

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

OA No.2804/2018

Reserved on: 21.05.2019

Pronounced on: 30.05.2019

Hon'ble Mr. A.K. Bishnoi, Member (A)

Dr. Farheen Begum
Research Associate (SRPP) Group 'B'
Prium, New Delhi
Age: 35 years
W/o Kamran Siddiqui,
R/o 2738, Gali Nanneh Khan,
Kucha Chelan,
Daryaganj, Delhi-110002.

-Applicant

(By Advocate: Ms. Harvinder Oberoi)

Versus

1. Union of India
Through its Secretary,
Ministry of Ayush,
Government of India,
Ayush Bhawan, B-Block,
G Complex, INA,
New Delhi.
2. The Central Council for Research in Unani
Medicine
Through its Director General
Jawaharlal Nehru Ayush Anushandhan Bhawan,
61-65, Institutional Area,
Opp. 'D' Block, Janakpuri,
New Delhi-110058.
3. The Deputy Director Incharge
Regional Research Institute of Unani Medicine
RRIUM, Abu Fazal Enclave, Okhla
New Delhi-110025.

-Respondents

(By Advocate: Shri Kumar Onkareshwar)

ORDER

The applicant has filed the present OA seeking the following reliefs:-

- “(i) Direct the respondents to consider the case of the applicant for grant of two months CCL expeditiously.
- (ii) Direct the respondents to release the salary for the month of June 2018 forthwith.
- (iii) All consequential benefits may be granted to the applicant.
- (iv) Any other relief, which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the applicant.
- (v) Cost of the proceedings be awarded in favour of the applicant and against the respondents.”

2. Ms. Harvinder Oberoi, learned counsel appeared on behalf of the applicant and Shri Kumar Onkareshwar, learned counsel appeared on behalf of the respondents.

2.1 During the course of arguments, it was informed by Ms. Harvinder Oberoi, learned counsel for the applicant that consequent to the interim orders passed in this OA, the matter relating to Child Care Leave has been settled to the satisfaction of the applicant and the only issue which survives is relating to the non-payment of the salary of the applicant for the month of June 2018. Accordingly, she has sought a direction to release the salary for the aforesaid

month. Thus, for the purpose of this OA, I shall confine myself only to this issue.

2.2 The applicant has mentioned that she has given birth to a child on 08.07.2017 and in this connection she remained on maternity leave from 12.06.2017 to 03.12.2017. She is employed in Swasthya Rakshan and Parikshan Programme (SRPP) where she is required to do mobile duties (OPDs and camps) in five different rural areas of Delhi and these OPDs spots are all about 20 to 25 kms. away from the Institute. Every morning she is required to come to the Institute and punch attendance in the biometric system and then go for OPD with her team. There are other members in the team also. After finishing the work in the rural areas, she reaches back the Institute by 3.30 p.m. where all members of the team are required to punch their biometric attendance before leaving the Institute.

2.3 Since March 2018, her child was facing some medical problems because of which she was advised certain remedial actions. In this background, she represented to the respondents seeking relaxation in her duty hours especially regarding permission to leave for her residence from the OPD spot without insistence on returning to the Institute and punching the attendance at the end of the day.

This would provide her better opportunity to nurse and look after her child. However, there was no response from the respondents. Meanwhile, the respondents served a Memorandum to her dated 16.07.2018 calling for her explanation regarding not marking attendance while leaving after office hours. The applicant replied to the Memorandum on 17.07.2018 explaining the situation in relation to her child's health and requesting for relaxation in duty hours for a few months only. The request was not acceded to.

3. The respondents in the counter reply have basically contended that the applicant has been absent on 65 days during the seven months period from January to July 2018 and have emphasized the issue of her not marking the attendance in the biometric machine while leaving office.

4. Heard the learned counsel for both the sides. Ms. Harvinder Oberoi, learned counsel for the applicant while advancing her arguments, drew attention to the Maternity Benefit (Amendment) Act, 2017, specifically referring to sub Section-3 (B) (5) and contended that the act of the respondents in denying the applicant's legitimate request for allowing her to leave for home from the last point of duty and insisting on her getting back to punch in the biometric

system was totally contrary to the spirit of the Act, which has been amended to provide a more considerate environment for working women.

5. Shri Kumar Onkareshwar, learned counsel for the respondents basically dwelt upon the issue that the applicant has been absenting herself from office on 65 days and in view of this withholding of her salary for the month of June, 2018 is justified.

6. I have gone through the pleadings on record and carefully considered the arguments advanced by the learned counsel for two sides.

7. The only issue in the present OA, which is still left to be decided upon, is not much complicated in nature. The applicant is the mother of a young child, who was suffering from certain ailments and in this context she made repeated requests to the respondents not to insist on her getting back to the office to mark attendance through the biometric system before leaving. There is nothing on record to show that she has taken extra leave or there has been reduction in time while she was actually performing her duties. The issue was only of saving time, without compromising on the quantum or quality of work, by not having to unnecessarily return to the Institute and then going back to her home and

by saving such time, she could have provided the much needed care for her young child. The Institute did not even consider it necessary to look into her genuine request and respond.

8. My attention has been drawn to the Maternity Benefit (Amendment) Act, 2017. Sub section-3 (B) (5) of the said Act reads as follows:-

“In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree”.

Whereas it may be argued that the situation prescribed in this provision does not apply to the case of the applicant, it can surely be inferred that the Act contemplates a congenial working environment for women during the time before and after childbirth with a degree of flexibility and understanding of a level which may not be there at other times. The approach of the respondents in the present case apparently is totally in divergence with the spirit of the enactment.

9. It has been argued that the applicant has been absenting herself from office on 65 days in the months January to July 2018. The applicants have nowhere

contended that the withholding of salary for the said month is by way of punishment. The payment of salary, or withholding it, for the month of June 2018 can only relate to the work performed in that month. This averment thus is totally extraneous to the issue and provides no justification to the case of the respondent.

9. It has been submitted that the respondents have engaged the applicant on contractual basis vide office order dated 28.12.2015 (Annexure R-3-1). A plain reading of this document reveals that there is no condition relating to the applicant being required to mark attendance through the biometric system. The respondents may have their reasons for applying this process for marking attendance for various categories of employees, including those who have a fixed desk job, but to insist on such strict compliance in a purely mechanical manner is totally unjustified. Especially so when the applicant is doing a field job, is covered by the terms of the contract and is entitled to maternity benefits. Even in normal circumstances when the officers have to do field work as distinct from desk work, the requirement of marking attendance through the biometric system may need examination. I have not been informed of any specific legal provision which mandates that attendance has to be marked through a biometric system only. So, in terms of

technicality also, the respondents have failed to justify their action in withholding the salary of the applicant. As for the averment made on behalf of the respondents regarding absence of the applicant for the month of June 2018, the respondents have failed to establish that. As such, there is nothing to show that the applicant had not actually performed the duties for the month of June 2018. Since the prayer of the applicant is only to release the salary for the month of June 2018, the grant of relief has to be confined to this month only. However, the general principle is valid otherwise also when the circumstances are similar.

10. For the reasons, as explained above, the OA is disposed of with a direction to the respondents to release to the applicant full salary for the month of June 2018, which shall mean the full consolidated remuneration she is entitled to and the HRA as per the terms of the contract. This shall be done within a period of 30 days from the date of receipt of a certified copy of this order. No costs.

(A.K. BISHNOI)
MEMBER (A)

cc.