

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/56/2018

Order reserved on 01.09.2021

DATE OF ORDER: 08.09.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Manish Sharma S/o Shri Gopiram Sharma, aged about 46 years, R/o 16, Choudhary Colony, Shankar Nagar (South), Amer Road, Jaipur, Rajasthan. Presently posted as Technical (Group C) at Doordarshan Kendra, Jaipur.

....Applicant

Shri Vinod Goyal, counsel for applicant.

VERSUS

1. Union of India through Secretary, Ministry of Information and Broadcasting, Prasar Bharti Secretariat, New Delhi-110002.
2. The Director General, Doordarshan Score Section, Doordarshan Bhawan, Copernicus Marg, New Delhi-110001.
3. The Deputy Director General, Doordarshan Kendra, Jhalana Doongari, Jaipur-302004.

.... Respondents

Shri Rajendra Vaish, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "1. by an appropriate order or direction, the respondents may kindly be directed to make the reimbursement of Children Education Allowance (CEA) of two survival children i.e. Yashodhan Sharma and Tavrit Sharma and due arrears thereof be paid accordingly to the applicant along with 9% interest. The respondents be further directed not to treat/include Vishesh Sharma in two surviving children after giving him in adoption which is a valid adoption.
 2. by an appropriate order or direction the impugned memorandum dated 04/05.10.2017 (Annex. A/1) and the impugned Memorandum dated 21.05.2015 (Annex. 2) may kindly be quashed and set aside. The respondents be further directed not to make any recovery from the salary of the applicant. The applicant be declared to be eligible to get the payment of Children Education Allowance of two surviving children i.e. Yashodhan Sharma and Tavrit Sharma.
 3. Any other order which has been passed and to be passed during the pendency of the Original Application may also be taken on record and may kindly also be set aside.
 4. Cost be quantified in favour of the applicant.
2. The brief facts of the case, as stated by the applicant, is that he was initially appointed as

Technician on 07.09.1993 and was posted at Chandigarh and thereafter was transferred at Jaipur in the year 1997 and since then he is discharging his duties till date. One Shri Kailash Chandra Sharma has adopted his elder son, Vishesh Sharma, at the time of birth under the provisions of Hindu Adoptions and Maintenance Act, 1956 and since then he has given his elder son to Shri Kailash Chandra Sharma under adoption. The said Adoption Deed was registered and Notified under the Rajasthan Gazette. On 25.09.2012, he submitted Form No. 3, (Annexure A/3), giving details of his family, showing his two sons, namely, Yashodhan Sharma and Tavrit Sharma and the said information was required to be updated by the respondents in his service book. As the said changes were not carried out, the applicant again vide letter dated 11.05.2015 reminded the respondents to make necessary amendment. Thereafter, the applicant was served with a Memo dated 21.05.2015, (Annexure A/2), stating that he has claimed the reimbursement of tuition fees of Yashodhan Sharma and Tavrit Bhardwaj, but in the service book, Tavrit Bhardwaj has been shown as the third child and, therefore, he was ordered to deposit total amount of Rs. 30,750/- of the academic year 2012-13 and 2013-14 in respect of

Tavrit, which was received by the applicant for two academic sessions. It was further stated that if the applicant does not deposit the said amount then the same shall be recovered from the salary of the applicant and the claim for the year 2014-15 was returned back. The applicant made a representation against the recovery order stating that no recovery can be made as he has already given his elder son, Vishesh Sharma in adoption and, accordingly, no recovery was made. The respondent No. 3 replied to respondent No. 2 that the applicant has not claimed any reimbursement of tuition fees / education allowance in respect of first child. Also vide letter dated 31.03.2016, (Annexure-A/7), it was informed to Dy. Director (Administration), New Delhi that the case has been examined in view of two surviving legal children and it was requested to consider the case of the applicant as per the extent DOPT instructions on the subject. Again a representation dated 16.02.2017 was made to clarify the fact of only two children and respondents vide Memo dated 04/05.10.2017, (Annexure A/1), informed the applicant that since first child is given in adoption, only younger child than Vishesh Sharma i.e. only in respect of Yashodhan Sharma would be given payment of children education

allowance and in the case of Tavrit Sharma, education allowance would not be given/reimbursed to which again the applicant has made a representation. Since the action of the respondents in not making the reimbursement of Children Education Allowance (CEA) to his two sons i.e. Yashodhan Sharma and Tavrit Sharma is illegal and unjustified, the applicant has filed the present Original Application for redressal of his grievance.

3. Respondents vide their reply stated that though the applicant states that one Shri Kailash Chandra Sharma has adopted his elder son namely Vishesh Sharma at the time of birth under the provisions of Hindu Adoption & Maintenance Act, 1956, in fact, the applicant has already got the benefit of allowances i.e. Leave Travelling Concession (LTC) of his elder son namely Vishesh Sharma, which is evident from the application submitted by the applicant himself, (Annexure R/1), and the order dated 04.05.2012, (Annexure R/2), issued by the respondents. This proves that the applicant has not approached this Tribunal with clean hands. It was further stated that the applicant has already got the benefit of allowance / LTC of his elder son, Vishesh Sharma. Therefore, as

per rules, applicant is entitled to claim the benefit of first two children and his claim for CEA is not justified and reasonable. Also the respondents have correctly considered in issuing the Memorandum dated 04/05.10.2017 as the applicant has already got the benefit of LTC for his elder son, Vishesh Sharma and as per rules, applicant is entitled to claim the reimbursement of first two children. Respondents further state that in Swami's book, there is reference of CEA about maximum limit of children. In the present case, the applicant has already been considered for first two children and applicant has already availed the benefit of LTC for 1st child Vishesh Sharma, so it would not be appropriate for respondents to consider the applicant for entitlement of 3rd child for reimbursement of CEA and, thus, the action of the respondents in issue of Memorandum dated 04/05.10.2017 and order of recovery vide Memo dated 21.05.2015 is just and proper and in accordance with rules and instructions, therefore, the present Original Application has no merit and is liable to be dismissed.

