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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.1512/92

Date of decision: *November 26, 1992*

Smt.Amita Maha Patra .. Applicant

versus

Union of India through
Secretary,
Ministry of Health & Welfare,
New Delhi & ors. .. Respondents.

CORAM:- THE HON'BLE SH.P.C.JAIN, MEMBER(A)
THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicant ... Mrs.Rita Kumar,
Counsel.

For the Respondents ... Sh.P.P.Khurana,
Counsel.

JUDGEMENT

(DELIVERED BY HON'BLE SH.P.C.JAIN,
MEMBER(A))

The applicant was appointed, on
compassionate grounds, as a Lower Division Clerk
under the Central Government Health Scheme, Delhi
in the pay scale of Rs.260-6-290-EB-6-326-8-366-
EB-390-10-400 with effect from 10.1.1980 vide
order of the same date (Annexure B). The background
in which she was given compassionate appointment
was that her husband who was a Doctor and
was working as Chief Medical Officer, C.G.H.S.
Sarojini Nagar Dispensary, New Delhi, had died
in a road accident on 13.11.79 at the age of
47. She was allowed to draw 5 pre-mature

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increments with effect from the date of her appointment under FR 27 vide Office Order dated 13.6.80 and her initial pay on appointment was accordingly fixed at Rs.290/- per month(R-1). However, ^{by} /the impugned Office Order dated 12.3.92 (Annexure A), five pre-mature increments sanctioned to her were withdrawn with effect from 18.4.91 and re-fixing her pay at Rs.260 per month with effect from 10.1.80 and Rs.1050/- with effect from 1.1.86. The Accounts Officer concerned was requested by the same order to calculate the overpayments made to her upto 18.4.91 from the initial date of appointment and to intimate the same to the Ministry of Health & Family Welfare for waiving all the over-payments. It is against this order, that the applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing the aforesaid impugned order dated 12.3.92, and as an interim measure to stay the operation of the aforesaid order. By an order passed by a Bench of this Tribunal on 5.6.1992, by way of interim relief, the respondents were restrained from starting effecting recovery. This interim order has continued since then.

2. The respondents have filed a reply contesting the OA and the applicant has filed

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rejoinder thereto. As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose of this OA at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

3. The fact of appointment of the applicant on compassionate grounds and the sanction of five pre-mature increments to her with effect from the date of her appointment are not in dispute. The ground on which the aforesaid pre-mature increments have been ordered to be withdrawn as per impugned order is stated to be on the advice given by the Department of Personnel & Training when two similar cases for grant of advance increments were referred to that department. The Department of Personnel and Training advised (Annexure A-II to the counter-reply) that there is no provision under FR 27 or any other rule to grant advance increments to those employees who are appointed on compassionate grounds merely because their relatives were holding Class I posts at the time of their demise. That department further advised that advance increments sanctioned earlier to three L.D.Cs were not in order and thus may be withdrawn. The name of the applicant is one of

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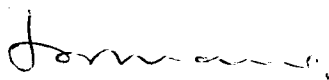
three names mentioned in the impugned order. As regards the other two employees to whom advance increments had been sanctioned, it is stated in the counter reply that both these employees are not in Government service as one of them resigned and the other has retired. Thus it is clear that two of the three employees whose pre-mature increments have been ordered to be withdrawn vide impugned Officer Order dated 12.3.92 have already availed of the benefit and no recovery is sought to be made from them. It is neither the case of the respondents nor there is anything on record to show that the applicant was given an opportunity to show cause before the impugned order was issued. The applicant was given five pre-mature increments with effect from the date of appointment and by an order issued nearly 12 years back. It is well-settled that even an executive order which adversely affects a civil servant in a matter in which he has acquired a vested right, principles of natural justice are required to be followed. This having not been done in the case before us, the impugned order cannot be sustained. Further, in view of the fact that the applicant is due to retire on 31.12.93(para 4.7 of the OA) and also because she was appointed on compassionate

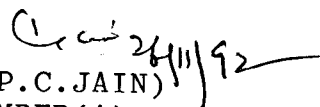
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grounds in very tragic circumstances after giving her relaxation in the matter of age, we do not consider it appropriate at this stage to reserve liberty to the respondents to initiate fresh action for cancelling/withdrawing the pre-mature increments sanctioned to her about 12 years back.

4. In the light of the foregoing discussion, the impugned Office Order dated 12.3.92, in so far as it relates to the applicant herein, is hereby quashed and the respondents are directed not to withdraw the five pre-mature increments sanctioned to her with effect from the date of her appointment vide Office Order dated 13.6.80. Further, the respondents are directed to release her annual increments stated to be due to her with effect from 1.1.91 and 1.1.92 which have not been released and continue to grant her annual increments which may fall due in accordance with the rules. No costs.


(J.P.SHARMA)
MEMBER(J)


(P.C.JAIN)
MEMBER(A)

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