitioners was enclosed along with letter, wherein it was mentioned that normally Sunday and National Holidays will be off and in addition, authorized absence without detriment to the terms shall be allowed at the rate of two days per month to be availed any time during the contract to the extent earned by the CMPs till such time. Except this, no other kind of leave is admissible to CMPs.

Hence, the claim made by you regarding the sanction of maternity leave is not permissible

according to the rules for contract medical practitioners.

This disposes of your appeal dated 18-8-2006."

[Emphasis supplied by us]

(n) On receipt of the order dated 08.09.2006 from the Respondents, the Applicant filed O.N.No.100/2007 [on 30.04.2007] with the following prayers:-

"8.1 To set aside and quash the order dated 08.09.2006[Annexure-6].

8.2 To direct the respondent authorities to grant to the applicant Maternity leave w.e.f.29.06.06 for 135 days as is admissible.

8.3 To direct the Respondent authorities to pay to the applicant her full salary for the period of her absence on maternity leave.

8.4 Cost of application.

8.5 Any other relief/reliefs that the applicant may be entitled to."

(o) Applicant in order to strengthen her case has placed on record a set of Instructions pertaining to grant of maternity leave in Railway at Annexure-6 to O.A.No.214/2006. It reads as under,-

Maternity leave – A female Govt. servant (including an Apprentice] with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of 135 days from the date of its commencement. Previously, the ceiling of such leave was limited to 90 days but this has been enhanced to 135 days w.e.f. 7.10.97. Maternity leave shall not be debited against the leave account of the railway employee. During such period of leave the railway servant shall be paid leave salary equal to the pay drawn immediately before proceeding on the leave. Maternity leave may be combined with any other kind of leave.

Maternity leave under this rule, may also be granted [irrespective of the number of surviving children] in cases of miscarriage or abortion [including abortion induced under the Medical termination of the Pregnancy Act,

1971] for a period not exceeding six weeks, if application for such is supported by a medical certificate from an Authorized Medical Officer. [The total period of Maternity leave on account of miscarriage/abortion should be restricted to 45 days in the entire career of a female railway servant. In calculating the number of days of Maternity leave, such Maternity leave granted and availed of by a female employee in the past should not be taken into account. (This rule is effective from 12.9.94]. R.B.'s No. E(P&A)I-94/CPC/LE-6 of 12.9.94, SE Sl.No.115/94].

This rule re: grant of Maternity leave is also applicable to temporary employees, irrespective of their length of service. Female casual labour with temporary status will also be entitled to all benefits of Maternity leave irrespective of their length of temporary status service. This order takes effect from 25.6.91. Cases where maternity leave had been granted to female temporary employees as well as to casual labour with temporary status prior to this date need not be opened and no recoveries need be made on this account.

Notwithstanding the rules regarding grant of commuted leave, as to whether the employee is expected to return to duty as is necessary for the grant of commuted leave, any leave (including commuted leave up to 60 days and leave not due) up to a maximum of 1 year may, if applied for in continuation of maternity leave may be granted without the production of medical certificate.

(a) (i) More leave in continuation of leave granted as in 4th sub-para above may be granted on production of a medical certificate for the illness of the female employee or illness of a newly born baby of the employee subject to the production of a medical certificate to the effect that the condition of the ailing baby warrants mother's personal attention and her presence by the baby's side is absolutely necessary.

Authority: Rule 551 RI as amended from time to time and Board's letter referred above.

Note 1- Maternity leave is also admissible to adopted mothers who are railway employees.

In this connection Board's letter No.E(P&A)-92/CPC/LE-3 dated 4.12.92, (SE Sl.No.171/98), may be referred to.

Note 2 - Maternity leave is also admissible-

- (i) In case of still born child and
- (ii) In case a female Rly. employee who has married a widower with children from his former wife."

(p) Respondents filed written statements, on 07.03.2007, in O.A.No.214/2006 and, on 26.09.2007 in O.A.No.100/2007, wherein they have disclosed/contested the stand of the Applicant as under:-

".....She was appointed by letter dated 12.9.2005 and after completion of the contractual period of one year she ceased to be in the Railway.....Her service was purely contractual and as such she had no status of govt. servant..... As regards leave she was allowed authorized absent of 2 days per month earned by her. She was not entitled to any other leave. It is stated that the contractual medical practitioners are not governed by any leave rule nor any maternity leave. It is stated that there is no rule of maternity leave of the CMP.....it is stated that she is not entitled to maternity leave under any rule.....It is stated the applicant has confused contractual appointment with ad-hoc appointment. This is not a case of ad-hoc appointment.....there is no rule for granting maternity leave to the applicant in the instant case. The applicant is neither an apprentice nor a temporary employee. She is not governed by the maternity leave as claimed by her in para 4.13. The instructions contained in Annexure-6 of the OA are not applicable in the instant case....."

6. At the hearing, of course, Dr. J.L. Sarkar, learned Standing Counsel for the Railway admitted that the Instructions at Annexure-6 to O.A. No.214/2006 are followed by the Railways and stated, further, that the same were not applicable to the Applicant; for she was not a whole time Railway employee and was just in contract for only one year. He argued that since the Applicant was engaged on contract, she was only entitled to the benefits available in the Contract; the Applicant was not entitled to get the benefit of Maternity Leave. Thus, he tried to

support the stand of the Respondents, that ("no other kind of leave is admissible") was taken in the impugned order dated 08.09.2006 [Supra].

7. Thus, Dr. Sarkar, learned Standing Counsel for the Railways, has raised the point [a] the applicant, not being in a regular post of the Railway, she was not entitled to "maternity leave"; [b] "maternity leave" not being part of the contract, the Applicant cannot avail the same and [c] grant of maternity leave cannot be read into the conditions of Contract attached to the letter of engagement of Applicant.

8. Mr. B. Sharma, learned Counsel appearing for the Applicant took us that the view of the Apex Court rendered in the case of Mathuradas Mohanlal Kedia & others Vs. S.D. Munshaw & others etc. [reported in AIR 1981 S.C. 53] to say that it cannot be said that the Applicant was not holding an employment under Railway etc. In para 15 of the case of Mathuradas [Supra] the Apex Court [with ref to AIR 1967 S.C. 884] noted that the true test for determination of the question whether a person is holding a civil or is a member of the civil service post is the existence of a relationship of master and servant between the State and the person holding a post under it and the existence of such relationship is dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wage and remuneration. It further held that the relationship of master and servant may be established by the presence of all or some of the factors referred to above in conjunction with other circumstances. Applying these tests, this Court held that a Mauzadar in the Assam Valley who was engaged in the work of collection of land revenue and other Government dues and in the performance of certain other special duties was a person holding a civil post under the State. Following the decision rendered in Superintendent of Post Offices etc. etc. v. P.K. Rajamma [1977] 3 SCR 678/AIR 1977 SC 1677] Apex Court held that persons who were working as extra departmental agents of the Posts and Telegraphs Department were person holding civil posts. Mr. Sharma took us through various clauses of the Contract [noted I para 5[a] above] to show that almost all responsible duties [including emergency/accident case] of a regular Doctor of Railway were entrusted to the Applicant and stated further that, therefore, it cannot be stated that she, not being in regular establishment, was not entitled to the benefit of maternity leave. We find enough force in the submissions

23
of Mr. Sharma; after going through the conditions appended to the contract in question.