4. The applicant filed a rejoinder denying the contentions of the respondents. The applicant further

states that after giving one child in valid registered adoption to another person, then that child cannot be considered as one of the two surviving children. Therefore, after adoption, Vishesh Sharma cannot be said as the son of the applicant. Respondents are trying to confuse and mislead this Tribunal as seeking benefit of LTC is different from seeking CEA of two surviving children i.e. Yashodhan Sharma and Tavrit Sharma and that it is clear that he is not claiming their LTC. Also respondents vide their letter dated 16.09.2015, (Annexure A/6), has accepted that the first child has been given in adoption and the Registered Adoption Deed has been placed on record. Therefore, the application of the applicant claiming LTC has no relevance and the present Original Application deserves to be allowed.

5. We have heard learned counsels for the parties at length and examined the pleadings.

6. Both the applicant as well as the respondents have reiterated their submissions.

7. The factual matrix of the case is that the applicant has been appointed on 07.09.1993 and since his transfer to Jaipur in the year 1997, he is

discharging his duties till date with utmost satisfaction. He has three children, namely Vishesh Sharma, Yashodhan Sharma and Tavrit Sharma. As per the submission of the applicant, his elder son was given in adoption at the time of birth to one Shri Kailash Chandra Sharma as per Hindu Adoption and Maintenance Act, 1956. Since the said adoption, Vishesh Sharma cannot be said to be his first or eldest son as after adoption he has two children namely, Yashodhan Sharma and Tavrit Sharma only. As at no point of time, he has claimed any Children Education Allowance (CEA) for his eldest son, Vishesh Sharma, he is entitled to claim the CEA for his two children i.e. Yashodhan Sharma as well as Tavrit Sharma as per rules.

8. On the other hand, respondents have pointed that the applicant at the one hand states that his eldest son, Vishesh Sharma has been given in adoption at the time of birth as per Hindu Adoption and Maintenance Act, 1956 and on the other hand has claimed allowance in the form of LTC of his eldest son, Vishesh Sharma in the year 2012, which can be perused from Annexure R/1 as well as Annexure R/2 as the applicant himself has applied for LTC showing

that Vishesh Sharma is his son and vide order dated 04.05.2012, he was allowed to avail the benefit of LTC. As per rules, applicant is entitled to claim the benefit of first two children only and, therefore, his claim for CEA is totally unjustified.

9. We would also like to refer towards Swamy's book as the applicant himself has referred to the said book and has mentioned about it in connection to the meaning of the word "Child" in context to Children Education Allowance (CEA), which has been defined as under:

"Child" means employee's child (including step/adopted child) wholly dependent on the Government servant."

Also Swamy's book mentions about maximum limit of the children, which is reproduced as under:

"Maximum Limit – The number of children for whom the CEA / Hostel Subsidy is drawn at a time should not exceed three in respect of children born upto 31.12.1987 and two in respect of children born thereafter. However, if the second child birth results in twins or multiple births, assistance shall be admissible to all the children."

Thus, it is clear that the applicant has already been considered for first two children and as such applicant has already availed the benefit of LTC for his first child namely Vishesh Sharma, therefore, the

respondents are justified in not considering applicant's entitlement of his third child for reimbursement of his CEA.

10. It is also shocking to understand that at one juncture, the applicant claims his eldest son Vishesh Sharma to be his son and claims LTC on behalf of the said son, Vishesh Sharma and at other instance states that he has given his eldest son, Vishesh Sharma in adoption as per Hindu Adoption and Maintenance Act, 1956. The applicant cannot rotate as per his convenience and claim benefits/allowances. Though Vishesh Sharma was given in adoption to one Shri Kailash Chandra Sharma but still he remains son of the applicant and claiming LTC for him proves the same. Thus, as the applicant has already claimed benefit of LTC for his first child Vishesh Sharma, so it is not proper on his behalf to claim CEA for his third child, Tavrit Sharma. It is clear that as per rules, the applicant is entitled to claim reimbursement of Children Education Allowance only in respect of first two children, therefore, the action of the respondents in denying his claim for Children Education Allowance is just and proper. Also none of the grounds raised by the applicants are convincing as the same are not

sustainable. As far as the impugned Memo dated 04/05.10.2017, (Annexure A/1), and Memo dated 21.05.2015, (Annexure A/2), are concerned, the same are just and proper.

11. In view of the observations made herein-above, as the action of the respondents is just and proper and the same cannot be interfered with the impugned Memo dated 04/05.10.2017, (Annexure A/1), and Memo dated 21.05.2015, (Annexure A/2), cannot be quashed and set aside. However, as far as recovery part of amount of Rs. 30750/- is concerned, the same need not be recovered from the applicant, if the same is not recovered yet, in view of the judgment of the Hon'ble Apex Court in the case of **State of Punjab and Ors. vs. Rafiq Masih (White Washer) and Ors.**, reported in (2015) 4 SCC 334, as the said amount was paid to the applicant way back in the year 2012-13 and 2013-14.

12. Accordingly, the Original Application is disposed of. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER