

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. No.1752 of 2017

Orders reserved on : 26.11.2018

Orders pronounced on : 28.11.2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Dr. Chetna Sharma, Aged about 37 years,
W/o Ramandeep Singh Saini,
R/o C-4/7, Vashisht Park, Designation – Orthaiogist)
R/o C-4/7, Vashisht Park,
New Delhi-110046.

....Applicant
(By Advocate : Shri Surya Karan Chaudhary)

VERSUS

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Secretariats, Players Building,
IP Estate,
New Delhi.
2. Attar Sain Jain Eye & General Hospital,
Lawrance Road, Industrial Area,
New Delhi-110035.
Through its
Medical Superintendent

.....Respondents
(By Advocate : Ms. Neetu Mishra for Mrs. Rashmi Chopra)

O R D E R

By filing this OA under Section 19 of the Administrative Tribunals Act, 1985, applicant is seeking the following reliefs:-

“A. Set aside the impugned order of the respondents dated 29/09/2016 whereby the

maternity leave of the applicant has been rejected; and

- B. Direct the respondents to clear the arrears of Rs.5,94,835/- including 18% interest from 16/8/2015 till disposal of the present petition.
- C. Pass appropriate direction(s)/Order(s) directing the respondents, to immediately issue appropriate orders.”

2. Brief facts of the case as stated in the OA are that on 27.07.2015, the respondent no.2 issued a notice for walk-in interview for the post of Senior Resident (Ophthalmology) (Annexure A-1). In the said notice, it is stated that appointment of Senior Resident on ad-hoc basis will be initially for the period of 89 days, which could be extended for a period of 89 days up to 3 years, subject to the satisfactory work and conduct report from the concerned Head of Department.

2.1 The applicant appeared in walk-in interview on 18.8.2015. The applicant was offered a job of Senior Resident (Ophthalmology) vide memorandum dated 12.10.2015 and in the said Memorandum, it is further stated that if the applicant is willing to accept the terms and conditions, she must convey her willingness within 10 days to respondent no.2. The applicant gave acceptance vide her letter dated 14.10.2015 (Annexure A-3) and in the said letter, the applicant was allowed to join

the services as Senior Resident (Ophthalmology) with effect from 21.10.2015 and consequently, she joined her services with respondent no.2 on 21.10.2015.

2.2 Applicant further stated that in the month of January 2016, she came to know about her pregnancy and, therefore, wanted to avail maternity leave as per law.

2.3 Applicant moved an application under RTI Act seeking information on the subject of maternity leave available to ad-hoc employees and the provisions for payment of salaries during maternity leave vide her application dated 2.5.2016 (Annexure A-4). On 15.7.2016, the respondent no.2 replied to the said RTI application but, according to the applicant, the same is evasive and in a non-satisfactory manner, as the concerned authority replied that the provisions of maternity act applied to the queries of the applicant.

2.4 The applicant applied for maternity leave for 180 days with effect from 16.8.2016 vide her application dated 25.7.2016 (Annexure A6).

2.5 The applicant after withdrawing her last salary on 12.8.2016 started her statutory maternity leave from 16.8.2016. Thereafter the applicant on 5.9.2016 received

a leave order from respondent no.2 stating that her salary for the month of August has been released w.e.f. 1.8.2016 to 12.8.2016.

2.6 The applicant received the impugned Memorandum dated 29.9.2016 (at page 11 of the paperbook) from respondent no.2 stating that the maternity leave applied by her has been rejected, as there is no such provision under the terms of employment on ad-hoc basis to grant maternity leave.

2.7 Thereafter, on 30.9.2016, applicant filed an application with respondent no.2 for her further queries regarding the letter dated 5.9.2016 and Memorandum dated 29.9.2016. However, respondents vide Memorandum dated 4.10.2016 (Annexure A9) stated that applicant being an ad-hoc employee, as such the benefit guaranteed under the Maternity Benefits Act cannot be extended to her.

2.8 On 13.2.2017, the applicant after completion of maternity leave contacted the respondent no.2 for resuming her services but the respondent no.2 refused her request.

2.9 Feeling aggrieved by the aforesaid actions of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they specifically stated that the applicant was appointed pursuant to a notice issued by the respondent vide a walk-in interview for an initial period of 89 days on adhoc basis, extendable upto 3 years. It is further stated that the contract/adhoc service period of 89 days of the applicant started w.e.f. 18.7.2016 and the applicant attended the hospital for only 19 days upto 13th August, 2016, including Sunday/GH. During this period, applicant availed 05 days Earned Leave w.e.f. 22-23 July, 2016, 03 August, 2016 and 5-6 August, 2016, which were not due to her.

