

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00724/2018

Wednesday, this the 23rd day of January, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Anusree Ashok, aged 27 years
W/o Emel V. Parackal
Postal Assistant,
Ponnani Head Post Office, Ponnani-679 577.
Residing at Attassery House
Kurichikkara P.O., Thannikkodam,
Thrissur-680 028.

Applicant

[Advocate: Mr.C.J.Joy]

versus

1. Senior Superintendent of Post Offices
Department of Posts, Tirur Division
Tirur-676 104.
2. The Post Master General
Northern Region, Calicut-673 011.
3. Secretary to Government
Department of Posts
Ministry of Communication & Information Technology
Govt of India, Dak Bhavan,
New Delhi-110 116.

Respondents

[Advocate: Mr. N. Anilkumar, SCGSC]

The OA having been heard on 16th January, 2019, this Tribunal delivered the following order on 23.01.2019:

ORDER

This OA is filed by Smt Anusree Ashok, Postal Assistant, Ponnani Head Post Office, aggrieved by order at Annexure A8 dated 21.8.2018 issued by the 2nd respondent disposing of Annexure A6 appeal submitted by the applicant against Annexure A5 order of the 1st respondent rejecting Annexure A4 application for

Child Care Leave (CCL) for 503 days. The reliefs sought in the OA are as follows:

- i) Set aside Annexure A8 order passed by the 2nd respondent upholding Annexure A5 order of the 1st respondent rejecting Annexure A4 application of the applicant for CCL for 503 days;*
- ii) Declare that the applicant is entitled to get CCL for 503 days as applied for in Annexure A4 in the light of Annexures A1, A2 and A9 and the special circumstance of the applicant in having to take care of her prematurely born triplets;*
- iii) Direct the respondents to grant CCL to the applicant as prayed for in Annexure A4:*

2. The applicant is working as a Postal Assistant in the Head Post Office under Tirur Division. On 29.1.2017, she gave premature birth to triplets who were all under-weight and required incubator care. Her husband works in Mumbai and is able to come home infrequently whereas her parents-in-law with whom she is staying are old and are yet to recover from injuries sustained in an accident. The applicant stays at her parental home which is 70 km from Ponnani, along with her 3 babies. Having to take care of her bed-ridden mother and the three babies is more than what she can manage especially when she has to travel 140 km everyday to her work place. The doctor attending to her babies has recommended regular breast feeding and proper maternal care, as is seen from a certificate issued by the medical practitioner (Annexure A2).

3. Faced with these difficulties, the applicant had filed a request for a temporary transfer to Thrissur Division (Annexure A3), which has not evoked any response from the side of the respondents. She has been constrained to take leave at frequent intervals and the details of the leave that she has availed of so far are given below:

	Nature of Leave	Period of Leave	Purpose of Leave
1	Earned Leave	39 days [27.7.16 to 3.9.16]	Triplet pregnancy
2	Commutated Leave	18 days [4.9.16 to 21.9.16]	Medical grounds
3	Extraordinary Leave (Loss of pay)	129 days [22.9.16 to 28.1.17]	Medical grounds
4	Maternity Leave	180 days [29.1.17 to 27.7.17]	Birth of premature triplets
5	CCL requested for 180 days but only 90 days granted	90 days [25.7.17 to 25.10.17]	Premature birth of triplet babies. Poor immunity, low birth weight (1.3 kg, 0.4 kg, 1.9 kg)
6	CCL	1 day [8.11.17]	For vaccinating the babies
7	CCL	10 days [15.11.17 to 24.11.17]	
8	CCL	5 days [27.1.18 to 31.1.18]	
9	CCL	5 days [6.2.18 to 10.2.18]	
10	CCL	116 days [14.2.18 to 9.6.18]	Due to expire on 9.6.18.
	Applied for CCL	503 days [10.6.18 to 25.10.19]	Application pending

4. As is seen above, the CCL granted for 116 days was to expire on 9.6.2018 and her difficult circumstances continued unabated. It was in the light of this that the applicant was constrained to move the first respondent through an application dated 8.5.2018 (Annexure A4) requesting for extension of CCL for 503 days (from 10.6.2018 to 25.10.2019). It was also with a view to avoid applying for leave in different and separate parcels. Unfortunately her representation was met with refusal (Annexure A5). The applicant submitted an appeal to the 2nd respondent on 2.6.2018 (Annexure A6) against the orders at Annexure A5. Since the disposal of the same was taking time, the applicant also approached this Tribunal by filing OA No.483 of 2018 seeking a direction to the 3rd respondent to dispose of the appeal on merits within a reasonable time. As per orders at

Annexure A7, this Tribunal disposed of the OA allowing the prayer and permitting the applicant to continue on CCL till disposal of her appeal.

5. While so, the 2nd respondent by order dated 21.8.2018 (Annexure A8) disposed of Annexure A6 appeal declining to interfere with the appellate authority's orders, allowing her to continue on CCL only till 31.8.2018. The applicant approached this Tribunal again by filing the instant OA and has obtained an order on 31.8.2018 permitting her to continue on CCL till the next posting date in view of the extenuating circumstances presented. The said interim order has continued till date.

