

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW**

Reserved on 13.05.2014.

Pronounced on 22<sup>nd</sup> May 2014.

**Original Application No.75/2007**

**Hon'ble Mr. Navneet Kumar, Member (J)**

**Hon'ble Ms. Jayati Chandra, Member (A)**

Smt. Saraswati Devi Sant, aged about 60 years wife of Late B.R. Sant, Resident of 1/125, Viram Khand, Gomti Nagar, Lucknow.

**-Applicant.**

**By Advocate: Sri Shireesh Kumar.**

**Versus.**

1. Union of India, Through the Secretary, Finance, Government of India, New Delhi-1.
2. The Joint Secretary, Department of Revenue, Ministry of Finance, Government of India, New Delhi-1.
3. The Central Board of Direct Taxes, Through its Chairman, Government of India, New Delhi-1.
4. The Chief Commissioner, Income Tax, Government of India, Kanpur.
5. The Commissioner, Department of Income Tax-1, Ayakar Bhawan, Sanjay Place, Agra.

**-Respondents**

**By Advocate: Sri Ashish Agnihotri.**

**ORDER**

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

- (i) *to set aside the order dated 03.01.2007 rejecting the representations submitted by the applicant as contained in Annexure A-11 to this original application.*

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- (ii). *to direct the respondents to allow the annual increments available in the pay scale of Late B.R. Sant for the entire period he remained in service and fix his pay after granting him annual increments and pay the arrears of salary arising thereof to the applicant alongwith an interest @ 18% p.a.*
- (iii). *to direct the respondent to make the payment of arrears of subsistence allowances for the entire period of suspension of Late B.R. Sant taking into account the salary of Late B.R. Sant after re-fixation of the same taking into account the inclusion of annual increments and further direct the respondents to pay the arrears of subsistence allowances after periodical upward revision of the subsistence allowance as per the provisions of the Financial Hand Book alongwith interest @ 18% p.a.*
- (iv). *any other order which is deemed just and proper in the nature and circumstances of the case be also passed in favour of the applicant in the interest of justice alongwith the cost of this original application."*

2. The facts of the case which are averred by the applicant are that her husband Late B.R. Sant joined Indian Revenue service in the year 1957 by appointment order dated 03.09.1957 (Annexure-A-1). He cleared all the qualifying examinations etc. required for his confirmation and further promotion (Annexure-3). In the year 1964, her late husband was posted as Income Tax Officer Class-I at Kolkata. On the basis of certain complaints, an enquiry was instituted against him. The memo of charge was also issued on 19.12.1966, containing 2 charges, the first in respect of purchasing a Motor car for sum of Rs.7000/- without sanction of the department, the second charge in respect of possessing assets disproportionate to the known source of income.

3. An enquiry was conducted and by order dated 13.11.1972 Late B.R. Sant was exonerated from all the charges vide (Annexure A-4). On 11.5.1971, Late B.R. Sant was trapped by the Central Bureau of Investigation

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(CBI) on the allegations of accepting a bribe of Rs.2,00,000/-. Late B.R. Sant was suspended and sanction for prosecution was granted. Late B.R. Sant was held guilty vide judgment dated 06.02.1984. He was awarded the punishment of imprisonment for one year and fine for a sum of Rs.2000/-, failing which he was to undergo further imprisonment for a period of two months (Annexure A-5).

4. Feeling aggrieved by the judgment dated 06.02.1984, Late B.R. Sant filed an appeal No.575/1984 before the Hon'ble High Court in which an interim order was passed on 29.05.1985, staying the operation of the order dated 06.02.1984 (Annexure A-6). The said interim order is still operating and appeal is still pending for disposal. Late B.R. Sant died on 09.09.2001. Meanwhile, by letter dated 10.10.1986, the respondents no.5 communicated an order dated 30.09.1986, passed by Respondent No.1, by which, it was informed that Late B.R. Sant has been dismissed from service without conducting any departmental enquiry. Copy of order dated 30.09.1986 alongwith covering letter dated 10.10.1986 are annexed as (Annexure A-8). In the entire service career Late B.R. Sant was never sanctioned any increment in pay scale admissible to him. He had submitted various applications from time to time for grant of increments and confirmation in the service having passed all qualifying examinations as per the rules.

5. Late B.R. Sant was placed under suspension by an order dated 11.05.1971 and he remained in the service

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(suspended) up to 30.09.1986. But, during the period of his forced suspension, he was not paid the subsistence allowance at the proper rate as the subsistence allowance was not revised as per the provisions of the Financial Hand Book. The subsistence allowance was required to be increased from one half to 3/4<sup>th</sup> of the pay and 100% of the pay at periodic intervals. As no decision was taken on the representation, during his life time the applicant submitted various applications with a prayer that the increments payable to her husband should be made available to him. The various applications submitted are being collectively shown at (Annexure A-10). Ultimately, the Respondent No.1 passed the impugned order dated 03.01.2007 by which her applications were turndown. Hence this OA.

