

GAHC010145422023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3831/2023

HC/GD (M) LEEMA EKKA
FORCE NO. 040881648 W/O HC/GD SUMAN TIGGA PRESENTLY RESIDES AT
GROUP CENTRE CENTRAL RESERVE POLICE FORCE AMERIGOG,
GUWAHATI KAMRUP (M) ASSAM PIN 781023

VERSUS

THE UNION OF INDIA AND 6 ORS
REP BY THE SECRETARY MINISTRY OF HOME AFFAIRS NEW DELHI 110003

2:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE CENTRAL GOVT. OFFICE COMPLEX
NEW DELHI-110001

3:THE SPECIAL DIRECTOR GENERAL
CENTRAL ZONE
CENTRAL RESERVE POLICE FORCE HC BLOCK SECTOR III SALT LAKE
KOLKATTA WEST BENGAL PINN 700106

4:THE INSPECTOR GENERAL OF POLICE
NORTH EASTERN SECTOR CENTRAL RESERVE POLICE FORCE SHILLONG
MEGHALAYA PIN 793001

5:THE DEPUTY INSPECTOR GENERAL (ESTT)
DIRECTORATE GENERAL BLOCK NO. 1 CGO COMPLEX LODHI ROAD
NEW DELHI PIN 110001

6:THE DEPUTY INSPECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE GROUP CENTRE GUWAHATI
AMERIGOG GUWAHATI ASSAM PIN 781023

7:THE COMMANDANT 232 (MAHILA) BATTALION

CENTRAL RESERVE POLICE FORCE LOCATED AT SALBONI WEST
MIDNAPORE WEST BENGAL PIN 72110

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 30.06.2023

Heard Mr. R. Mazumdar, the learned counsel appearing on behalf of the Petitioner. Ms. B. Sarma, the learned counsel appears on behalf of all the Respondents.

2. The instant writ petition is taken up for disposal at the motion stage itself.
3. The case of the Petitioner herein is that the Petitioner was promoted vide an order dated 7/9/2022 to the post of Head Constable General Duty and was posted at 232 (M), Bn, CRPF. Thereupon the Petitioner submitted a representation stating that she and her husband were never posted in static offices and were posted in operations and naxal affected battalions since enlisted in the force. It was further mentioned in the said representation that the Petitioner has two children who were studying at Guwahati. The elder child was then studying in Class VII and the younger was then in the 2nd standard. It was further mentioned by the Petitioner that on promotion in the middle of the year, the education of her children will be interrupted and therefore requested that the Petitioner be retained in her Group Centre till Summer Chain Transfer—2023 for better education of her children.
4. It further reveals that on 17th of March, 2023, the Petitioner was retained in her Group Centre till SCT-2023 by the DIG Establishment on the basis of a signal dated 11/11/2022. It was further mentioned that the Petitioner may be relieved after

31/3/2023 and to intimate her the date of relieving for further needful action. Thereupon the Petitioner submitted yet another representation for deferment of one year tenure in Group Centre. The representation of the Petitioner was rejected by the competent authority on the ground that she has to complete two years of mandatory field service in the rank of Head Constable General Duty for next rank promotion. Thereupon on 8/6/2023, the Petitioner submitted an application seeking child care leave to look after her children. In the said application, she had mentioned that she had accumulated 579 days of child care leave, of which she wanted to avail 450 days and 60 days of earned leave for the year 2023 w.e.f. 20/6/2023. The said application is yet to be taken into consideration by the competent authority.

5. The learned counsel appearing on behalf of the Petitioner has drawn the attention of this Court to the notification dated 1st of December, 2009 whereby the Central Civil Service (Leave) Rules, 1972 was amended thereby inserting Rule 43-C. Taking into account the relevance of the said Rules, the same is reproduced herein under :-

“43-C. Child Care Leave .—(1) A woman Government servant having minor children below the age of eighteen years and who has no earned leave at her credit, may be granted child care leave by an authority competent to grant leave, for a maximum period of two years i.e. 730 days during the entire service for taking care of upto two children whether for rearing or to look after any of their needs like examination, sickness, etc.

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

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

(4) 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 60 days and leave

not due) upto a maximum of one year, if applied for, be granted in continuation with child care leave granted under sub-rule (1).

(5) Child care leave may be availed of in more than one spell.

(6) Child care leave shall not be debited against the leave account.”

6. A perusal of the above Rule reveals that a woman Government servant having minor children below the age of 18 and who has no earned leave at her credit, may be granted child care leave by an authority competent to grant leave, for a maximum period of two years i.e. 730 days during the entire service for taking care of upto two children whether for rearing or to look after any of their needs like examination, sickness, etc. Therefore, sub-Rule(1) of Rule 43-C grants the competent authority a discretion to grant child care leave for the reasons mentioned therein.

7. Now coming back to the facts involved herein, the Petitioner claims that she has 579 days of child care leave and the Petitioner seeks to avail 450 days out of the said 579 days left in her child care leave account. It is well settled that leave is not a matter of right and would be subject to the discretion to be exercised by the authority competent to do so.

8. In the instant case, the Petitioner herein has two children, one who is presently pursuing her studies in the 8th standard and the other child is in the 3rd standard. The husband of the Petitioner is presently posted at 133 Batallion which is Left Wing Extremist Area. These aspects of the matter are therefore required to be taken note of while exercising the discretion by the authority concerned. This Court has also taken note of that on 8/6/2023, the Petitioner had submitted the leave application which is yet to be considered by the competent authority.

9. This Court therefore is of the opinion that the interest of justice would be met, that an opportunity be granted to the authority concerned to take a call on the application so filed on 8/6/2023 by exercising the discretion taking into account the relevant factors which have been mentioned herein above.

10. Accordingly, this Court therefore disposes off the writ petition directing the Respondent No. 6 to decide the application dated 8/6/2023 filed by the Petitioner within a period of 15 days from the date of the instant order. Till such time, the said application is decided, the Petitioner may not be relieved from the Group Centre, CRPF, Guwahati.

JUDGE

Comparing Assistant