

(2019) 10 CAT CK 0047

In the Central Administrative Tribunal

Case No : Original Application No. 1551 Of 2018

Neelam Sabharwal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Citation : (2019) 10 CAT CK 0047

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : Arvind Nagar, Anupama Bansal

Final Decision : Dismissed

Judgement

1. The applicant Ms. Neelam Sabharwal is Nursing Sister in Lady Hardinge Medical College and Smt. S. K. Hospital. She took leave to look after her son and was absent for a period of 9 months from 01.01.2010 to 30.06.2011 for part of which period leave was sanctioned but for certain part of the period she was away without leave. Subsequently, the period of unauthorised absence of 183 days was regularised vide order dated 19.10.2016. The detailed status is as follows :-

S. No.

Leaves

From

To

Total No. of Days

1

01.10.2010

31.10.2010

31 days

2

01.11.2010

31.12.2010

*No Leave Application

3.

01.01.2011

31.01.2011

31 days

4.

01.02.2011

28.02.2011

28 days

5.

01.03.2011

30.06.2011

*No Leave Application

Total

90 days

*Subsequently sanctioned EL on 13.07.2016 (Annexure R/6)

2. On 27.07.2017 the applicant gave a representation to convert the said EL to CCL. This was rejected vide respondents' letter dated 08.02.2018 which is the impugned order.

3. It is the contention of the applicant that the leave of the applicant has been regularised vide order dated 19.10.2016 in an arbitrary and discriminatory manner wherein CCL for a period of 31 days from 01.10.2010 to 31.10.2010 and 91 days from 01.01.2011 to 31.03.2011 has been sanctioned and for the period 01.11.2010 to 31.12.2010 i.e. 61 days and for the period from 01.04.2011 to 30.06.2011 i.e. 91 days, EL has been sanctioned. She has claimed that no grounds have been given by the respondents for this nor has any speaking order been passed. She has prayed that the period of 152 days with effect from 01.11.2010 to 31.12.2010 (61 days) and 01.04.2011 to 30.06.2011 (91 days) be treated as CCL instead of EL.

4. Respondents have stated that the applicant was absent without leave for the said period of 183 days which should have been treated as unauthorised

absence, but taking a liberal view of the matter her unauthorised absence was regularised by grant of leave due and admissible. Accordingly, she was granted 121 days CCL against her application for 90 days CCL and the remaining period of absence was regularised by the grant of EL thereby making a total grant of 273 days of leave. They have quoted the provisions of the DoP&T order which reads as follows :-

"a) That women employee having minor children are granted CCL by an authority competent to grant leave for a maximum period of two years during the entire service for taking care of up to two children.

b) That CCL can be combined with leave of the kind due and admissible.

c) That CCL cannot be demanded as a matter of right Under no circumstances can any employee proceed on CCL without prior proper approval of the leave by the leave sanctioning authority.

d) That CCL should not disrupt the functioning of Central Government Office."

5. They have also cited problems in case rules are waived in this particular matter. There would be a flood of cases claiming CCL for the specific purpose of looking after their children since there is a large number of female employees in the Nursing cadre having minor children. They have also stated that the applicant never sought approval of the competent authority for any kind of leave and preferred to remain absent from duty. It was only after joining duty that she applied for 273 days for the period from 01.10.2010 to 30.06.2011 which cannot be demanded by her as a matter of right at this stage. They have reiterated that the applicant had not applied for CCL for a period of 9 months i.e., from 01.10.2010 to 30.06.2011. Even the joining report submitted by the applicant on 01.07.2011 after availing of leave did not mention CCL.

6. Heard Mr. Arvind Nagar, learned counsel for applicant and Ms. Anupama Bansal, learned counsel for respondents.

7. The rules regarding CCL stated the following :-

"43-C. Child Care Leave

1) Subject to the provisions of this rule, a women Government servant may be granted child care leave by an authority competent to grant leave for a maximum period of 730 days during her entire service for taking care of her two eldest surviving children, whether for rearing or for looking after any of their needs, such as education, sickness, and the like.

2) For the purposes of sub-rule (1), "child" means -

(a) a child below the age of eighteen years; or

(b) a child below the age of twenty-two years with a minimum disability of forty per cent as specified in the Government of India in Ministry of Social Justice and Empowerment's Notification No. 16-18/97-N 1.1, dated the 1st June, 2001.

(3) Grant of child care leave to a woman Government servant under sub-rule (1) shall be subject to the following conditions, namely :-

(i) it shall not be granted for more than three spells in a calendar year;

(ii) it shall not be granted for a period less than fifteen days at a time; and

(iii) it shall not ordinarily be granted during the probation period except in case of certain extreme situations where the leave sanctioning authority is satisfied about the need of child care leave to the probationer, provided that the period for which such leave is sanctioned is minimal.