3.1 It is further stated that applicant's adhoc period w.e.f. 18.7.2016 to 4.10.2016 which came to end on 4.10.2016. The applicant did not report for duty even after 4.10.2016 and further applied for extension of her residency vide letter dated 22.12.2016 w.e.f. 2.1.2017 which was not possible under the prevailing rules. Hence, continuation of maternity leave as claimed by her does not arise.

3.2 Lastly they stated that the relief sought by the applicant in the OA may not be granted in view of the brief facts and parawise reply submitted above. The action taken by Respondent is legal and justified. That in any case the applicant's last term of contract/adhoc period came to an end on 4.10.2016 and hence, there is no question of availing of maternity benefits beyond her contract period.

4. In the rejoinder affidavit filed by the applicant, applicant has reiterated and denied the contents of the counter affidavit filed by the respondents.

5. During the course of hearing, while reiterating the averments made in the OA, counsel for the applicant submitted that impugned order dated 29.10.2016 is highly arbitrary, unlawful and further against the rules, norms and practices in this regard as also issued without application of mind and the same also suffers from an error apparent on the face of it as it was issued in ignorance of the statutory provisions of the law. Reliance is placed on the following judgments:-

(i) ***Municipal Corporation of Delhi vs. Female Workers (Muster Roll) & Ors.*** SLP (Civil) No.12797 of 1998 decided on 8.3.2000;

- (ii) ***Anuradha Arya vs. The Principal & Ors.*** in OA No.3734/2015 decided on 12.12.2017;
- (iii) ***Govt. of NCT of Delhi and others vs. Shweta Tripathi & Anr.*** in Writ Petition (Civil) No.3089/2014 decided by the Hon'ble Delhi High Court vide order dated 9.12.2014;
- (iv) ***Smt. Brijlata Sharma vs. State of M.P.*** in Writ Petition No.9374/2017 decided by the Hon'ble Madhya Pradesh High Court vide order dated 11.7.2017; &
- (v) ***Dr. Kamini Singhal vs. Govt. of NCT of Delhi and others*** in OA No.1181/2014 decided on 10.09.2015.

6. Counsel for the respondents reiterated the contents of the counter affidavit filed by them.

7. Heard learned counsel for the parties and perused the material placed on record.

8. It is an admitted fact that applicant's appointment as Senior Resident (Ophthalmology) under Residency Scheme was on Ad-hoc basis for a period of 89 days against the vacant post of Senior Resident (Anesthesia) reserved for OBC or filled up the regular post, whichever is earlier on the following terms & conditions:-

1. xxx	xxx	xxx
2. xxx	xxx	xxx

If, Dr. Chetna Sharma is willing to accept the offer on the terms and conditions laid above, she should report to the undersigned within 10 days from the date of issue of this memorandum, failing which the above offer of appointment will stand cancelled.

(emphasis supplied)

9. Both the counsels placed reliance to the Maternity Benefit Act, 1961, rather the applicant has placed on record a copy of the Act *ibid*. This Court perused the said Act *ibid*. Section 5 (2) of the Act *ibid* provides as under:-

“No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.”

10. The applicant gave her consent to the said terms and conditions vide her letter of acceptance. It is further admitted fact that applicant's contract/adhoc service

period of 89 days started w.e.f. 18.7.2016 and the applicant attended the hospital for only 19 days upto 13th August 2016 and the applicant thereafter did not report to duty even after 4.10.2016 despite the fact that the request for grant of maternity leave was rejected by the competent authority and the said contract/adhoc service period of 89 days was with effect from 18.7.2016 to 4.10.2016. The applicant applied for extension of her residency vide letter dated 22.12.2016 w.e.f. 2.1.2017, which was no possible under the prevailing rules. Therefore, the stand of the respondents that continuation of maternity leave, as claimed by the applicant, does not arise was the right course, which they have taken in this matter, as having regard to the terms and conditions of the contract/adhoc appointment of the applicant and also having regard to the aforesaid provision of the Maternity Benefit Act, 1961.

11. The reliance placed by the learned counsel for the applicant on the aforesaid judgments is not relevant to the facts of this case as in this case there is a specific term and condition that "**In case of absence of more than 03 days, the services will liable to be terminated without any prior notice.**" which terms was also accepted by the applicant while accepting her

appointment on the said post on adhoc basis and also the fact that there is a specific provision in the Maternity Benefit Act, 1961 as noted above. As such the said cases are distinguishable on facts.

12. In the result, for the foregoing reasons, this Court does not find any infirmity in the action of the respondents while rejecting the request of the applicant for grant of maternity leave vide impugned order dated 29.9.2016. Accordingly the present OA being devoid of merit is dismissed. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

/ravi/