

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 10.10.2003

OA No.571/2001

Smt. Vijay Laxmi Dhabaria w/o late Shri O.C.Dhabaria, Ex-Principal, aged about 55 years r/o 171- Laxman Colony, Shyam Nagar, Jaipur.

.. Applicant

Versus

1. Union of India through the Commissioner, Kendriya Vidyalaya Sangathan, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. The Assistant Commissioner, Regional Office, Kendriya Vidyalaya Sangathan, GCF Estate, Jabalpur (M.P.)

.. Respondents

Mr. P.K.Asthana, counsel for the applicant.

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

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PER HON'BLE MR. M.L.CHAUHAN.

The applicant has filed the present OA thereby praying for the following reliefs:-

- "i) by an appropriate order or direction the respondents may be directed to pay arrear of salary and allowance, gratuity and computation at the earliest alongwith interest thereupon.
- ii) respondents may also be directed to make payment of medical bill of Rs. 27878/- and TA bill of travelling from Jaipur to Mahasamund (MP) and travelling expenses incurred in connection with Medical attendance from Mahasamund (MP) to Jaipur

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as advised by the attending neuro-surgeon, alongwith interest from the date of submission of the bill. Respondents may further be directed to make payment of 30 days leave salary alongwith arrear of leave salary of 344 days at the rate of revised pay scale in accordance with the 5th pay commission alongwith interest at the rate of 18 percent per annum from the date the benefit of 5th pay commission is implemented.

iii) by an appropriate writ order or direction respondents may be directed to refund a sum of Rs. 54181/- and 12300/- so illegally recovered from G.P.F. and gratuity DCFG alongwith interest at the rate of 18 percent per annum from the date of recovery."

2. Facts of the case are that husband of the applicant late Shri O.C.Dhabaria while working as PGT (Engligh) at Kendriya Vidyalaya, Jaipur was promoted as Vice-Principal and was posted to Kendriya Vidyalaya, Mahasamund as Principal Gr.II where he reported for duty on 19.11.94. The husband of the applicant expired on 12.10.96. Though in this application the applicant has raised number of grounds including payment of arrears of salary and allowances, gratuity, computation alongwith interest, when the matter was listed on 22.5.03, the learned counsel for the applicant submitted that he is restricting his claim only to recovery of Rs. 12,300/- on account of travelling advance and sum of Rs. 54,181/- on account of excess payment of leave encashment. The learned counsel for the applicant further argued that though the husband of the applicant has submitted TA bill within time

and it was on account of the objection raised by the respondents that the claim could not be settled within the time as prescribed under the rules, as such his client is not at fault. His further contention was that recovery on account of excess payment of leave encashment amount has been wrongly calculated and no such amount was required to be recovered from the deceased employee. On the basis of the arguments advanced by the learned counsel for the applicant, the matter was adjourned for further hearing on 21.7.2003 and the learned counsel for the respondents was directed to check-up the matter further and make submissions in that behalf. Thereafter the matter was listed from time to time and lastly the matter was listed on 7.10.2003. Pursuant to the observations made by this Tribunal vide order dated 22.5.2003, the respondents have filed MA No.410/2003 thereby annexing certain documents in order to show that late Shri O.C.Dhabaria never submitted the TA <sup>Claim</sup> on transfer from Jaipur to Mahasamund.

2.1 In the counter filed by the respondents, it has been stated that only one TTA bill pertaining to late Shri O.C.Dhabaria joining on promotion from Jaipur to Mahasamund was received in the office and in receipt of the TTA bill certain clarifications were sought from the applicant before the time barred TTA bill can be submitted to the Commissioner Kendriya Vidyalaya Sangathan (KVS), who is the competent authority as Head of the Department to settle such claims. The claim of the applicant was not allowed by the Commissioner as there was no provision in the rules to condon the delay beyond one year. This fact was also informed to the applicant vide communication dated 26.5.2000 (Ann.R1). Regarding recovery on amount of leave salary, the respondents have stated that leave

salary as admissible to the husband of the applicant has already been worked out and paid. However, due to modification of the leave sanctioning order, payment if any is still found due, it will be worked out as per rules and paid to the applicant.