6. The respondents have contested the claim of the applicant through their Counter Reply as well as Supplementary Counter Reply, stating therein that the applicant's husband was dismissed from service in the year 1986 and died in the year 2001. As per Rule 24 of CCS (Pension) Rules dismissal from service entails forfeiture of past service, hence no claim for any payment can be entertained. Moreover, during his lifetime, Late B.R. Sant never made any representation for payment. The applicant has sought for the payments belatedly without explaining any kind of reasons for delay. She may have given repeated representations but that action does not entitle any condonation of delay. It is also submitted that the applicant in his entire service career was subject some form of disciplinary action or the others. Moreover, the case is very old and the service

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record of the applicant, who was dismissed in the year 1986 are not traceable in the office.

7. However, from other supporting documents, it is established that Late B.R. Sant was trapped by the CBI for accepting illegal gratifications of Rs.2 Lakh. He was prosecuted in the Court of Special Judge, Anti Corruption (Center) U.P., Lucknow under Section 120-B, 161 and 119 of IPC and under Section 5 (2) read with Section 5 (1) (b) of the Prevention of Corruption Act. He was awarded punishment by the trial court by an order dated 06.02.1984. Although, the order of the trial court was stayed by an interim order dated 29.05.1985 passed in Appeal No.575/1984 by the Hon'ble High Court. The same has not been set aside. After the advice of UPSC and after considering the facts in entirety the penalty of dismissal of service was imposed by the Hon'ble President vide order dated 30.09.1986.

8. Against the rejection of the review petition, Late B.R. Sant filed an O.A.No.72/1989 in this Tribunal but the fate of which has not known. By the instant OA the applicant had prayed that respondents may be directed to pay provisional pension and other retrial benefits. It is also stated in the Supplementary Counter affidavit that Late B.R. Sant was also awarded the penalty of reduction of his pay from the stage of Rs.480/- to Rs.450/- in the pre-revised scale for a period of two years without cumulative on for the charges involving lack of integrity and devotion of duty by an order dated 30.03.1977 (Annexure SCR-1). On the issue of confirmation and crossing the efficiency bar (EB) the case is determined as

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per conditions given in Notification GIMFOMFI (ii)-E-III (A/67 dated 21.9.67 which states that a government servant may be allowed to cross EB only after he is completely exonerated from any pending disciplinary /vigilance case. As per copies of letter Nos.F.No.Misc./SG/R-I/85-86 (CR-I) dated 27.1.1996 and 1.4.1986 (CR-2) addressed to Tax Recovery Officer, Agra, Late B.R. Sant was paid subsistence allowance regularly.

9. The applicant has filed his Rejoinder Affidavit, stating more or less same things as earlier stated by him in his OA. It is also stated that although the services of her late husband were dispensed with through a punishment of removal but still the applicant is entitled to fixation of pay of her late husband at proper stage for the period he was in employment and the consequential service benefits such as subsistence allowance, during the period he remained under suspension and the terminal benefits payable to her late husband.

10. We have heard the learned counsel for both the parties and perused the entire material available on record.

11. The perusal of the relief prayed for in the OA shows that the applicant has made a very general prayer in the relief clause without specifying what was the salary drawn at various periods of time and what by her reckoning was due backed with relevant documents. Even, the pay-scale/s of her late husband, which he has drawn from time to time, has also not been indicated in

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the entire OA by the applicant. Be that as it may, it appears that there are broadly 2 different categories of payment sought a). pay fixation consequent upon increments earned and EB crossed and b). subsistence allowance. All the payments are to be determined against various disciplinary actions taken. These material facts as disclosed in her representation dated 02.08.2005 (Annexure-11) are that her husband was due to cross EB w.e.f. 02.12.1962 and that nothing adverse was pending against him. In the same representation she has disclosed that Late B.R. Sant was placed under suspension in the year 1964, as mentioned in para-6 (c) of the representation dated 02.08.2006 by the applicant. He was issued charge memo on 19.12.1966. By her own statement an enquiry has been initiated against her husband in the year 1972. It is not clear at that point of time Late B.R. Sant was placed under suspension in 1964 and when he had been reinstated. It is also not clear what is the status of his service when the enquiry was initiated and he was held guilty of charge was also issued on 19.12.1966 and subsequently he was exonerated from all the charges vide order dated 13.11.1972 (Annexure A-4). The penalty was imposed upon him in the year 1977 as disclosed by the respondents, he was trapped by the CBI etc. In short there is no complete & reliable evidence to co-relate the pay drawn and the pay/subsistence allowance admissible. In the absence of any kind of details of service particulars and in face of the statement made by the respondents that by copies of letters by which CR-1/C-2 dated 27.01.1986 and 01.04.1986 written by Inspecting Assistant Commissioner of Income Tax,

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Range-I, Agra to the Tax Recovery Officer-I, Jaipur House, Agra was directed to draw the subsistence allowance in respect of Late B.R. Sant, Income Tax Officer, Group 'A'. It is belief that some subsistence allowance has been paid to him whether or not that has not been established.

**12.** Section 101 of Indian Evidence Act 1872 reads:-

“101. Burden of Proof- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person”.

**13.** In this case the applicant has completely failed to establish her case. Accordingly, the OA is dismissed. No order as to costs.

*J. Chandra*  
**(Ms. Jayati Chandra)**  
**Member (A)**

*Navneet Kumar*  
**(Navneet Kumar)**  
**Member (J)**

Amit/-