

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6792/2015**

Judgment reserved on: 09.09.2015

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Judgment decided on: 14.10.2015

AMANDEEP KAUR

..... Petitioner

Through: Mr.Ayush Negi with Mr.Rajeev
Misra and Mr.Himanshu Tyagi,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Rajan Khosla, Advocate with
Mr.Reshesh Mani Tripathi,
Govt.Pleader on behalf of
R-1&2/UOI

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (JUDGMENT)

1. The present writ petition has been filed for setting aside the order dated 01.08.2014, whereby the petitioner was imposed with a penalty of reduction of pay to the minimum of her basic in the pay band of Rs.5200-20200+Grade Pay Rs.2400 from Rs.7830/- +Rs.2000 (Grade Pay) to Rs.6460+2000 (Grade Pay) for a period of three years with a direction that the petitioner shall not earn any increments of pay during the said period and that the said reduction shall have the effect of postponing her future increments of pay. The petitioner also challenges the order dated 30.12.2014

whereby the intervening period with effect from 03.08.2013 to 02.09.2014 was ordered to be treated as “dies-non” for all purposes with denial of any allowance for the said period.

2. A brief narration of facts shows that the petitioner joined the CISF on 02.09.2006 and proceeded on maternity leave of 180 days with effect from 25.06.2012. She was blessed with a girl child on 15.08.2012. Before the expiry of the maternity leave, she applied for 60 days of Child Care Leave (CCL) with effect from 22.12.2012, but was sanctioned 30 days of CCL. She, on expiry of CCL, rejoined her duties on 21.01.2013. She also applied for additional CCL with effect from 22.01.2013 vide her application dated 16.01.2013, but the same was rejected in the first instance. On her approaching the higher officials, she was sanctioned 30 days of leave with effect from 22.01.2013. She returned to her parental home where the child had developed pneumonia and was treated at Community Health Centre (Sammudaik Swasthya Kendra), Baraut, Baghpat, U.P. Finding no improvement in the condition of the child, the petitioner returned to Hyderabad on 12.02.2013 and the treatment of the child started at Apollo Hospital (empanelled). The treating doctor diagnosed the child of five months age to be suffering from allergic bronchitis recurrent tract infection

and advised proper and constant supervision by the mother. On expiry of 30 days CCL, she was to rejoin on 21.02.2013, however, she applied for extension of CCL by 5 months with effect from 21.02.2013. Her application was returned to her on 20.02.2013 with the remark that the medical certificate was not attached to the application. She resubmitted the application on 21.02.2013. Although she was required to join duties on 21.02.2013, she did not do so and a reminder call up Notice-I dated 28.02.2013 was sent to her directing her to rejoin the duties immediately or face Departmental Enquiry. The said notice was duly replied and again a request was made to sanction the CCL on the grounds that the child was unwell and there was no one at home to take care of the child. Another call up Notice-II and later a Notice-III were sent to her on 14.03.2013 and 20.03.2013 respectively. The petitioner replied, but did not re-join the duties. Since petitioner did not re-join the duties, a Memorandum of Charge dated 11.04.2013 under Rule 36 of the CISF Rules 2001 alleging that she had continued to overstay her sanctioned leave from 21.02.2013 and had exhibited an act of gross misconduct and indiscipline was served upon her. A Departmental Enquiry was ordered on 26.04.2013. The petitioner duly participated in the enquiry and report of the enquiry officer was submitted to

the Disciplinary Authority on 10.07.2013. The Disciplinary Authority by order dated 03.08.2013 ordered that the petitioner be removed from service on account of proven misconduct. The petitioner's appeal dated 29.08.2013 was rejected. She preferred a Revision and the Revisional Authority by order dated 01.08.2014 converted the penalty of "*removal from service*" to "*reduction of pay to the minimum of her basic in the pay band of Rs.5200-20200+Grade Pay Rs.2400 from Rs.7830/- +Rs.2000 (Grade Pay) to Rs.6460+2000 (Grade Pay) for a period of three years with direction that no increments shall be earned by her during that period and that it will have effect of postponing her future increments of pay*".

3. What emerges is that the petitioner had applied for sanction of the CCL with effect from 21.02.2013 but the same was not sanctioned to her. Her repeated submissions of the application/request for sanction for further period were not acceded to; still she did not rejoin her duties on expiry of the period of sanctioned leave. She did not re-join her duties even after she was served with three call-up notices, asking her to rejoin her duties and simultaneously informing her that her application for CCL was rejected. The fact, therefore, is that the petitioner did continue to remain absent from duty without any sanctioned leave and this proves the misconduct.