3. I have heard the learned counsel for the parties and gone through the material placed on record.

3.1 As already stated above, the grievance of the applicant is two fold.

3.1.1 First grievance of the applicant is that she is entitled to the TTA claim of transfer of her late husband from Jaipur to Mahasamund and the same could not have been rejected as time barred. I have given thoughtful consideration to the submissions made by the learned counsel for the applicant. From the material placed on record, it is quite evident that the applicant was transferred on promotion from Jaipur to Mahasamund (MP) in November, 1994. The applicant was relieved from Jaipur on 7.11.1994, which can be seen from the Last Pay Certificate attached by the respondents with their MA No.410/2003 and marked as Ann.MAF/4. It is also not disputed that husband of the applicant died on 12.10.96. On account of his transfer from Jaipur to Mahasamund, he was paid advance of Rs. 11,800 by the Principal, Kendriya Vidyalaya, Jaipur which amount was adjusted by the Principal, Kendriya Vidyalaya, Mahasamund as can be seen from letter dated 1.8.95 (Ann.MAF/3). The learned counsel for the respondents have also placed on record letter dated 27.3.96 written by the Principal, Kendriya Vidyalaya, Mahasamund to the Assistant Commissioner, KVS, Regional Office, Jabalpur which has been placed on record as  
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Ann.MAR/2. From perusal of this letter it is evident that the husband of the applicant joined as Vice Principal, Kendriya Vidyalaya, Mahasamund on 21.11.94 with Transfer TA/TA advance of Rs. 11,800. He left the station on 6.11.95 for his treatment at Jaipur referred by the Bihali Hospital without submitting the Transfer TA bill in anticipation to come back soon after his treatment. Thus, from this document, it is evident that the applicant who joined on transfer on 21.11.94 and died on 12.10.96 did not submit the transfer TA bill for a practical period of about 2 years. The contention of the learned counsel for the applicant that husband of the applicant was suffering from Brain Tumor as such he could not submit the transfer TA bill, cannot be accepted as the applicant fell suddenly ill on 6.11.95 as per averment made by the applicant in Para 2 of the application whereas he joined on transfer/promotion at Kendriya Vidyalaya, Mahasamund on 21.11.94, practically one year before he fell ill. From the documents placed on record by the applicant as Ann.A4,A5 and A6, it can be seen that four persons of the family travelled in Taxi from Jaipur to Nagpur and they have produced only travelling bill upto Nagpur and not upto Mahasamund. No reason is forthcoming as to what prevented the husband of the applicant to submit the bill of transfer TA within the time allowed under the rules. From the material placed on record, it is evident that it is only the wife of late Shri O.C.Dhabaria, who subsequently submitted the TTA bill of transfer of her late husband only after the amount was deducted by the respondents from the pensionary benefits. As such no infirmity can be found, if the applicant was informed vide order Ann.R1 that the TTA bill pertaining to transfer from

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Jaipur to Mahasamund was submitted after a lapse of one year. Request for condonation of delay has been considered by the competent authority but the same was not agreed to as there was no provision of condonation of delay beyond normal time. The learned counsel for the applicant has not shown any rule where the TTA claim can be accepted even after a lapse of one year. On the contrary, there is specific rule in case the adjustment bill is not submitted in due time, the TA claim stands forfeited. At this stage, it will be useful to reproduce S.R.194-A of FF & SF Part-II (Travelling Allowances) :-

"S.R. 194-A. The right of a Government servant to travelling allowance, including daily allowance, is forfeited or deemed to have been relinquished if the claim for it is not preferred within one year from the date on which it became due."

