

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

OA No.4368/2013

This the 16th day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

**Smt. Poonam Rani,
Aged 40 years T No. 3522,8**

D/o Late Lal Chand,
Presently working as 'upholster' in skilled grade Gp. 'C',
fence civilian in 510 Army Base workshop Meerut Cantt
under Dte General of EME (CIV) MGO's Branch AHQ
Ministry of Defence,
R/o H.No. 72, Diggi Mohalla,
Kaseru Khera, Meerut (U.P.)

... Applicant

(By Advocate : Shri V.P.S. Tyagi)

VERSUS

1. Union of India
(Through Secretary)
Ministry of Defence
South Block,
New Delhi-110001.
2. The Director General of EME (CIV)
(Director Gen. EME)
MGO's Branch AHQ
IHQ of MOD (Army)
DHQ PO New Delhi-110011
3. The Commander Head Quarter
Base Workshop Group EME
Meerut Cantt. -250001 (U.P.)
4. The Commandant
510 Army Base Workshop EME
Meerut Cantt.-250001 (U.P.)
(None) ... Respondents

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman:**

The applicant was appointed as Industrial Labourer in the Defence Civilian Establishment of 510 Army Base Workshop, Meerut, on compassionate grounds, on account of death of her father. She was also promoted to the post of Upholster in the skilled grade of Group 'C'. She submitted an application on 11.09.2012, with a request to grant her maternity leave, and the same was rejected through order dated 17.09.2012. This OA is filed, challenging the said order.

2. The applicant contends that she had a daughter by name 'Himani', before she joined the service, and while in service, she was granted maternity leave in the year 1999, and on that occasion, she gave birth to her second female child, namely, 'Priya'. She contends that the first daughter Himani was given adoption to a family and when she became pregnant in the year 2012, she submitted an application for maternity leave, but the same was rejected. The applicant places reliance upon Rule 43 of the CCS (Leave) Rules, 1972 (for short, the Rules).

3. The respondents filed counter affidavit opposing the OA. It is stated that the Rules provide for sanction of maternity leave to a woman employee, who has, less than two surviving children and that the applicant has two children. It is also stated that she availed the leave of 42 days in the year 1998, when it resulted in mis-carriage and thereafter she availed 135 days of maternity leave in the year 1999. It is also stated that so called adoption does not change the applicability of the Rules and that the applicant is not entitled to maternity leave, for the third time.

4. We heard Sh. V.P.S. Tyagi, learned counsel for applicant at length.

5. The undisputed facts are that (a) the applicant had a child, by name Himani, before she entered the service; (b) she was granted maternity leave of 42 days in the year 1998, but she suffered miscarriage; and (c) she was granted maternity leave of 135 days in the year 1999, when she gave birth to another female child. Rule 43 of the Rules, reads as under :-

“43. Maternity Leave:

(1) A female Government 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 180 days from the date of its commencement.

(2) During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

NOTE:- In the case of a person to whom Employees' State Insurance Act, 1948 (34 of 1948), applies, the amount of leave salary payable under this rule shall be reduced by the amount of benefit payable under the said Act for the corresponding period.

(3) Maternity leave not exceeding 45 days may also be granted to a female Government servant (irrespective of the number of surviving children) during the entire service of that female Government in case of miscarriage including abortion on production of medical certificate as laid down in Rule 19:

Provided that the maternity leave granted and availed of before the commencement of the CCS (Leave) Amendment Rules, 1995, shall not be taken into account for the purpose of this sub-rule.

(4) (a) Maternity leave may be combined with leave of any other kind.

(b) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of Rule 30 or sub-rule (1) of Rule 31, leave of the kind due and admissible (including commuted leave for a period not exceeding 60 days and leave not due) up to a maximum of two years may, if applied for, be granted in continuation of maternity leave granted under sub-rule (1).

(5) Maternity leave shall not be debited against the leave account.”

6. From this, it becomes clear that it is only a female Government servant, with less than two surviving children, who can be granted maternity leave for the period of 180 days.

7. The applicant has two surviving children, by the time she applied for another maternity leave in the year 2012. Even assuming that the plea of the applicant that the first child was given adoption, it hardly makes any difference, in the context of application of the Rules.

8. Adoption would bring about some legal relationships between the adoptive parents and the child, in the context of succession and other aspects. However, the fact that child was born to the applicant does not get obliterated. What is essential for the Rules is, as to whether a woman employee had two surviving children born out of her womb. It makes no difference that the children so born to her, were given adoption or, are living with her.

9. We do not find any merit in the OA and the same is, accordingly, dismissed.

There shall be no orders as to costs.

(Aradhana Johri) (Justice L. Narasimha Reddy)
Member (A) Chairman

/rk/