9. Mr. B. Sharma, learned Counsel appearing for the Applicant also took us through the view of the Apex Court rendered in the case of Central Inland Water Transport Corporation v. Brojonath Ganguly & another etc. [reported in [1986] 3 SCC 136] to say that some unconscionable terms in the contract cannot take away the effect of greater benefits available in law.

10. Finally, Mr. B. Sharma, learned Counsel appearing for the Applicant placed before us the view of the Apex Court rendered in the case of Municipal Corporation of Delhi vs. Female Workers [Supra]; wherein, on examining all aspect of the matter [i.e. Universal Declaration of Human Rights, 1948 of UNO; Declarations in the UNO Convention on the point of Elimination of all forms of discrimination against women, 1979; provisions in the Constitution of India & the provisions in Maternity Benefit Act, 1961 of India] it was held that matters relating to grant of 'Maternity Leave' has to be read into the service condition.

11. After the above discussion, we find that the Railway has taken a narrow view of looking at the problem; which essentially a human in nature and any one acquainted with the working of the Railways, which aims at providing social and economic justice to the citizen of this country, would outright reject their contention. The relevance and significance of the doctrine of social justice has, times out of number, been emphasized by the Supreme Court. 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 the 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. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to working woman in a dignified manner so that she may overcome the state of motherhood honourably, peacefully, undeterred by the fear of being victimized for forced absence during the pre-or post-natal period.

12. That apart, the instructions from Railway Board relating to "Maternity Leave" [as has been extracted even in para 5 (o) above] goes to show that the same has been extended even to apprentice, temporary employees [irrespective of their length of service], female casual labourers, etc. That being the position, there were no reason as to why the Applicant, who was engaged under a Contract, was not allowed to enjoy the "Maternity Leave"; especially when Article 42 gave a mandate in that regard.

13. For the reason of our aforesaid discussions, we are inclined to hold that the Applicant was entitled to enjoy "Maternity Leave" and refusal of the same to the Applicant was an act in violation of the constitutional requirement.

14. Now that we hold that the Applicant was absent with Maternity leave, lawfully; it was not available for the authorities/Respondents to brand her absence as an "unauthorized one". Thus, the Applicant was not absent unauthorisedly; but on Maternity Leave; for which she was to get full salary/wages for the period of said absence.

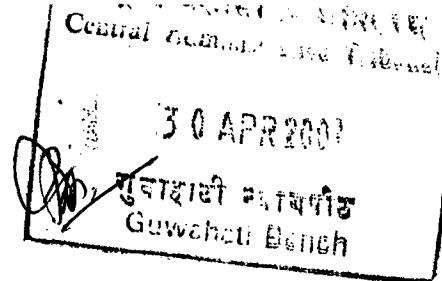
14. Once we hold that the absence of the Applicant was not unauthorized and that the same was a lawful absence on Maternity Leave, the notice of termination [on the ground of unauthorized absence] was bad and not sustainable in the touch stone of present judicial scrutiny.

15. Once notice of termination goes, the Applicant must be held to be continuing lawfully in service till attaining the terminee of her contractual employment.

16. As a consequence, we hereby set aside the order dated 07.08.2006 [Annexure-5 to the O.A.] and the order dated 08.09.2006 [Annexure-A to the written statement] and, accordingly, these cases are allowed. Applicant would be entitled to full salary/wages [as specified in her contract] for the entire period of her employment/till end of one year of her engagement, which should be paid to her within 120 days from the date of receipt of the copy of this order. Cost of Rs.2000/- should be paid [by the Respondents] to the Applicant.

[N.D.Dayal]
Member, Administrative

Manoranjan Mohanty
[Manoranjan Mohanty]
Vice-Chairman



**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: AT GUWAHATI.**

ORIGINAL APPLICATION NO. 100 /2007

Dr. Sabari Devi

....Applicant.

VERSUS

The Union of India & Ors.

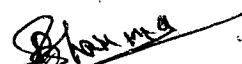
.... Respondents

SYNOPSIS

That the applicant has by way of this application raised a grievance against the arbitrary, illegal and malafide action on the part of the respondent authorities in not sanctioning to her the due maternity leave admissible to her as per the relevant provisions of law. The applicant was pursuant to a process of selection engaged as a Medical Practitioner on contract basis vide issuance of the order dated 12.09.05. Thereafter, during the continuance of her service the applicant out of her wed lock gave birth to a female child on 29.06.06. The applicant on 28.06.06. had preferred a representation for sanctioning the maternity leave admissible to her but, the respondent authorities in a most arbitrary, illegal and discriminatory manner refused to sanction to her the said maternity leave. The only reason behind not sanctioning to her the said admissible leave is to see the ouster of the applicant from service so as to enable the blue eyed person of the respondent authorities to replace the applicant. Left with other alternative, the applicant approached this Hon'ble Court by way of preferring an original application being O.A No. 193/2006 and this Hon'ble Court was pleased vide its order dated 08.08.06 to dispose of the said original application with a direction that the applicant would prefer a comprehensive representation regarding admissibility of maternity leave to her and the respondent authorities would dispose of the said application within a period of two months from the date of receipt of a certified copy of the said order dated 08.08.06. The applicant in the meantime received a letter dated

07.08.06 issued by the respondent authorities on 17.08.06 by which the respondent authorities issued notice of termination of her service as a Medical Practitioner on contract basis and also rejected the claim of the applicant for grant of maternity leave. The applicant received a certified copy of the order dated 08.08.06 passed by this Hon'ble Court in O.A. No. 193/ 06 and 17.08.06 and preferred the representation as directed by the Hon'ble Court. The said representation dated 17.08.06 having failed to evoke any response, the applicant had by way of preferring the Original Application being O.A. No. 214/ 2006 approached this Hon'ble Tribunal challenging the legality and validity of the order dated 07.08.06 which is pending disposal before this Hon'ble Tribunal. However, during the pendency of the said O.A. No. 214/ 2006, the order dated 08.09.06 has been issued necessitating preferring of the instant application.

Filed by



(B. Shanna)

Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: AT GUWAHATI.

ORIGINAL APPLICATION NO. 100 /2007

Dr. Sabari Devi, wife of Dr. Partha Sarathi Chakrabarty, resident of Ambikagiri Nagar, House No. 18, Zoo Road, Guwahati - 24.

.....Applicant.

VERSUS

1. The Union of India, represented by the General Manager Secretary, N.F. Railways, Maligaon, Guwahati.
2. The General Manager (P) N.F. Railway Maligaon, Guwahati.
3. The Chief Personal Officer, N.F. Railway, Maligaon, Guwahati.
4. Chief Medical Director, N.F. Railway Hospital, Maligaon, Guwahati.

.... Respondents.

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE:

That this application is directed against the arbitrary and illegal issuance of the order bearing No. E/ 170/ LC/ NS/ 767/ 06 dated 08.09.06 by the respondent authorities rejecting the prayer made by the applicant vide her

22
Filed by : the applicant
through → Brijesh Kumar.
Advocate

representation dated 18.08.06 for sanctioning to her the admissible maternity leave.

2. **JURISDICTION:**

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

3. **LIMITATION:**

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

4. **FACTS OF THE CASE:**

4.1 That the applicant is a citizen of India and a permanent resident of aforesaid locality in the State of Assam and as such is entitled to all the rights, protections and privileges guaranteed under the Constitution of India and the laws framed thereunder.

