

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3033/2013

Reserved on : 29.02.2016.

Pronounced on : 04.03.2016.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Mrs. Neera Rani
Programmer,
Joint Cipher Bureau,
Metcalfe House Complex,
M.G. Road, Delhi.

..... Applicant

(through Sh. Padma Kumar. S. with Sh. K.K. Mishra, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Defence,
South Block, D.H.Q., PO,
New Delhi-110 011.

2. Director,
Joint Cipher Bureau,
Metcalfe House Complex,
M.G. Road, Delhi.

3. Joint Secretary & Chief
Administrative Officer,
Ministry of Defence,
E Block, D.H.Q PO,
New Delhi-110 011.

4. Secretary,
Dept. of Defence (R&D),
Ministry of Defence,
DRDO Bhawan,
New Delhi-110011. Respondents

(through Sh. A.K. Singh, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant is working as a Programmer with the Ministry of Defence.

During the period between 2009 and June, 2011, she proceeded on leave for

several spells. According to her, she had applied for Child Care Leave (CCL) but the respondents on their own converted this into Extra Ordinary Leave (EOL) and also ordered recovery of Rs. 1,29,270/- on this account. The respondents passed the orders dated 23.02.2010, 18.07.2011 and 08.08.2011 in this regard. Aggrieved by their action, the applicant made a representation dated 19.08.2011. However, when the respondents did not take any action on the same, she approached this Tribunal by filing OA-2629/2012. This was disposed of by the Tribunal on 13.08.2012 and directions were given to the respondents to decide her representation within a period of four weeks. In compliance thereof, the respondents have passed the impugned order dated 08.01.2013. Challenging the same, the applicant has filed this O.A. seeking the following relief:-

- “(a) Quash and set aside the impugned orders dated 23.2.2010, 18.7.2011, 08.08.2011, 18.5.2012 and 8.1.2013.
- (b) Direct the respondents to consider her requests for grant of Child Care Leave as applied for her.
- (c) Direct the respondents to reimburse the recoveries which have already been made from her salary.
- (d) Any other direction which this Hon'ble Tribunal may be pleased to pass in the interest of justice, in favour of the Applicant.”

2. The contention of the applicant is that the respondents have treated the period of leave she applied for as unauthorized absence without giving any opportunity to her of being heard. Her further contention is that even when CCL was due to her, the respondents have granted her EOL. While doing so, they did not even consider that other kinds of leave were still due to her. She has submitted that grant of CCL was part of the National Policy for empowerment of women and the respondents have erred by interpreting this welfare legislation as a criminal or fiscal instrument, thereby, they have acted contrary to the

underlying policy for empowerment of women. The respondents have also violated the principles of natural justice as they have suo moto converted the leave from one kind to another. They have inflicted civil consequences on the applicant by ordering recovery of Rs. 1,29,270/- from the salary of the applicant. They have also fixed the amount of monthly instalment arbitrarily. The respondents have not given any valid reason for rejection of her CCL and even deducted her salary for the period when she was recalled from leave and worked i.e. 22.06.2011 to 26.06.2011.

2.1 The applicant has relied on the judgment of Hon'ble Supreme Court in the case of **Kakali Ghosh Vs. Chief Secretary, Andaman & Nicobar Administration and Ors.** (Civil Appeal No. 4506/2014) dated 15.04.2014 where it is laid down that the entire period of CCL of 730 days can be granted in one spell also. However, we do not find this judgment to be relevant. As such, it cannot be of any help to the applicant.

3. The respondents in their reply have opposed the averments of the applicant. According to them, the competent authority while sanctioning leave was fully aware of the provisions regarding CCL as laid down in DoP&T OMs dated 11.09.2008, 18.11.2008 and 07.09.2010. According to them, CCL could be given only for reasons of illness of the child or examination of the child. For availing CCL under both these provisions, proper documents were required to be furnished. Thus, in the case of illness of the child a medical certificate was required. In the case of leave being taken for child's examination a certificate from the school was required. Moreover, CCL cannot be demanded as a matter of right. In the instant case, the applicant had proceeded on CCL prior to her leave being sanctioned. Further, the competent authority found reasons

quoted by her for grant of CCL not to be covered by DoP&T orders. Hence, the period of CCL in respect of the applicant was treated as unauthorized absence.

4. We have heard both sides and have perused the material on record. We have looked at the DoP&T O.M.No. 13018/2/2008-Estt.(L) dated 18.11.2008, O.M. of even No. dated 11.08.2008 and O.M. No. 13018/1/2010-Estt.(Leave) dated 07.09.2010 on the subject of CCL. These OMs are available at pages 41-43 of the paper-book. Broadly, these provisions provide that CCL can be granted to a woman employee to take care of the child during the illness of the child or during examination of the child upto a maximum of 730 days during entire service for taking care of maximum of two children. The OMs also provide that CCL cannot be demanded as a matter of right and under no circumstances can an employee proceed on CCL without prior approval of the leave sanctioning authority. The leave has to be treated like earned leave and can be granted only when earned leave had been exhausted. It also cannot be granted for more than three spells in a calendar year. CCL also cannot be granted for period less than 15 days at a time.

5. In the instant case, we find that during the relevant period the applicant had proceeded on leave more than 30 times, the period of leave ranging from 02 days to 45 days. This is evident from pages 32 and 33 of the paper-book. It is obvious that the applicant was treating CCL like CL completely ignoring the provisions contained in DoP&T Instructions that CCL cannot be granted for a period less than 15 days and not more than for three spells in a year.

6. Nevertheless, we find that the orders passed by the respondents do not clearly bring out the reasons why CCL was denied to the applicant in each case. Thus, for the period from 29.05.2009 to 26.06.2009 (29 days) EOL has been

sanctioned to the applicant. It is not clear why CCL could not be given for this period. Similarly, for a period of 40 days between 17.05.2010 to 25.06.2010, EOL has been granted without assigning reason for denial of CCL. Again for the period 11.05.2011 to 24.06.2011 (45 days) no reason has been given for denial of CCL. It is also not clear from the orders of the respondents as to whether the applicant was considered for grant of any other kind of leave due to her before being given EOL.

7. Under these circumstances, we quash the impugned order dated 08.01.2013, 18.05.2012, 23.02.2010, 08.08.2011 and 18.07.2011 and direct the respondents to pass fresh orders. For each spell, they may indicate the reason for denial of CCL asked for. They may also grant EOL only when no other kind of leave is due and admissible. Before taking a decision in her case, the applicant may also be given an opportunity for submitting supporting documents, such as, medical certificate or school certificate wherever required. Decision on grant of CCL be taken strictly in accordance with the instructions of DoP&T.

8. The O.A. is accordingly disposed of. The aforesaid exercise be carried out by the respondents within a period of eight weeks from the date of receipt of a certified copy of this order. It is made clear that the respondents would be at liberty to make necessary recovery as calculated on the basis of new leave sanctioning orders. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/