4. The contention of the petitioner is that her child, born on 15.08.2012, was unwell and was suffering with allergic bronchitis recurrent tract infection for which treatment was given to her at an empanelled hospital, i.e., Apollo Hospital and that the medical prescriptions of Apollo, DRDO Hospital, Hyderabad dated 01.02.2013, 04.02.2013, 06.02.2013, 14.02.2013, 26.02.2013, 19.03.2013, 16.04.2013 were submitted with the respondent along with the application for sanction of CCL. It is submitted that the genuineness of these certificates has never been in dispute, despite which she was denied the CCL. It is contended that she had applied for CCL under pressing circumstances which shows that the child, who was then suffering from allergic bronchitis recurrent tract infection, needed her support and care. The child was just a toddler of five months and dependent on her mother's feed. It is further contended that she had been acting under the advice of the doctor who had recommended that the mother should constantly supervise the child. It is further contended that her service record was clear and she had never suffered with any penalty in the hands of respondent.

5. It is contended on behalf of the respondent that the petitioner cannot claim the CCL as a right and that the respondent is within its rights to deny

it for administrative reasons. It is submitted that the petitioner was denied the CCL due to shortage of lady Constables as many of them were at that time on leave and that there was another lady Constable who had applied for leave. It is submitted that it was due to these exigencies of service that leave was refused to her. It is further submitted that 14 duty posts were required to be manned by lady staff in one shift on 21.02.2013 when the petitioner had applied for the leave. It is further submitted that total 28 lady personnel were posted in 'C' Coy and out of this, 12 were on leave/course/CCL/ML/Medical Rest, etc until 13.02.2013 and that male staff could not be asked to function in the post of lady Constable. This included 8 duty posts which were to be covered by lady screener staff. It is contended that the grounds raised by the petitioner were taken into consideration by the Revisional Authority and the punishment from removal from service was converted into lesser punishment. It is submitted that in view of the fact that the petitioner, despite receiving three notices, calling upon her to re-join her duties failed to do so, the penalty imposed upon her by the Revisional Authority cannot be said to be disproportionate.

6. We have given due consideration to the rival contentions of the parties. The question for consideration is if the penalty imposed is

disproportionate to the proved charges. There is no dispute to the settled proposition of law relating to the extent of judicial intervention in cases of imposition of penalty on proof of charges on the ground of proportionality. The court does not sit as an Appellate Court to review the order, but can interfere where it is of the opinion that the penalty imposed is grossly disproportionate, harsh, excessive, perverse or irrational. In such cases, the Court can either remand the matter for re-consideration to Disciplinary/Appropriate Authority or to cut short the litigation, itself impose appropriate punishment for cogent reasons. The Supreme Court in the case of ***Chairman-Cum-Managing Director, Coal India Limited and Another vs. Mukul Kumar Choudhuri and Others***: (2009) 15 SCC 620 has clearly held as under:-

“19. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected

to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”

7. In the present case, that the petitioner overstayed the sanctioned leave since 21.02.2013 without permission is not disputed. In the Departmental Enquiry, she explained the reasons of her overstay, i.e., that her five months old daughter was ailing and suffering from allergic bronchitis recurrent tract infection; that the doctor had advised the constant care and attention. The child was required to be nebulized during the day, there was nobody at her house to take care of the toddler and the child underwent treatment at Apollo DRDO Hospital, an empanelled hospital. It is contended that for these compelling reasons, she was unable to join her duties and that she also considered her prime duty to be towards her ailing child. Undoubtedly, leave is not a matter of right for an employee and the same can be refused by the employer in view of the exigencies of the service. The reason for refusal of CCL is shown as shortage of lady Constables in the Coy. In the enquiry, the respondent had examined PW-1 who had given the status of lady Constables up to 13.02.2013 and had deposed that there were totally 28 lady personnel posted in ‘C’ Coy and out of this, 12 were on leave /course/CCL/ML/Medical Rest, etc., till that date, i.e. 13.02.2013. The

petitioner apparently sought extension of leave with effect from 21.02.2013. In order to prove the shortage of lady personnel in the Coy after 13.02.2013, the respondent had examined CW-1 who had stated that on 21.02.2013 there were four lady Constables on leave and one was on OSL. He had further deposed that 13 lady screener staff were mandatory to be deployed for one shift of a Coy. It therefore is clear that out of 28 lady personnel posted in 'C' Coy, only 5 were not on duty. Besides that, no other reason for not approving the CCL was shown by the respondent during the enquiry. Apparently, the respondent had managed its affairs with shortage of 12 lady personnel until 21.02.2013, but, found it difficult to manage it beyond 21.02.2013 when only four lady personnel were on leave, the fifth on OSL obviously being the petitioner.

8. The benefit of Child Care Leave was introduced in Service Rules to ensure the welfare of the child. It was felt that the working women were unable to devote their time towards their children due to exigencies of service; this led to introduction of CCL, which can be availed of any time by a mother whenever she feels that the child needs her care. This facility is available to a woman employee only till the child attains the age of 18 years. There is also no dispute that the CCL can be claimed, without assigning any

reason. A lady employee can even ask for uninterrupted 730 days of CCL (*Kakali Ghosh vs. Chief Secretary A & N Administration & Ors., Civil Appeal No. 4506/2014, decided on 15.04.2014*). The petitioner in this case, however sought CCL under the compelling circumstances of child being unwell and absence of any other person to take care of the child in her absence.