4.2 That the applicant states that pursuant to a process of selection she was selected for pursuing the MBBS from the Gauhati Medical College and successfully completed the same in the year 1996. Thereafter the applicant also got selected for pursuing the post graduate (M.D) course in the subject of Pathology and successfully completed the same also in the year 2005 from the said college.

4.3 That the applicant states that the respondent authorities vide issuance of advertisement in the newspapers invited applications from eligible candidates for engagement of a Medical Practitioner on contract basis in the North East Frontier Railways (Specialist). The applicant who fulfilled the

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eligibility criteria's prescribed in the said advertisement applied for the same and pursuant to a process of selection held on 7th of July, 2005 was selected for being appointed as a Medical Practitioner on contract basis in the N.F. Railways.

4.4 That the applicant states that on being selected for engagement as a Medical Practitioner in the establishment of the respondent authorities, the applicant was vide order bearing no. E/ 227/ III/ 178-IX(O) dated 12.09.05 offered engagement as a Medical Practitioner (Specialist) on contract basis. The applicant accepted the offer of engagement and was engaged in the services of the respondent authorities in the N.F. Railway Hospital situated at Maligaon, Guwahati. After her engagement as such under the respondent authorities the applicant started to discharge her duties to the best of her abilities and without any blemish to any quarter.

A copy of the order of engagement dated 12.09.05 is annexed as Annexure – 1.

4.5 That the applicant states that vide the said order of engagement dated 12.09.05, the respondent authorities also communicated to her the terms and conditions that would be applicable to her for her such engagement on contract basis. It was mentioned in the said terms and conditions enclosed as Annexure to the said order of engagement dated 12.09.05 that in matters not referred to in the said terms and conditions, her such engagement would be governed by any orders/ amendments to the terms of the contract issued by the Railways from time to time.

4.6 That the applicant states during here engagement as a Medical Practitioner (Specialist), out of her wed-lock, she conceived a baby and due to the advanced stage of her pregnancy and anticipated date of delivery of the child being 03.07.06 she vide her representation dated 28.06.06 to the Chief Personal Officer, N.F. Railway, Maligaon, Guwahati applied for the sanctioning of maternity leave for the period 29.06.06 to 29.08.06 as is admissible to her under the relevant rules and orders of the respondent authorities.

A copy of the said representation dated 28.06.06 is annexed as Annexure – 2.

4.7 That the applicant states that as per the terms and conditions of her service, she was entitled to 2 days of admissible leave in a calendar month. The applicant had to her credit 8.5 days of the said admissible leave as on 20.06.06 and she being in the advanced stage of her pregnancy availed the same for the period 20.06.06 to 28.06.06. Subsequently, the applicant gave birth to a female child on 29.06.06 i.e. much prior to the expected date of delivery on 03.7.06. The applicant was later on discharged from hospital on 01.07.06.

A copy of the discharge letter issued by the concerned authorities is annexed as Annexure – 3.

4.8 That the applicant states that after submitting her representation dated 28.06.06 for sanctioning the maternity leave admissible to her, she was waiting in anticipation as regards passing of necessary orders to that effect from the respondent authorities but, to her utter shock and surprise it was verbally informed to her that she being engaged on contract basis was not entitled to grant of maternity leave and as such it was denied to her. Thereafter, the applicant tried to persuade the respondent authorities by bringing to their notice the relevant provisions regarding admissibility of maternity leave to a railway servant but the respondent authorities turned a blind eye to it.

4.9 That the applicant states that since the respondent authorities denied sanction towards grant of maternity leave to her and was pressurizing her to join her service knowing it very well that such directions could not be carried out by the applicant, thereby providing the respondents with a handle to terminate her service, she by way of preferring an Original Application being O.A. No. 193/2006 approached this Hon'ble Court praying for a direction upon the respondent authorities to sanction to her the due maternity leave admissible to her. This Hon'ble Tribunal after hearing the parties was pleased vide its order dated 08.08.06 to dispose of the said Original Application with a direction that the applicant would prefer a comprehensive representation highlighting her

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grievances and the respondent authorities would consider the same as per the rules / orders holding the field in that regard and dispose of the same within a period of two months from the date of receipt of a copy of the said order dated 08.08.06.

A copy of the order dated 08.08.06 is annexed as Annexure – 4.

4.10 That the applicant states that she received a certified copy of the order dated 08.08.06 on 17.08.06 and immediately on receipt of the same she preferred a representation dated 18.08.06 and furnished a copy of the order dated 08.08.06 before the respondent authorities. However, on 17.08.06 the applicant received a communication dated 07.08.06 by way which the respondent authorities in addition to issuing notice of termination of her services have also rejected the prayer of the applicant for grant of maternity leave to her.

A copy of the communication dated 07.08.06 is annexed as Annexure – 5.

4.11 That the applicant states that the said order dated 07.08.06 has been challenged by her in the Original Application being O.A. No. 214/ 2006 which is pending disposal before this Hon'ble Tribunal. However, during the pendency of the said O.A. No. 214/ 2006 the respondent authorities have issued an order dated 08.09.06 in compliance of the order dated 07.08.06 passed by this Hon'ble Tribunal in Original Application being O.A. No. 193/ 2006 and as such this instant application has been necessitated so as to make a challenge to the order dated 08.09.06.

A copy of the order dated 08.09.06 is annexed as Annexure - 6.

4.12 That the applicant states that the order dated 08.09.06 is ex-facie illegal and arbitrary and has been issued solely with the objective of denying the applicant the benefit of maternity leave which, is legally due and admissible to her and the order dated 08.09.06 is clearly without any jurisdiction and/ or

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authority being in clear violation of not only the Constitutional right of the applicant but, also in violation of the mother and child rights of the applicant and her baby.

4.13 That your applicant states that there is noting adverse against her requiring the termination of her services vide the order dated 07.08.06 and the respondent authorities with a view to achieve their nefarious objective of appointing a person close to the powers that be, against the post held by the applicant, have now sought to take advantage of the helpless situation of the applicant, ignorant of the fact that the applicant having delivered a baby short while back is not in a position to discharge her duties immediately. The authorities for achieving their nefarious intention have even proceeded to hold, without any jurisdiction and or any authority, that the applicant is not entitled to maternity leave, which reason is perverse to the core of it.

4.14 That the applicant states that as per the relevant provisions applicable to railway employees regarding grant of maternity leave, even an Apprentice and/or temporary employee, is entitled for availing maternity leave upto the ceiling limit of 135 days. The case of the applicant who was engaged by the respondent authorities vide the issuance of the order dated 12.09.2005, is covered by the provisions of the said Rules and as such, the said maternity leave admissible to her cannot be denied. This aspect of the matter is very much in the know how of the respondent authorities and the action towards rejecting the prayer of the applicant for the grant of the said maternity leave to her is not only arbitrary and illegal, but also against their own policy holding the field in that regard.

A copy of the provisions regarding admissibility of maternity leave is annexed as
Annexure – 7.

