

**CENTRAL ADMINISTRATIVE TRIBUNAL CHANDIGARH BENCH**

**ORIGINAL APPLICATION NO.060/00671/2014**

Order Reserved on 29.07.2015

Pronounced on 31.07.2015

CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

Anu Sharma W/o Sh. Pushpinder Sharma, Ex-Senior Laboratory Technician, Department of Advanced Pediatric Centre, Post Graduate Institute of Medical Education and Research, Chandigarh, R/o # 869, Sector-16, Panchkula (HR.)

**Applicant**

**Versus**

1. Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh through its Director.
2. President, Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh-cum-Appellate Authority, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
3. Department of Advanced Pediatric Centre, through its Head, Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh.

**Respondents**

Present: Sh. Karan Singla, counsel for the applicant.

None for the respondents.

**ORDER**

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

- (ii) Memo of charges dated 21.09.2011 (Annexure A-11) be quashed.
- (iii) Enquiry report dated 07.09.2012 (Annexure A-19) may be set aside.
- (iv) The illegal, arbitrary and unjustified orders of punishment of removal from service imposed upon the applicant by the Disciplinary Authority as well as Appellate Authority vide impugned orders dated 21.12.2012 (A-25) and 24.04.2014 (A-29) respectively, may be set aside and quashed.
- (v) The applicant may be ordered to be reinstated in service with retrospective effect and with pay, allowances and all other consequential benefits.

2. Background of the matter is that the applicant has served the PGIMER from 01.05.1997 to 21.11.2012 in the capacity of Jr/Senior Lab Technician. On her request Child Care Leave for six months from 12.07.2010 to 07.01.2011 was sanctioned vide office order dated 04.08.2010 (Annexure A-1). On 03.01.2011 she applied for extension of Child Care Leave from 10.01.2011 to 08.07.2012 to complete two years of Child Care Leave as originally applied for but the same was refused. At that time the applicant had a minor daughter aged 8 years and a 13 year old son who was medically unfit as he was suffering from continuous cough and vomiting and his regular medical treatment was going on. The request of the applicant for extension of Child Care Leave as well as for leave without pay was rejected. Since the applicant did not join duty, respondent no.1 issued memo of charges on 21.09.2011 under Rule 14 of the CCS (CCA) Rules, 1965 for violating Rule 3(i)(ii) and (iii) of the CCS (Conduct) Rules, 1964 for lack of devotion to her duty (Annexure A-11). The applicant after issuance of memo of charges resumed duty and worked till 14.05.2012. Thereafter she remained on sanctioned leave from 15.05.2012 to 31.08.2012 and then again was on duty from 04.09.2012 to 15.09.2012. She further applied for CCL from 17.09.2012. Inquiry regarding memo of charges issued on 21.09.2011 was held and ultimately her services were terminated through order dated 24.04.2014 (Annexure A-29). Hence this O.A.

3. In the grounds for relief it has, inter alia, been stated as follows:

1. The applicant had been validly applying for the extension of her child care leave repeatedly as she had to take care of her children but the respondents have not been acceding to her requests and have been denying the CCL to her without furnishing any reason. It is submitted that every woman has a natural right to take care of her children and keeping in view this very right of a women, Child Care Leave was introduced as a matter of right for the serving women, if such a right is denied to the women than the very purpose of introducing CCL is defeated.

2. Dr. Savita, In-Charge APC Biochemistry Lab on 08.04.2011 in her comments on the application dated 04.04.2011 (Annexure A-6) had validly approved the case of the applicant considering it a genuine one and had further requested the concerned authorities to look into the matter and grant the Child Care Leave to the applicant but the action of denying the sanction of the CCL on the part of the respondents without giving any sufficient reasons and further holding the applicant liable for misconduct is totally arbitrary and illegal on the part of the respondents.

3. There were procedural defects in the conduct of inquiry proceedings as IO was fully aware that the Defence Assistant had always requested to fix the enquiry proceedings in the 2nd half/post-lunch because DA is working at public dealing counter but IO did not pay any heed, which further led to denial of adequate opportunity of defence to the DO. Even on 08.08.2012, respondent no.3 was also not present for cross examination but IO proceeded relying upon the statement submitted by respondent no.3 at the back of DO without granting opportunity of cross examination.

