

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00628/2018

Friday, this the 14th day of September, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Leena.T.N.,
W/o.Aneesh.E.M.,
Track Maintainer-IV,
Kasargod Section Railway Station,
Southern Railway, Kasargod, Palakkad Division.
Residing at Qt.No.Type I/18, CPCRI Campus,
P.O.Kudle, Kasargod – 671 371. ...Applicant

(By Advocate – Mr.U.Balagangadharan)

V e r s u s

1. Union of India
represented by its Secretary to the Government of India,
Ministry of Railways, Rail Bhavan, New Delhi – 110 001.
2. The General Manager,
Southern Railway, Headquarters Office,
Park Town, Chennai – 600 003.
3. The Divisional Railway Manager,
Southern Railway, Palakkad Division,
Palakkad – 678 001.
4. The Senior Divisional Personnel Officer,
Palakkad Division, Southern Railway,
Palakkad – 678 001.
5. The Senior Section Engineer/P.Way,
Southern Railway, Kasargod – 671 371.
6. The Additional Divisional Railway Engineer,
Southern Railway, Palakkad Division,
Mangalore – 575 001. ...Respondents

(By Advocate – Mr.Sunil Jacob Jose)

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This Application having been heard on 7th September 2018, the Tribunal on 14th September 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The applicant, Track Maintainer, is aggrieved by issuance of Annexure A-10 order which observed that she was on unauthorised absence and failure on her part to report for duty on or before 16.7.2018 would attract disciplinary action. The reliefs sought by the applicant in the O.A are as follows :

1. Call for the records leading to Annexure A-10 and quash the same as illegal.
2. Direct the 5th respondent to sanction childcare leave to the applicant up to 16th November 2018 without any interruption as requested in Annexure A-5 application.
3. Direct the 5th respondent to regularize the period of absence of the applicant from 16.5.2018 as eligible childcare leave and grant all consequential benefits and drop all disciplinary proceedings contemplated against the applicant.
4. Direct the 5th respondent not to compel the applicant to resume duty immediately before the expiry of CCL sought by her as per Annexure A-5 application.
5. Such other reliefs that the Hon'ble Tribunal deem fit in the facts and circumstances of the case.

2. It is submitted in the O.A that the applicant entered into service as Track Maintainer on 23.4.2013. While on maternity leave from 17.6.2017 to 14.12.2017, she delivered a baby prematurely with congenital problems on 17.6.2017. Due to continued illness of the child, vide Annexure A-2 she applied for extension of Child Care Leave from 15.12.2017 to 15.8.2018. However she was granted only 90 days leave. On expiry of the aforesaid 90 days, vide Annexure A-3 she again sought Child Care Leave for 90 days

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from 16.3.2018 to 21.9.2018. However the same was rejected. Since the leave granted to her expired on 15.3.2018 and the health condition of the child had not improved, vide Annexure A-5 and Annexure A-6 she again applied for Child Care Leave from 16.3.2018 to 16.11.2018. In consideration of the same she was granted leave only up to 16.5.2018. Highlighting the illness of her child she submitted a detailed representation on 24.4.2018 praying for grant of Child Care Leave up to 16.11.2018. However, vide Annexure A-10 the 6th respondent directed the applicant to report for duty on or before 16.7.2018 failing which she has to face disciplinary proceedings.

3. The applicant has stated in the O.A that Child Care Leave is provided under Rule 551(E) of Indian Railway Establishment Code which envisages that a woman Railway servant having minor children below the age of 18 years may be granted Child Care Leave for a maximum period of two years (730 days) during the entire service for taking care of two children whether for rearing or to look after any of their needs like examination, sickness etc.

4. The applicant has filed M.A.No.180/919/2018 praying for a direction to the 5th respondent to release pay and allowances to her which has been withheld by the respondents from 14.6.2018 onwards.

5. The eligibility of the applicant and the pressing need for her to take Child Care Leave for the period she has applied for has been detailed in the O.A. Her child born pre-maturely was in need of constant care and had

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health issues which required medical treatment. These facts are not contested by the respondents. Her request for Child Care Leave on both occasions she applied for the same was restricted to 90 days and 60 days respectively. There is no mention made in the decision so adopted as to the special circumstances detailed by the applicant in her leave application. We do not think this is the way a model employer ought to have conducted itself.

6. Shri.Sunil Jacob Jose, learned standing counsel for the Railways argued that the Track Maintainer category to which the applicant belonged is under staffed and this was the reason why the restriction has been imposed. This is an altogether different question which is for the respondents to sort out by effectively planning personnel deployment and if necessary, by recruitment to fill up vacant posts. This argument cannot be extended to deny a right which has accrued to women employees.

7. Learned counsel for the applicant drew our attention to the orders viz. **Dr.Kanchan Bala v. State of Haryana & Ors.** in **CWP No.21506/2007** decided on 10.10.2017 by the Hon'ble High Court of Punjab & Haryana and **Kakali Ghosh v. Chief Secretary, Andaman & Nicobar Administration & Ors.** reported in **2014 KHC 4252** which discussed Child Care Leave at some length. As in the latter case of Kakali Ghosh (supra) no reasons have been attributed in the orders refusing the leave for the period asked for. On the contrary the respondents have threatened coercive steps as per impugned order at Annexure A-10. This is a conduct entirely unacceptable. Under the

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circumstances, we direct the respondents to grant the applicant Child Care Leave for 190 days from 16.3.2018 that she has sought as per Annexure A-5 leave application. M.A.No.180/919/2018 is also allowed. Orders on these lines are to be issued within 15 days of receipt of a copy of this order. O.A is disposed of accordingly. No costs.

(Dated this the 14th day of September 2018)

**ASHISH KALIA
JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A.No.180/00628/2018

1. **Annexure A1** – True copy of the medical certificate issued by medical officer primary health centre, Panikkottur.
2. **Annexure A2** – True copy of the leave application submitted by the applicant to 6th respondent for CCL from 15.12.2017 to 15.8.2018.
3. **Annexure A3** – True copy of the application submitted by the applicant on 14.2.2018 for CCL from 16.3.2018 to 21.9.2018.
4. **Annexure A4** – True copy of the covering letter submitted by the applicant dated 14.2.2018.
5. **Annexure A5** – True copy of the application submitted by the applicant dated 15.3.2018 fro CCL from 16.3.2018 to 16.11.2018.
6. **Annexure A6** – True copy of the cover letter submitted by the applicant dated 15.3.2018.
7. **Annexure A7** – True copy of the medical certificate dated 13.7.2018 issued by Paediatrician.
8. **Annexure A8** – True copy of the representation submitted by the applicant to 6th respondent dated 24.4.2018.
9. **Annexure A9** – True copy of the relevant extract of Indian Railway Establishment Code.
10. **Annexure A10** – True copy of the communication dated 5.7.2018 issued by the 6th respondent.