4.15 That the applicant states that on enquiry in the office of the respondent authorities it has been revealed that the only reason for not sanctioning to the applicant the due maternity leave admissible to her is that the authorities concerned wants to see the ouster of the applicant from her services

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as because some other person close to them is aspiring for engagement against the post currently being held by the applicant. At present the railway authorities are not in contemplation of filling up of the post of Medical Practitioner on permanent basis and in such a situation, the only way for the said blue eyed person of authorities concerned for securing an engagement in the services of the respondent authorities, is against the post held by the applicant and for that the ouster from service of the applicant is a must, without which the nefarious designs of the authorities concerned cannot be culminated into reality.

4.16 That the applicant states that the action on the respondents part in contemplating to see the ouster of the applicant and to replace her by way of another ad-hoc employee is in total violation of the provisions of law laid down by the Apex Court and this Hon'ble Tribunal in its various decisions. Such an action on the part of the concerned authorities is not only malafide and in colourable exercise of power but also against the basic principles of service jurisprudence which deplores replacement of an adhoc employee by another adhoc-employee. As such, it is prayed before Your Lordship to direct the respondent authorities not to terminate the service of the applicant.

4.17 That the applicant states that the denial of sanction towards grant of maternity leave to the applicant on the respondent's part is in total violation of the relevant laws/ rules/ orders issued by the Government of India from time to time. Maternity leave is admissible to an employee irrespective of the nature and type of employment, be it private or public and/ or temporary or permanent and as such denial of the said maternity leave to the applicant has resulted not only in violation of the human rights of the applicant but also the mother as well as the child rights of the applicant and her baby have been infringed. The respondent authorities by their actions have rendered themselves liable to be proceeded against under the relevant provisions of the disciplinary rules for imposition of appropriate penalty.

4.18 That the applicant begs to state that the action/inaction on the part of the respondent authorities in not sanctioning to her the due admissible maternity leave and rejecting the same in addition to being in the violation of the principles of Administrative Fair Play is also violative of the Fundamental

Rights of the petitioners guaranteed under the Constitution of India and the laws framed there under

4.19 That the applicant states that she has no any other appropriate, equally efficacious alternative remedy available to her and the remedy sought for herein when granted would be just, adequate, proper and effective.

4.20 That the applicant demanded justice, but the same was denied to her.

4.21 That this application has been filed bonafide for securing the ends of justice

5. **GROUND FOR RELIEF WITH LEGAL PROVISIONS:**

5.1 For that the impugned action on the part of the respondent authorities is illegal, arbitrary and in violation of the principles natural justice.

5.2 For that the action on the part of the respondent authorities in denying to the applicant the maternity leave admissible to her is bad in law as well as in facts.

5.3 For that the action on the part of the respondent authorities in rejecting the claim of the applicant for grant of maternity leave to her is not only against the own policy of the respondent authorities holding the field in that regard, but also in blatant violation of the Fundamental Rights of the applicant.

5.4 For that under the relevant provisions of the "A Guide to Railway Men on Establishment Rules, 2006" the applicant is entitled for the grant of maternity leave to her and as such it cannot be denied to her. The authorities

have by not sanctioning the Maternity leave to the petitioner, sought to negate the very intention behind grant of Maternity leave.

5.5 For that denial of the said maternity leave to the applicant has resulted not only in violation of the human rights of the applicant but is also total violation of the mother and child rights of the applicant and her child.

5.6 For that as per the various rules/ guidelines/ circulars issued by the Government of India from time to time maternity leave is admissible to all category of employees, be it temporary or permanent and as such denial of grant of such leave to the applicant is in total violation of the express policy of the Government of India in that regard and the Constitutional Law holding the field in this regard.

5.7 For that the applicant has applied for grant of the said maternity leave to her and as such the same cannot be denied to her inasmuch as grant of sanction towards maternity leave is mandatory in nature and the same cannot be contingent upon the satisfaction of the whims and caprices of the respondent authorities.

5.8 For that the contemplated action on the respondents part in terminating the services of the applicant and replacing her by way of another adhoc employee is bad in law.

5.9 For that an adhoc employee cannot be replaced by way of another adhoc employee and such an action if accentuating in termination of the services of the applicant would be in violation of the relevant provisions of service law.

5.10 For that the services of the applicant cannot be sought to be taken away by the respondent authorities only for the reason that she has applied for the sanction of the due Maternity Leave to her which, under any circumstances cannot be denied to her and the very action on the respondent's part cannot stand the scrutiny of law.

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5.11 For that in any view of the matter the impugned action on the part of the respondents is not sanctioning the maternity leave to the applicant is bad and unsustainable in the eye of law.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. **DETAILS OF THE REMEDIES EXHAUSTED:**

That the applicant declares that she has exhausted all the remedies available to her and there is no alternative remedy available to her. The urgent nature of the relief's as sought for in this application has forced the applicant to approach this Hon'ble Tribunal at the earliest possible instance.

7. **MATTER NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:**

The applicant further declares that she has not filed any application, writ petition or suit regarding the grievance in respect of which this application is made before any other court or any other bench of this Tribunal or any other authority, nor any such application writ petition or suit is pending before any of them.

8. **RELIEF SOUGHT FOR:**

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted, records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be pleased to grant the following relief's to the applicants:

8.1 To set aside and quash the order dated 08.09.2006 (Annexure-6).

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8.2 To direct the respondent authorities to grant to the applicant Maternity leave w.e.f 29.06.06 for 135 days as is admissible.

8.3 To direct the Respondent authorities to pay to the applicant her full salary for the period of her absence on maternity leave.

8.4 Cost of the application.

8.5 Any other relief/ reliefs that the applicant may be entitled to.

9. INTERIM ORDER PRAYED FOR:

The applicant in the facts and circumstances of the case the applicant does not pray for any interim direction, however reserves her right for the same if need be.

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11. PARTICULARS OF THE POSTAL ORDER:

- i) IPO No. - 346 653194.
- ii) Issued from - Guwahati.
- iii) Payable at - Guwahati.

12. DETAILS OF INDEX:

An Index showing the particulars of documents is enclosed

13. LIST OF ENCLOSURES:

As per Index.

Sd/-

VERIFICATION

I, Dr. Sabari Devi, wife of Dr. Partha Sarathi Chakrabarty, aged about 32 years, resident of Ambikagiri Nagar, House No. 18, Zoo Road, Guwahati - 24, Assam, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case, the statements made in paragraph 1, 2, 3, 4 (1, 2, 3, 5, 8, 12, 13, 15 to 21) 5, 6, and 7 are true to my knowledge; those made in paragraphs 4 (4, 6, 7, 9, 10, 11, and 14) are true to my information derived from the records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 30 th day of April, 2006.

Sabari Devi

DEPONENT

N.F.RAILWAY

Office of the
General Manager(P)
Guwahati-11

Dated 12.09.2005.

No. E/227/III/178-IX(O)

To,
✓ Dr. Sabari Devi,Sub.: Engagement of Medical Practitioner on CONTRACT
BASIS on N.F.Railway - (SPECIALIST).

Dear Doctor,

The General Manager, N.F.Railway, hereby offers to engage you as a Medical Practitioner (Specialist) on full time CONTRACT BASIS. This offer is for a period not exceeding one year from the date you start discharging the functions under the terms of this contract. For the purpose of this contract, you will be posted at Central Hospital under MD/CH/MLG.

2. The terms and conditions of the contract which will be applicable to you, are laid down in the enclosed Annexure.

3. As you have been found medically FIT, you are, hereby, directed to report to the MD/CH/MLG where you will undergo a briefing for a period of 14 days before your posting to the specified station.