(4) During the period of child care leave, the woman Government servant shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(5) Child care leave may be combined with leave of any other kind.

(6) 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 not exceeding sixty days and Leave Not Due) up to a maximum of one year, if applied for, be granted in continuation with child care leave granted under sub-rule (1).

7) Child care leave shall not be debited against the leave account."

8. Therefore, as per this rule, where the CCL may be combined with leave of any other kind, it shall not be granted for more than three spells in a calendar year.

9. The respondents have filed O.M. No.13018/2/2008-Estt.(L) dated 18.11.2008 which contains the following :-

2. Consequent upon the implementation of orders relating to Child Care Leave, references has been received from various sections regarding the procedure for grant of this leave etc. In this connection, it is mentioned that the intention of the Pay Commission in recommending Child Care Leave for women employees was to facilitate women employees to take care of their children at the time of need. However, this does not mean that CCL should disrupt the functioning of Central Government offices. The nature of this leave was envisaged to be the same as that of earned leave. Accordingly, while maintaining the spirit of Pay Commission's recommendations intact and also harmonizing the smooth functioning of the offices, the following clarifications are issued in consultation with the Department of Expenditure (Implementation Cell) with regard to Child Care Leave for Central Government employees:-

i) CCL cannot be demanded as a matter of right. Under no circumstances can any employee proceed on CCL without prior proper approval of the leave by the leave sanctioning authority.

ii) The leave is to be treated like the Earned Leave and sanctioned as such.

iii) Consequently, Saturdays, Sundays, Gazetted holidays etc. falling during the period of leave would also count for CCL, as in the case of Earned Leave.

iv) CCL can be availed only if the employee concerned has no Earned Leave at her credit."

10. This O.M. clarifies that periods of CCL for female employees was to facilitate them to take care of their children in time of their need but it does not mean that CCL disrupts the functioning of Central Government Offices. It specifies that CCL cannot be demanded as a matter of right and under no circumstances, can an employee proceed on CCL without proper prior approval of the leave sanctioning authority. It further states that CCL can be availed only when the employee concerned has no leave at her credit. Therefore, it is abundantly clear that CCL is a sort of emergency relief to be resorted to when no other leave is due and there is an urgent need to care for a minor child. It is also implicit that this leave has to be granted with great caution since it is to be given only for a great need and should not be resorted to in general by all female employees which may disrupt the functioning of the Central Government office.

11. The applicant has filed the ruling of Hon'ble Supreme Court in *Kakali Ghosh Vs. Chief Secretary*, in Civil Appeal No. 4506/2014. In the said case the Hon'ble Supreme Court has held that CCL even beyond 730 days can be granted by combining other leaves, if due. Hon'ble Apex Court also held that it shall not be open to the competent authority to alter the kind of leave due and applied for except at the written request of the government servant, at the same time holding that under sub-rule 2 of Rule 7, leave can be reduced and revoked by the competent authority in case of exigencies of public service. However in the present case, the applicant has not given any evidence proving that she applied for CCL as per rules and applicable OMs whereas the respondents have clearly denied any such application having been made.

12. A perusal of the said ruling reveals that O.M. No. 13018/2/2008-Estt.(L) dated 18.11.2008 was never brought to the notice of the Hon'ble Apex Court in the cited case. Therefore, it is not directly applicable in the present case. It has been admitted by the applicant that she had EL to her credit at that point of time. Further, respondents have stated that no application was given for the said period by the applicant and the applicant has neither filed nor been able to show any leave application. The first communication that has been filed by the applicant is a representation of 27.07.2017 which is six years after she joined her duties. Even in the joining memo (R/4) dated 09.04.2011 the applicant does not mentioned CCL. Therefore, it is very clear that the claim of CCL is an afterthought which does not fulfil the conditions laid down in the said O.M. of 18.11.2008.

13. We live in a welfare state which has progressive legislation to look after the needs of all its citizens particularly, those who belong to the weaker sections and need protection. The provision of CCL for women employees is one such liberal

provision. However, it should be exercised with great care and not misused, otherwise the functioning of government offices will be adversely affected and ultimately the public will suffer. It is clear that the applicant, though she had EL to her credit, has later on decided to make a pitch for CCL with a view to saving her EL since her minor son would have become a major and this would have disentitled her for further CCL. The O.M of 18.11.2008 clearly states that CCL can be availed only if the employee concerned has no EL to her credit. It is not as if she has been put to any hardship since the respondents have regularised her unauthorised absence and she has not suffered any loss of salary etc.

14. In the light of the above, the O.A is dismissed. No order as to costs.