At this stage it will also be useful to refer to the Government of India decision below rules 226 and 234 of the GFF, which provides that where after drawal of an advance under the above rule, a Government servant has not submitted the adjustment bill in due time and consequently his right to travelling allowance claim stands forfeited under S.R.194-A, the advance so drawn shall be recovered from his pay bill or any other dues in one instalment by the authority competent to sanction such an advance.

In view of the aforesaid provisions, no infirmity can be found if the advance taken by late Shri O.C.Dhabaria was recovered by the respondents from the pensionary benefits.

3.1.2 Regarding the second contention put forth by the learned counsel for the applicant it was argued that vide letter dated 8/12.11.96 (Ann.R2) the leave encashment of the applicant was regularised in the following manner:-

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- "(a) 266 Earned Leave from 04.11.95 to 26.07.96.
- (b) 45 days Commuted Leave (i.e. 90 days HPL) from 27.07.96 to 09.01.1996.
- (c) 33 days EOL from 10.9.96 to 12.10.96."

Thus the learned counsel for the applicant argued that as against payment of 344 days leave only 314 days payment has been made vide order dated 9/10.12.98. Thus the leave of 30 days is still due and is required to be paid by the respondents.

3.2 The respondents in their reply have categorically stated that the order dated 8/12.11.96 was modified vide subsequent order dated 1.10.99 as according to rule 26 of the Central Civil Service (Leave) Rules, Earned Leave can be sanctioned and availed upto 180 days at a time and as such 266 days Earned Leave sanctioned from 4.11.95 to 26.7.96 could not be sanctioned. According to respondents, the leave period of the applicant was regularised in the following manner:-

- "(a) 180 days Earned Leave from 04.11.1995 to 1.5.96.
- (b) 042 days Commuted Leave i.e. 84 days Half Pay Leave from 02.05.96 to 12.06.1996.
- (c) 122 days EOL from 13.06.1996 to 12.10.1996."

At the outset, it may be submitted that the contention of the learned counsel for the applicant is totally misconceived. Even if the order dated 8/12.11.96 on which reliance has been placed by the applicant is taken into consideration, this order shows that the applicant was sanctioned 266 days Earned Leave, 45 days (Half of 90 days) Commuted Leave and 33 days EOL, in aggregate 344 days. It cannot be disputed that according to rule 40 (5) of CCS (Leave) Rules, a person is not

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entitled to any leave salary where the absence of the period is regularised as Extra Ordinary Leave. If this fact is taken into account, the applicant was not entitled to any amount for 33 days. Thus the contention of the learned counsel for the applicant that she was paid less salary for 30 days and the said amount was recovered by the respondents from the retiral benefits cannot be accepted. The learned counsel for the applicant further argued that even if the modified order dated 1.10.99 whereby the applicant was allowed only 180 days Earned Leave sanctioned vide order dated 8/12.11.96 is taken into account, in that eventuality, as per rules prevalent at that time, the applicant was entitled to accumulate leave upto 240 days and he was entitled to cash equivalent to leave for the balance leave in his credit in terms of rule 39-A. According to him, the respondents have not paid cash equivalent to leave salary to the applicant for the balance leave in the credit of the husband of the applicant.

3.3 The respondents in para 5 of their reply have specifically stated that the leave salary as admissible to the husband of the applicant has already been worked out and paid. However, due to the modification of the leave sanction order, payment, if any, is still found due will be worked out and paid to the applicant. In view of this stand taken by the respondents, it is hereby directed that in case husband of the applicant was entitled to cash equivalent to leave salary on account of the modified order dated 1.10.99 (Ann.R3), the same shall be worked out by the respondents and the balance payment, if any, be paid to the applicant within two months from the date of receipt of this order. In case the applicant is not

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entitled to any amount on account of cash equivalent to leave salary in terms of modified order <sup>dated 1-7-1954</sup> <sub>Ann. R. 3</sub>, intimation to this effect would be given to the applicant by the respondents within the aforesaid period thereby giving details of the leave account of the husband of the applicant.

4. With the above observations, the present OA is disposed of with no order as to costs.



( M.L.CHAUHAN )

Member ( J )