4. If you fail to report to MD/CH/MLG within 10 days from the date of issue of this offer, this offer shall stand withdrawn. Please also note that no request for extension of joining time will be allowed. A declaration form is enclosed herewith which may be filled and returned to this office duly signed by two Sureties.

Enclo : Annexure.

Yours faithfully,

ad.

(APO/GAZ)

For GENERAL MANAGER(P)

Copy forwarded for information and necessary action to :-

1. FA&CAO/EGA/MLG
2. OS/EO-Bill
3. MD/CH/MLG. He is requested to intimate this office regarding joining of Dr. Sabari Devi as Medical Practitioner(Specialist) on Full time Contract basis.

For GENERAL MANAGER(P)

Certified to be true copy
A. S. Roy
Advocate

- 10 -

Northeast Frontier Railway

Office of the
General Manager (P),
Maligaon, Guwahati -11.

Dated: 01.09.2005

No. E/227/III/178-Pt.XII (O)

To
CMD, MD/CH, CMSs & MS/ICs,
FA&CAO/EGA, Finance/MLG,
All DRMs/DRM(P)s & DFM/N.F. Railway,
OS-EO/Bill/MLG.

Sub: Terms and conditions applicable for Medical Practitioners/
Dental Surgeons on Contract Basis.

Railway Board vide their letter No. 96/E (GR)II/9/16 dated 24.08.2005 have revised the rate of monthly remuneration to the Medical Practitioners/Dental Surgeons engaged on the Railways, as under: -

Category of Medical Practitioner/Dental Surgeons on contract	Monthly remuneration for those engaged for		
	Full time	Part time	
		Four hours	Two hours
General Duty Medical Practitioners	Rs.21,900.00	Rs.9,840.00	Rs.4,920.00
Dental Surgeons	Nil	Rs.9,840.00	Rs.4,920.00
Specialists	Rs.27,100.00	Rs.12,160.00	Rs.6,080.00
Super Specialists	Rs.32,400.00	Rs.14,480.00	Rs.7,240.00

2. The remuneration specified as per Para -1 above includes the following amounts as HRA in case of full time Contract Doctors: -

General Duty Medical Practitioners	Rs.2,437.00
Specialists	Rs.3,045.00
Super Specialists	Rs.3,656.00

In case of Full Time Contract Doctors for whom Railway accommodation is provided, an amount equivalent to the sum of HRA (as indicated above) and license fee of the accommodation so provided be deducted from the monthly remuneration of the concerned Medical Practitioner.

3. The daily rate of deduction of remuneration for absence in excess of eligibility, should be as indicated below: -

Category of Medical Practitioner/Dental Surgeons on contract	Full time	Part time	
		Four hours	Two hours
General Duty Medical Practitioners	Rs.730.00	Rs.328.00	Rs.164.00
Dental Surgeons	Nil	Rs.328.00	Rs.164.00
Specialists	Rs.903.00	Rs.405.00	Rs.203.00
Super Specialists	Rs.1,080.00	Rs.483.00	Rs.241.00

4. These orders will take effect from 01.09.2005 and shall remain in force till 31.08.2008.

5. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

Accordingly, the above orders may be implemented in respect of all serving Contract Medical Practitioners/Dental Surgeons on N. F. Railway, w.e.f. 01.09.2005.

Please acknowledge receipt.

(S. K. Chowdhury)
1.9.05
APO(Gaz)
for General Manager (P).

U1

Terms and conditions for entering into contract
with Medical practitioners on full-time basis.

1. The contract shall be entered into for one year or less from the date of entering into the contract. Period of contract is not extendable on any grounds. However, the Railway administration shall reserve the right to enter into fresh contract with the Practitioner for another term.
2. The full-time contracted Medical Practitioner (hereinafter referred to as CMP) who enters into contract with the Railways will not have any claim or right for his/her continuity in service or automatic extension of the term of contract.
3. During the validity of the contract, the CMP will be at liberty to terminate the contract for betterment of his/her career or on any other grounds by giving 15 days notice to the Railways. The contract can also be terminated by the Railways at any time during the contract by giving 15 days notice without assigning any reasons whatsoever. Contract shall also be terminated if the CMP is found to be mentally or physically incapacitated.
4. The CMP shall undergo a medical examination, before the contract is entered into, for his/her fitness to perform the work awarded to him/her.
5. At the time of entering into contract, the CMP shall produce certificates of his/her character and antecedents from two gazetted officers of the Central/ State Government.
6. At the time of entering into contract, the CMP shall produce original certificates for proof of his/her date of birth and educational qualifications.
7. The CMP shall have to undergo a brief orientation for a period of two weeks.
8. Normally Sundays and National Holidays will be off and in addition, authorised absence without detriment to the terms shall be allowed at the rate of two days per month to be availed any time during the contract to the extent earned by the CMP till such time.

Provided this facility shall be available to the CMP subject to fulfilment of conditions stipulated in clause 14 and 15 of the terms and conditions. Any CMP leaving his place of work on leave of absence/national holidays should get prior permission of the controlling authority.

9. Expenses on outstation journeys connected with the contracted works will be borne by the Railway. Duty passes will be issued by the Railways for the purpose of journey in the line jurisdiction of the Health Unit where the CMP renders service and to the Divisional Headquarters and the CMP will be paid Daily allowance at the following rates during such journeys subject to other provisions contained in Board's letter No. F(E)L/98/AL-28/9 dated 24.4.1998.

FS/201(B)

27

<u>A1 Class Cities</u>	<u>A Class cities</u>	<u>B1 Class cities</u>	<u>Other areas</u>
Rs 230	Rs 185	Rs 150	Rs 120

10. The monthly fee for CMPs and the daily rate of proportionate reduction from the fee in the event the CMP absents himself for periods exceeding those stipulated in the contract, are at the following rates.

Category of CMP	Monthly fee	Daily rate of Reduction from the fee for excess absence
General Duty	Rs 10,950	Rs 365
Specialised services	Rs 14,950	Rs 498
Super speciality services	Rs 17,900	Rs 597

11. Full-time CMPs may be provided unfurnished accommodation subject to availability. In case Railway accommodation is provided to the CMP, an amount equivalent to HRA and licence fee of the accommodation so provided shall be deducted from the monthly fee admissible to the CMP.
12. The CMP may be given one set of First Class complimentary pass for self and family during each contract. The pass, however, shall be issued after he/she renders three months of contracted service regularly.
13. The CMP may avail of free medical treatment for self only except the operations categorised as "Special" in para 622 (8) of Indian Railway Medical Manual 2000 and treatment normally available at superspeciality centres from his/her respective zonal railway hospitals during the currency of contract.
14. The CMP shall be governed in respect of matters not referred to in these terms and conditions by any orders/ amendments to the terms contract issued by the Railways from time to time.
15. The CMP shall attend to all normal tasks which any medical practitioner is conventionally doing. He/she will also attend to emergencies and accidents.
16. CMP shall issue sick/fitness certificates for a period upto 7 days, beyond which the certificate so issued by him/her should be countersigned by a regular Railway Medical Officer available at the nearest hospital/ dispensary/ health unit.
17. The CMP shall not perform administrative work like pre-employment or periodical medical examinations, sanction of leave to Group 'C' and 'D' staff and certification with respect to food items considered unfit for human

consumption, etc. However, the CMP shall be allowed to permit Group 'C' and 'D' staff casual leave if sought, for 3 days or less at a stretch.