6. Annexure A8 order has been issued for the reason that CCL is not to be claimed as a matter of right and granting it should not disrupt the functioning of the office to which the applicant is attached. The applicant pleads that while the above is a general principle, the extremely difficult circumstances that she is going through have not been taken into consideration at all. She is eligible for 703 days' CCL during her entire service as per Annexure A1 Office Memorandum dated 11.9.2008 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training. Her only desire is to bring up her three babies who are triplets and who are in urgent need of continued maternal care. For this purpose, she wishes to avail the facility of CCL for the remaining period to which she is eligible, i.e., for 503 days as one block.

7. Reply statement has been filed on behalf of the respondents wherein her claim for seeking 503 days' CCL in one block has been disputed on the ground that there is a severe shortage of manpower in Tirur division where 40 posts of Postal Assistants are lying vacant. The applicant has been availing CCL in

segments and now wants to take the entire period of 730 days, out of which 503 days are remaining, in one block. This move will be extremely disruptive to the functioning of the office to which she is attached. The first respondent is the sole competent authority to grant leave and CCL cannot be demanded as a matter of right and under no circumstances can any employee proceed on CCL without prior approval. The DoPT OM dated 18.11.2008 issued on the subject makes a special mention that grant of CCL should not disrupt functioning of the office. In this case, in view of the acute shortage of staff at Ponnani Head Post Office, grant of further CCL to the applicant was not deemed to be in administrative interest. In fact the order at Annexure A8 directing leave sanctioning authority to permit the official to continue on CCL till 31.8.2018 has been issued after taking a most humane view of the case.

8. Sri C.A.Joy, learned counsel for the applicant and Sri N.Anilkumar, SCGSC on behalf of the respondents were heard. All pleadings, both documentary and oral, were examined. The facts, as presented by the applicant relating to her condition, are compelling and remain undisputed. She is the mother of three babies born as triplets who were under-weight and were nursed under incubator care. There is very little support from anyone on a regular basis for her to pull on taking care of her babies who are yet only infants. It was in the light of these facts that she has been repeatedly pressing for CCL in short stretches and now in one block. The scheme for grant of CCL has been introduced by the Govt of India specifically meant for mothers who are employed, for taking care of children below 18 years of age. In this case, the employee who seeks the benefit, has the responsibility of taking care of three little babies and her need for CCL is more acute than in ordinary cases.

9. The respondents have taken an officious view of the issue. They point out that there are a large number of vacancies in Tirur Division under which Ponnani Head Post Office falls. While they may call it as humanitarian a view as possible, we cannot conclude that it is so. The problem of shortage of manpower in the said Division in general and Ponnani in particular will not be solved by denying the request in such a deserving case as that of the applicant. The applicant has also called to her assistance the judgment of the Hon'ble Supreme Court in Civil Appeal No.4506 of 2014 – ***Kakali Ghosh vs. Chief Secretary, Andaman & Nicobar Administration and Ors.*** [Annexure A9], in which the matter of applicants taking 730 days of continuous leave was examined and it was held that this can be denied only for adequate reasons. In the case put up by the respondents, no such reasons are discernible. During the final hearing, learned counsel for the applicant also requested that the respondents may consider transferring the applicant to a closer station to her home than Ponnani.

10. After examining the entire facts before me, the OA is seen to succeed. The respondents are directed to grant the applicant CCL for the remaining 503 days from 10.6.2018. The period of her absence so far may be regularized by debiting it to her entitled CCL. The applicant is to remain on CCL till 25.10.2019. Orders to the above effect are to be issued within 15 days from receipt of this order. No order as to costs.

(E.K.Bharat Bhushan)
Administrative Member

Annexures filed by the applicant:

- Annexure A1: Copy of the office memorandum No.13018/2/2008-Estt.(L) dated 11.9.2008.
- Annexure A2: Copy of the medical certificate dtd 2.6.2018 issued to the applicant by Dr.Aloke V.R., of NYLE hospital, Thrissur.
- Annexure A3: Copy of the representation dated 11.1.2018 submitted by the applicant to the 2nd respondent requesting for temporary transfer.
- Annexure A4: Copy of application dated 8.5.2018 submitted by the applicant to the 4th respondent for CCL for 503 days.
- Annexure A5: Copy of order dated 18.5.2018 issued by the 4th respondent rejecting Annexure A4 application for CCL.
- Annexue A6: Copy of appeal dated 2.6.2018 submitted by the applicant to the 3rd respondent against Annexure A5 order of the 4th respondent.
- Annexure A7: Copy of the order dated 7.6.2018 in OA No.483/2018 passed by this Tribunal.
- Annexure A8: Copy of the order dated 21.8.2018 passed by the 2nd respondent in Annexure A6 appeal.
- Annexure A9: Copy of the judgment dated 15.4.2014 passed by the Hon'ble Supreme Court in Civil Appeal No.4506 of 2014.

Annexures filed by respondents:

- Annexure R1: Copy of O.M. dated 18.11.2008 by Ministry of PG & Pensions/DoPT..
- Annexure R2: Copy of letter dated 30.1.2012 by Chief Postmaster General, Kerala Circle circulated vide Respondent No.2 endt. No.STA/9/RLG/II dated 3.2.2012 that grant of CCL should not disrupt the functioning of offices.