9. To this Court's mind, the respondents have dealt with the plea of the petitioner in a very unsympathetic manner. Even though the genuineness of the medical certificates submitted by her was not disputed, yet the approach of the respondents was callous. The mindset of the respondent is apparent from the following observation in the impugned order:

“iv) On perusal, it is noticed that doctor from Apollo Hospital, Hyderabad had been consulted on 14.02.2013, 26.02.2013, 19.03.2013 and 16.04.2013 respectively as out-patient only as the child was suffering from minor disease like “Cold and Cough and loss of Appetite”. Even the baby was never advised for admission in Hospital. As such, plea of the petitioner for justifying her long OSL is not acceptable and denied.”

It was further observed:

“viii) With regard to taking care of her ailing kid, it is observed that treatment had been taken from Apollo hospital, Hyderabad on 14.02.2013, 26.02.2013, 19.03.2013 and 16.04.2013 as out-patient only as the child was suffering from “Cold & Cough and Loss of

Appetite”. Further as mentioned above there is nothing in the medical documents of the child to suggest mother’s presence/attendance for 24 hrs of a day for such long period of her overstay of more than five months.”

10. It is also obvious from the facts on record that till 02.08.2013 the petitioner was facing departmental enquiry which she was regularly attending and by order dated 03.08.2013 she was removed from service and it was only after the order of the revisional authority dated 01.08.2014 was she taken back into the service. Although the respondents have found the reason of overstay of leave on the ground of illness of the child unreasonable yet at the same time, the revisional authority reduced the penalty on compassionate grounds. It observed as under:

“6. However, it is also a fact that her newly born baby was suffering illness and she requested extension of leave (CCL) to the Competent Authority. As such purely on humanitarian aspect, I am inclined to consider the consequences and impact of this penalty on the family of the petitioner, who for no fault of theirs would be subjected to severe deprivation and their living would be adversely affected. Hence only on sympathetic and compassionate consideration, keeping in view the clean record of service of the petitioner and future of her newly born baby, I, would like to give her an opportunity to serve the force and hence, hereby modify the penalty.....”

The revisional authority thus had apparently acknowledged the fact that the newly born of the petitioner was suffering with illness and it was for that reason that she had been requesting for extension of CCL.

11. Although the respondents have refused CCL on the ground of exigencies of services, they have failed to bring on record any emergent situation showing presence of petitioner on duty imminent (Indeed, they have even failed to show an acute shortage of female staff) to justify refusal of CCL when it was sought for a valid reason. A parent forgets herself and subsumes her interest to the needs and requirements of the child—she risks everything for the welfare of the child.

12. We must remark that CCLs are special types of leaves which are prescribed for the benefit of the child. They serve a larger societal goal and public interest in furthering every individual's right to a wholesome family life, securing the interest and health of infants – all of which are answered by Article 21 of the Constitution of India. Public employers should not ordinarily be denying the CCL to a mother unless it is for compelling and overriding public interest considerations. It could not have been in a case where the child was suffering. The discretion for granting CCL should be

exercised liberally by the employers, keeping its objective and underlying purposes in mind.

13. In the facts and circumstances of the case, we are of the opinion that the penalty imposed by the impugned order dated 01.08.2014 was grossly excessive, perverse and disproportionate. For the same reasons, the order dated 30.12.2014 by which the intervening period dated 03.08.2013 to 02.09.2014 was ordered to be treated as '*dies non*' must also be set aside.

14. The consistent line in the enquiry report has been that even if it were an emergency, once leave has been denied, the petitioner should have rejoined duty and then sought redressal. Perhaps that is required for the proper functioning of a disciplined force and it is therefore we do not interfere with the finding of misconduct itself. Nevertheless, in determining the penalty to be finally imposed, we may certainly take into account the objective of CCL, the petitioner's situation and indeed the respondent authority's callous attitude with respect to her. We find it appropriate that the penalty be reduced to that of only "censure" under Sub-Rule 22 (i) of Rule 36 r/w Rule 34 of CISF Rules, 2001. We also direct that the number of days that the petitioner has overstayed, i.e., 165 days, be treated as having been spent on Child Care Leave. The intervening period from removal to

reinstatement i.e. from 03.08.2013 to 02.09.2014 shall be treated as if she had rendered service. Consequently, she shall be entitled to all arrears of salary as well as consequential benefits, if any. Orders as to the treatment of 165 days of leave as also the period between 03.08.2013 to 02.09.2014 shall be issued in six weeks and arrears shall be paid within the same time. A copy of the same shall be filed for the record along with a supporting affidavit. List for compliance review after eight weeks.

15. The writ petition is allowed in the above terms.

DEEPA SHARMA, J

S. RAVINDRA BHAT, J

OCTOBER 14, 2015

rb/bg