18. The CMP shall not make medical recommendation of any kind referred to paras 559 to 564 of Indian Railway Medical Manual (IRMM), 2000

19. The CMP will not have any financial powers. However he/she may operate the imprest account in accordance with the guidelines contained in the IRMM. However, the cash vouchers in such cases shall be got countersigned by an authorised Railway medical Officer. No cash imprest account shall be recouped unless the proposal is countersigned by an Indian Railway Medical Service Officer.

20. The CMP shall not initiate/review /accept the annual confidential reports of Group 'C' Railway employees. However, he/she shall, on request, prepare and present the performance report of the staff

21. The CMP shall not indent or condemn/recommend for condemnation any tools and plants.

To

The Chief Personal Officer,
N.F. Railway,
Maligaon, Guwahati.

Sub : Application for maternity leave.

Through proper channel.

Respected Sir,

I would like to inform you that I am in advanced stage of pregnancy and EDD is on 3rd July 2006. I shall be unable to continue my duties from 29/6/06 to 29/8/06.

So, I request you to kindly grant me the maternity leave for the above period.

With regards,

Yours faithfully,



(Sr. Sabari Devi)

Date : 28/6/06
Guwahati

Reed
ark
4/7/06
RECORDED IN FILE

Certified to be true copy

Shobhoy
Advocate

Form No. 2

DISCHARGE CERTIFICATE

GAUHATI MEDICAL COLLEGE HOSPITAL GUWAHATI ASSAM

F-2 (N.P.C.)

Admitted on 27/6/06

IRN - 352/06 Discharged on 1/7/06

Hospital No. B-9628

Dept Regd No. 6391/06

MRD No. 22937

Ward N.P.C.

Unit IV

Service O&G

Name: Dr. Sabari Devi Age: 31 yrs Sex: F Religion: Hindu

Address: C/o - Dr. P. S. Chakraborty

Zoo Road, Gecanagar

Village/Town:

P. O.

T. O.

Dist: Kamrup

INVESTIGATION

Blood group \rightarrow O⁺/ue

(Rupt.) R/E uterine - WNL

Hb% \rightarrow 11.5 gm%.T₃ \rightarrow 1.72 ng/dlRBS \rightarrow 80 mg%.T₄ \rightarrow 9.16 μ g/dlSr. Creatinine \rightarrow 0.6 mg%.TSH \rightarrow 1.58 M.I.U./ml

R/S - Urine - A/H - Trace

(Rest - Enclosed)

Pus cell - 3-4/HPF

EP. cells - 3-6/HPF

Baby Blood group \rightarrow O⁺/ueECG - Normal Sinus rhythm
(27/6/06)DIAGNOSIS: G₄P_{1,2} at Term pregnancy with R.T.I.

TREATMENT: Spontaneous Vaginal delivery following Oxytocin induction.

(Midline perineal tear \rightarrow Repaired)

Baby Note

Small parametrial laceration

Female	2:40pm
3 kg	29/6/06

Results: Cure/Improved/imchanged/Diagnosis only/Worse

He/She is fit/unfit to resume duty/light duty/advised rest for year.....

month..... days..... w.e..... to.....

The condition of the mother and baby is fit
for discharge

Counter Signature of

Head of Service & unit/Registrar

Other side

Advice on discharge

Bijul Sarma
Signature of Doctor i/c
1/7/06Certified to be true Copy
A. Chakraborty
Advocate

① Tb. Augmentin-Duo

⑥

Sig - 1 tab twice daily x 3 days more

④ Tb. Serasit K

② V.P.S.E

Sig - 1 tab twice daily after food x 1 day more
or, if there is pain

③ Oint- Sural

①

Sig - To apply locally

④ Syrup - Zincovit

①

Sig - 2 tbs twice daily after food

⑤ Tb. Accyclov

④ 5

Sig - 1 tab daily after food x 1/2 months

⑥ Cp. Anofex

④ 5

Sig - 1 cap daily after food x 1/2 month

Actu

① Exclusive breast feeding.

② Regular Immunization of the baby.

③ Check up after 2 months

on Tuesday in G.O.D.

Singed
1/9/02

Original Application No. 193 of 2006.

Date of Order: This the 8th day of August 2006.

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.

The Hon'ble Sri Gautam Ray, Administrative Member.

Dr. Sabari Devi,
Wife of Dr. Partha Sarathi Chakrabarty
Resident of Ambikagiri Nagar
House No. 18, Zoo Road,
Guwahati - 24.

... Applicant

By Advocates Mr. B. Sarma, Mr. A. Chettri, Mrs. B. Chakrabarty.

Versus -

1. The Union of India, represented by the
General Manager Secretary,
N.F. Railways,
Maligaon, Guwahati.

The General Manager (P),
N.F. Railway,
Maligaon, Guwahati.

The Chief Personal Officer,
N. F. Railway,
Maligaon, Guwahati.

4. Chief Medical Director,
N.F. Railway Hospital,
Maligaon, Guwahati.

... Respondents.

By Advocate Dr. J.L. Sarkar, Railway Standing Counsel.

ORDER (ORAL)

K.V. SACHIDANANDAN (V.C.)

The Applicant, who is a Medical Practitioner (Specialist),
was engaged on full time contract basis in the Northeast Frontier
Railway Hospital for a period not exceeding one year from the date of

L

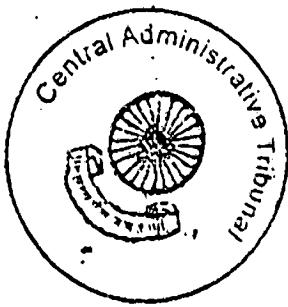
Certified

A. Chettri
Advocate

part discharging the functions with a provision for extension of the same. The Applicant made Application on 28.06.2006 to the Chief Personal Officer, N.F. Railway, Maligaon, Guwahati praying for sanctioning of maternity leave for the period from 29.06.2006 to 29.08.2006 due to advance stage of her pregnancy and anticipated delivery of a child being on 03.07.2006. But nothing transpired. Therefore, aggrieved by the said inaction of the Respondents, she has filed this Application seeking the following reliefs: -

- 8.1 To direct the respondent authorities to grant to the applicant Maternity leave w.e.f. 29.06.2006 for 135 days as is admissible.
- 8.2 To direct the Respondent authorities to pay to the applicant her full salary for the period of her absence on maternity leave.
- 8.3 To direct the respondent authorities not to disturb the services of the applicant and to allow her to continue in her services till persons are appointed against the post held by the petitioner on regular basis.
- 8.4 Costs of the application.
- 8.5 Any other relief/reliefs that the applicant may be entitled to."

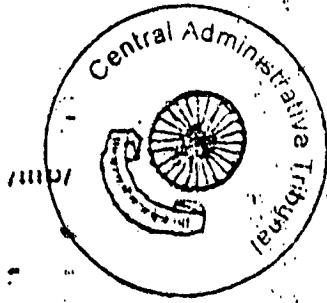
2. Mr B. Sarma, learned Counsel for the Applicant has taken to our attention to the annexure - 4 to the O.A. "Special kinds of Leave : Maternity Leave" and submitted that the Applicant is entitled for maternity leave. Dr. J.L. Sarkar, learned Standing Counsel for the Railways submitted that this is a policy matter and it will be decided by the Respondents. At this juncture, learned Counsel for the Applicant submitted that he will be satisfied if the Applicant permits to file a comprehensive representation to the 4th Respondent and direct the 4th Respondent to consider and dispose of the same within a time frame.