4. In the written statement filed on behalf of the respondents it has been stated that the punishment order of removal dated 21.12.2012 and order dated 24.04.2014 are passed after going through the record file of the applicant and after proper application of mind. The applicant had applied for two years CCL from 01.09.2009 to 31.08.2011 vide application dated 12.08.2009 which was considered and rejected. She was also informed vide office letter dated 23.02.2010 in this regard. Further she again applied for CCL from 15.06.2010 to 14.06.2012 vide application letter dated Nil but this request was again rejected by the competent authority and she was informed vide office letter dated 14.06.2010. Her request was again considered by the Committee and she was sanctioned CCL from 12.07.2010 to 07.01.2011

(Annexure A-1). The Head, Department of Pediatrics forwarded the application with the remarks that further leave cannot be granted due to shortage of staff or a replacement may be provided. The competent authority considered and declined the request of the applicant seeking extension of CCL and she was categorically told that CCL was rejected and she was being treated as willfully absent from duty since 08.01.2011. She was directed to resume duty immediately, failing which disciplinary action would be initiated. The applicant was also informed through registered letter dated 19.02.2011 (Annexure A-2) that her request for CCL from 10.01.2011 to 08.07.2012 for one and a half years was considered and rejected. The applicant after remaining absent from duty from 08.01.2011 to 04.10.2011 joined duty on 05.10.2011 and thereafter was also granted leave from time to time. She again applied for CCL from 17.09.2012 to 16.03.2013 but without the same being sanctioned, she left the Institute and sent application through Speed Post to the HOD requesting for grant of CCL for six months from 17.09.2014. She resumed duty only when she was informed to resume duty immediately failing which disciplinary action would be initiated against her.

5. It has further been stated that the applicant had participated in the inquiry proceeding and was offered opportunity to defend herself. The allegations regarding procedural lapses in the inquiry are not supported by the record. Inquiry report was considered by disciplinary authority and after issue of show cause notice, the applicant had been removed from service as per the impugned order. Since the applicant had been willfully absent from duty, penalty imposed upon her does not merit reconsideration.

6. Pleadings in the matter were complete as recorded on 13.03.2015 and the matter was listed for arguments on several dates thereafter. The counsel for the parties have either not been present or have been requesting for adjournment of hearing. Hence on 27.07.2015 it was recorded that no further adjournment would be allowed and on the next date matter would be decided. When the matter was taken for hearing on 29.07.2015, the respondents were not represented as such Rule 16 of the C.A.T. (Procedure) Rules, 1987 was invoked and we proceed to decide the matter.

7. Learned counsel for the applicant stated that the applicant had applied for CCL in 2011 and thereafter on account of her son's serious illness for which he was undergoing medical treatment. The respondent Institute had taken a very rigid stand in the matter and CCL had been allowed only for a short period while as per the rules women employees could avail CCL for a period up to 2 years. Learned counsel also stated that on some dates when inquiry was being held, the defence assistant of the applicant could not participate but the IO proceeded with the inquiry and the applicant therefore was not given adequate opportunity to defend herself.

8. We have carefully considered the pleadings of the parties and material on record. It is quite clear that the applicant had been applying for CCL time and again and a note was recorded on letter dated 04.04.2011 by Dr. Savita In-Charge APC Biochemistry Lab, which reads as under:

I have learnt from a reliable source that her problem is genuine. Therefore, it is requested, the case may be considered. If possible, a substitute may also be provided keeping in view the work load of APC Biochemistry lab.

Nowhere in the written statement have the respondents stated that the grounds on account of which the applicant was applying for CCL were not genuine. Apparently, leave was only being refused on account of perceived shortage of staff.

9. Even if the inquiry proceedings have been conducted as per prescribed procedure and the penalty was imposed upon the applicant after due process, we are constrained to observe that the PGIMER authorities appear to have taken an unduly harsh view in the matter. The applicant's son was apparently suffering from a serious illness and the applicant had applied for the CCL due to this. CCL of 2 years has been allowed to women employees as a welfare measure keeping in view recommendations of 6th CPC and sympathetic view should be taken where a women employee applies for such leave. Staff shortage can always be addressed through short term appointments and the Institute such as PGIMER has the autonomy/authority to make such arrangements. Hence memo of charges dated 21.09.2011 is quashed. The respondents are directed to reinstate the applicant in service and treat the period for which she was not on duty as leave of the kind due/leave without pay as may be appropriate. Action in this regard may be completed within 45 days from the date of a certified copy of this order being served upon the respondents.

10. O.A. is allowed accordingly. No costs.

(DR. BRAHM A. AGRAWAL)

(RAJWANT SANDHU)

MEMBER (J)

MEMBER (A)

Place: Chandigarh.

Dated:

O.A. No.060/00671/2014