3. In the interest of justice, we direct the Applicant to file a comprehensive representation within two weeks from today. On receipt of such representation, the 4th Respondent and/or any other Competent Authority shall consider and dispose of the same with special reference to the Rules and antecedents, within a period of two months from the date of receipt of copy of the representation.

The O.A. is disposed of at the admission stage itself. In the circumstances, no order as to costs.

S/ VICE CHAIRMAN
S/ MEMBER (A)



Date of Application : 8/8/06
Date on which copy is ready : 17/8/06
Date on which copy is delivered : 17/8/06
Certified to be true copy

Surjya 17/8/06
Section C (P) (J) dl
C. A. T. Guwahati Bench
Guwahati

ASL 17/8/06

-26-

Annexure 25

50

NORTHEAST FRONTIER RAILWAY

Office of the
General Manager(P)
Maligaon, Guwahati -11

No. E/227/II/178/Pt.XI(O)

Dated: 07.08.2006

To
Dr. Sabari Devi,
C/O Joykanta Sharma,
P.O.Zoo Road,
Ambikagiri Nagar,
Guwahati-781024.

Sub: Sanction of Maternity leave.

Ref: Your letter No. nil dated 28.06.2006.

In reference to your letter quoted above, it is intimated that there is no provision for granting Maternity leave to the Contract Medical Practitioners, as mentioned in the terms and conditions. Hence, your absence from duty w.e.f. from 29.06.06 is hereby treated as un-authorised one and you are given 15 days notice for terminating your services as full time Contract Medical Practitioner(Specialist), Central Hospital, Maligaon as per item No. 3 of the said terms and conditions.

This is for your information.

Vul
8/8/06

(P. K. SINGH)
Dy. Chief Personnel Officer/Gaz.
for General Manager(P)

Copy forwarded for information and necessary action to:-

- 1) FA & CAO/EGA/MLG
- 2) MD/CH/MLG, in reference to your letter No. H/Leave/Gaz dated 06.07.2006
- 3) EO/Bill

(P. K. SINGH)
Dy. Chief Personnel Officer/Gaz.
for General Manager(P)

Certified to be true Copy
A. Chetry
Advocate

NORTHEAST FRONTIER RAILWAY

ANNEXURE-6

Office of the
General Manager (P)
Maligaon, Guwahati - 11

No. E/170/LC/NS/767/06

Date: 08-9-2006

To,
Dr. Sabari Devi,
Ambikagiri Nagar,
House No. 18, Zoo Road,
Guwahati - 24.

Sub:- Compliance of the Hon'ble CAT/GHY's
order dt.08-8-2006 in OA No.193/2006.

Dr. Sabari Devi

-Vs-

UOI & Ors.

Ref:- Your letter No. Nil dt. 18-8-2006.

In compliance to the Hon'ble Central Administrative Tribunal/Guwahati Bench's judgement/ order dt. 08-8-2006 in OA No.193/2006, I have gone through your representation dt 18-8-2006 alongwith your original application and Hon'ble Tribunal's judgement/ order dt. 08-8-2006. I have also gone through the relevant rules & antecedents and after due consideration dispose of the same as under:

At the time of engagement as a Medical Practitioner on Contract Basis on this Railway vide letter No.E/227/III/178-IX (O) dated 12-9-2005 (offer letter), the clear terms and conditions applicable for Contract Medical Practitioners was enclosed alongwith the letter, wherein it was mentioned that normally Sunday and National Holidays will be off and in addition, authorised absence without detriment to the terms shall be allowed at the rate of two days per month to be availed any time during the contract to the extent earned by the CMPs till such time. Except this, no other kind of leave is admissible to CMPs.

Hence, the claim made by you regarding the sanction of maternity leave is not permissible according to the rules for contract medical practitioners.

This disposes of your appeal dated 18-8-2006.

12/8/2006
(Dr. K.K. Senlaskar)
Chief Medical Director

Certified to be true copy
A. Chetry
Advocate

main the same as in the Board's letter dated 20.5.94, Ref. R.B.'s Nos. F(E)III/90/LEI/1 of 8.5.1995 & 14.7.1998, SE Sl. No. SE 182/98.

(5)1 Encashment of L.H.A.P to Railway Servants retiring with SRPF(C) benefits — In case of persons retiring with SRPF C benefits, the amount of employer's contribution plus the interest thereon may be treated as pensionary benefits. For the purpose of calculating the pension, the following formula may be adopted.

Pension =
$$\frac{\text{Total amount of employer's contribution to SRPF plus interest till the date of retirement}}{\text{Commutation factor as per age on next birth day} \times 12}$$

For calculating pension equivalent of gratuity (PEG) the formula will be as follows :—

PEG =
$$\frac{\text{Special Contribution to PF}}{\text{Commutation factor} \times 12}$$

Ref: R.B.'s letters No. F(E)III/90/LEI/1 of 27.5.94, 18.12.95 and 14.7.1998, SE Sl. No. 182/98.

✓ Special kinds of Leave

Maternity leave — A female Govt. servant (including an Apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of 135 days from the date of its commencement. Previously, the ceiling of such leave was limited to 90 days but this has been enhanced to 135 days w.e.f 7.10.97. Maternity leave shall not be debited against the leave account of the railway employee. During such period of leave the railway servant shall be paid leave salary equal to the pay drawn immediately before proceeding on the leave. Maternity leave may be combined with any other kind of leave.

Maternity leave under this rule, may also be granted (irrespective of the number of surviving children) in cases of miscarriage or abortion (including abortion induced under the Medical termination of the Pregnancy Act, 1971) for a period not

-26-

exceeding six weeks if application for such is supported by a medical certificate from an Authorised Medical Officer. [The total period of Maternity leave on account of miscarriage/abortion should be restricted to 45 days in the entire career of a female railway servant. In calculating the number of days of Maternity leave, such Maternity leave granted and availed of by a female employee in the past should not be taken into account. This rule is effective from 12.9.94, R.B.'s No. E(P&A)I-94/CPC/LE-6 of 12.9.94, SE Sl. No. 115/94].

This rule re: grant of Maternity leave is also applicable to temporary employees, irrespective of their length of service. Female casual labour with temporary status will also be entitled to all benefits of Maternity leave irrespective of their length of temporary status service. This order takes effect from 25.6.91. Cases where maternity leave had been granted to female temporary employees as well as to casual labour with temporary status prior to this date need not be opened and no recoveries need be made on this account.

Notwithstanding the rules regarding grant of commuted leave, as to whether the employee is expected to return to duty as is necessary for the grant of commuted leave, any leave (including commuted leave upto 60 days and leave not due) upto a maximum of 1 year may, if applied for in continuation of maternity leave may be granted without the production of medical certificate.

(a) (i) More leave in continuation of leave granted as in 4th sub-para above may be granted on production of a medical certificate for the illness of the female employee or illness of a newly born baby of the employee subject to the production of a medical certificate to the effect that the condition of the ailing baby warrants mother's personal attention and her presence by the baby's side is absolutely necessary.

Authority : Rule 551 RI as amended from time to time and Board's letter referred to above.

Note 1 — Maternity leave is also admissible to adopted mothers who are railway employees. In this connection Board's letter [No. E(P&A)I-92/CPC/LE-3 dated 4.12.92, (SE Sl. No. 171/98)] may be referred to.

Note 2 — Maternity leave is also admissible

(i) In case of still born child and

(ii) In case a female Rly. employee who has married a widower with children from his former wife.

Certified to be true Copy

St. Chakraborty

26 SEP 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH
GUWAHATI.

O. A. NO. 100/2007

Dr. Sabri Devi

- Vs -

U. O. I & Ors.

Written statement filed by the respondents

The respondents most respectfully beg to state as under :-

1. That the respondents have gone through the O.A. and understood the contents thereof.
2. That in reply to statements in para 4.3 it is stated that the applicant was found fit for engagement as CMP in N.F. Rly for a period, specified in the contract of engagement with clear terms and conditions stipulated in appointment letter. It is wrong to say that she was appointed as Medical Practitioner in Rly.
3. That in reply to statements in para 4.4, 4.5, 4.6, 4.7 and 4.8 it is stated that the applicant was

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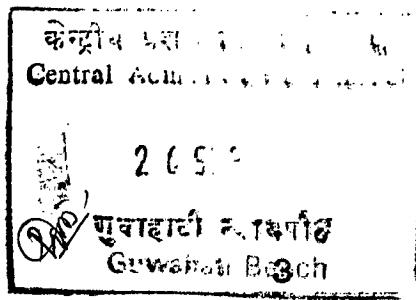
53
Pradeep Kumar
प्रादीप कुमार (राज)
Ch. P. S. No. Officer (Gaz)
पू. सू. रेलवे भारतीय
Filed by the
Applicant 15/09/07 U. Dated 26/09/07
on 26/09/07

प्रधान प्राप्ति कानून संसद
 विधायक सभा (राज.)
 विधायक सभा (गोव.)
 गोव. सो. रेलवे मालिगांव
 गोव.

engaged as Medical Practitioner on contract basis after being found eligible for the same. It is wrong to state that her engagement as CMP should be governed by any order/amendments other than the terms of the contract issued by the Rly from time to time. In fact, the other benefit/entitlement of the CMP are variable in terms of Rly Bd's instructions, but the vital terms and conditions for engagement of a CMP will be remained static and cannot be withdrawn except for breach of performance of the terms and conditions by the either sides. Maternity leave is not permissible in case of CMP. That, sanctioning of leave to the applicant was subject to the availability of earned leave to her credit. Moreover, the applicant was a CMP in Rly, was not entitled to be granted maternity leave and cannot demand the same which was not governed/or applicable to her under the rules and terms & conditions of contract.

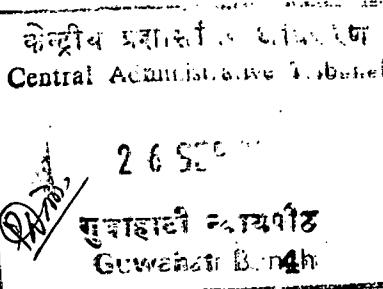
4. That in reply to statement in paras 4.9, 4.10, 4.11, 4.12 and 4.13 it is stated that the Hon'ble Tribunal's order dt. 08.8.06 in O.A. No. 193/06 was duly complied with by the competent authority, i.e. CMD/MLG vide this Rly's order dt. 08.9.06 No. E/170/LC/NS/767/06, wherein it was informed that the claim of the applicant's

Contd...3/-



entitlement to maternity leave as CMP was found as inadmissible as per terms and conditions of the engagement. In the meantime, her terms of engagement expired on 15.09.06 and accordingly her contract was not extended further. Dr. Sabari Devi vide her letter (copy enclosed) has also informed the General Manager, to withdraw the application of extension contract. The Hon'ble Tribunal's order dt. 08.08.06 in O.A. No. 193/06 was complied with a speaking order by the competent authority of the Rly and therefore the matter has become infructuous on being complied the Hon'ble Tribunal's said order, and as such, filing of another O.A. before the Hon'ble Tribunal in the same subject matter attracts resjudicatian. Again, the applicant, while the O.A. No. 214/06 was pending has filed another O.A. No. 100/07 before the Hon'ble Tribunal, which on the part of the applicant is nothing but a mere abuse of process of the court of Law, and therefore the O.A. is liable to be dismissed in limine. The applicant's engagement as CMP was not extended as per terms and conditions of the stipulation of the contract, was fully justified. The terms of contract will not extended to/or not binding upon the child of the applicant. The terms of the contract are binding upon the applicant, as such called for a specific performance by the parties to contract only.

Contd... 46-



১৪
 প্রেসিডেন্সি কার্যালয় অধিকারী (রাজ)
 C.I.P. Sonam Officer (Gaz)
 প. সো. রেলওয়ে, মালিমার্ব

That the terms of engagement of the applicant expired on 15.09.06, engagement was not extended further for another term as such, Her service was terminated as per terms and conditions of the engagement, therefore, allegation of nefarious objective of appointing some other is denied.

Copy of the letter of the applicant withdrawing application for withdrawal is enclose as Annexure -

5. That in reply to statements in paras 4.14, 4.15, 4.16, 4.17 and 4.18 it is stated that the contract Medical Practitioner in Rly is not entitled to be granted maternity leave nor the said entitlement has been inserted in the terms and conditions of the contract agreement. The rules applicable to Apprentices or temporary employees in Rly are not applicable to a contract CMP as stated by the applicant.

Apprentices/Temporary employees in Rly are deemed regular Rly Employees subject to the fulfillment of some conditions laid down in this regard, moreover they are appointed as per Rly rules/codal provisions. In the present case the applicant was engaged as CMP on

Contd...5/-

26 SEP 2007

গুৱাহাটী নথায়ৰী
Guwahati Bench

5

contractual basis for a certain period as per stipulation of contract arrived into both by the parties.

The applicant is governed by the terms and conditions of the contract thus question of breach of Service Jurisprudence or against Administrative Law never been disputed. The applicant is engaged as Contract Medical Practitioner, not as adhoc appointee as stated by her.

She is not entitled to get Maternity Leave but she may be granted leave as per terms of engagement.

6. That in reply to statements in paras 4.19, 4.20 and 4.21 it is humbly stated that this O.A. before this Hon'ble Tribunal is not maintainable because, she could not bring out any specific point of breach/Or non-performance of the contract and therefore it is liable to be dismissed with cost.

Contd... 6/-

মু. কামিল অধিকারী (রাজ)
প্রাপ্তে প্রতিক্রিয়া
৭. সো. রেলবে মারিয়াব

26 SEP 2007

✓ गुवाहाटी न्यायपाल
Guwahati Bench

VERIFICATION

I, Shri Pradeep Kumar Singh, Dy. CPO/9A2
aged about 47 years do hereby verify
that the statements made in paragraphs 1 to 6
above are true to my knowledge.

21.9.2007.

Pradeep Kumar Singh
Signature

उप्र. मु. कार्मिक अधिकारी (राज)
Dy. Chief Personnel Officer (Govt)
पु. सो. रेलवे मार्गांव
N. F. Railway Marg, 06