

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO.060/00852/2014 Date of order:- October 12, 2015.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Varun Bansal s/o late Sh. Raj Kumar Bansal s/o Sh. Nand Kishore Bansal, resident of House No.27, Bharat Nagar, Bathinda (PB).

.....Applicant.

(Mr. Varun Bansal, applicant in person)

Versus

1. Union of India through Secretary of Human Resource Development Room No.302, C-wing, Shastri Bhawan, Rajendra Prasad Road, New Delhi, Delhi-110 001 under Govt. of India.
2. The Commissioner, KVS (HQRS), 18th Institutional Area, Shaheed Jeet Singh Marg, New Delhi. \
3. Deputy Commissioner, KVS(RO), Sec. 31-A, SCO 72-73, Chandigarh.

...Respondents

(By Advocate : Mr. R.K.Sharma).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

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Applicant Varun Bansal has filed the present OA with a prayer that the respondents be directed to pay three increments from 1993 to 2004 and grant senior scale.

2. Facts of the case are that the mother of the applicant joined the service of respondent school on 21.8.1993 and after serving for more than eleven years, she died on 7.9.2004. The applicant has stated that when recommendations of 5th Pay Commission were implemented in 1998 from 1.1.1996, his mother was not given the benefit of two annual increments i.e. August, 1994 & August, 1995 while fixing her pay in the revised pay scale. He has further stated that her mother was denied the benefit of 3rd increment due in August, 2004. By wrongly fixing the pay and denying the benefit of annual increment to her mother, the applicant claims has resulted in his mother getting lesser payment in respect of DCRG and leave encashment. The applicant has further stated that since his mother had completed 12 years of service, she may be granted senior scale (PRT) due to her clean service record. Hence the present OA.

3. Pursuant to notice, the respondents have filed their written statement wherein they have stated that the present OA is liable to be dismissed being mis-joinder and non-joinder of proper and

necessary parties; the OA is barred by the law of limitation and the OA is not maintainable at the behest of the present applicant.

4. On merits, they have stated that the mother of the applicant had already been given the benefit of two annual increments of August, 1994 & August, 1995 as per entry made in her service book (Annexure R-1). The mother of the applicant had availed extra ordinary leave from 1.8.2004 to 7.9.2004 i.e. the date when she died and in view of Rule 33 of the CCS (Pension) Rules under the heading of Emoluments Note 3, wherein it is mentioned that "If a government servant immediately before his retirement or death while in service had been absent from duty on extraordinary leave or had been under suspension, the period whereof does not count as service, the emoluments which he drew immediately before proceeding on such leave or being placed under suspension shall be the emoluments for the purposes of this rule". Accordingly, the mother of the applicant is not entitled for increment due in August, 2004 as she had not joined duties even for a single day in August. They have thus prayed for dismissal of the OA.

5. The applicant has filed a rejoinder by generally reiterating the averments made in the OA.



6. We have heard Shri Varun Bansal, applicant appearing in person and Shri R.K.Sharma, learned counsel for the respondents.

7. Although the OA is debarred by limitation as the final admissible dues were granted on 11.9.2007 and the applicant has chosen to agitate the matter before us only in September, 2014 after a lapse of over 7 years, we have, in the interest of justice, decided to dis-regard this infirmity in the OA.

8. Through oral submissions, the applicant has sought the following relief:-

a) to grant 3 increments for 1993 , 1994 and 2004;

b) to grant senior scale to his mother on sympathetic consideration on humanitarian grounds; and

c) to refix the admissible emoluments at the time of the death of her matter.

It is his contention that his mother has not been given the benefit of two increments i.e. August, 1994 & August, 1995 and further on 1.8.2004 on completion of 11 years.

9. The respondents in their response have enclosed the copy of the service book of the mother of the applicant. A perusal of the same reveals that there are entries in the service book made by the Principal, which reads as under:-

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"Granted annual increment of Rs.30/- raising his salary from Rs.1200/- to Rs.1230/- w.e.f. 1.8.94.

Sd/- Principal.

Granted annual increment of Rs.30/- w.e.f. 1.8.95 raising his salary from Rs.1230/- to Rs.1260/-

Sd/- Principal.

Further there are entries made by the Principal granting further increments. We also find that these entries have been countersigned by the mother of the applicant against each of these entries indicating that these entries were in her knowledge. Therefore, on the face of it, it cannot be said that annual increments as per prevailing rates in 1994 and 1995 were not granted by the respondents. The applicant also seeks to establish some connection between the 5th Pay Commission recommendations which came into effect w.e.f. 1.1.1996 and grant of these increments. However, he has not elaborated as to how the two increments granted to his mother in 1995 & 1996 are inadequate and why these need to be revised ? Ordinarily, when the recommendations of Pay Commission are implemented, replacement pay scales are provided and the government employee's pay is to be fixed in the new pay structure in the light of the Pay Commission recommendations. On perusal of the service book, we find that the pay of the mother of the applicant was fixed as per the 5th Pay Commission recommendations and there is an entry to this effect. The applicant has not challenged neither this pay fixation nor the

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entries with regard to grant of annual increments. In the light of the above, his claim about non-grant of two increments i.e. August, 1994 & August, 1995 seems un-substantiated.

10. As regards her 3rd claim with regard to grant of increment in August, 2004, the respondents maintain that while the annual increment was due on 1.8.2004, the mother of the applicant was on extra ordinary leave from 1.8.2004 to 20.8.2004 and thereafter the said leave was extended from 21.8.2004 to 7.9.2004 and his mother died on 7.9.2004. It is the contention of the respondents that in the light of the fact the mother of the applicant was on extra ordinary leave on the due date of increment, the rules provide that this increment cannot be given to her. As per Rules, if a government servant who is on earned leave/child care leave/extra-ordinary leave do not join on the date of increment, he/she will not be granted increment till he/she joins the duty. In this case, not only the mother of the applicant was not on duty on the due date of increment, she actually never joined back the duty as a consequence of her unfortunate demise.

11. The applicant has also assailed this contention by making an assertion that this rule is applicable only to work-charged and

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industrial employees. He had also enclosed the relevant rule position which reads as under:-

"12. Regulation of increments on the 1st of month - The sanction of the President is conveyed hereby to the increment of employees being admitted from the first of the month in which it would fall due under the operation of the normal rules and orders regulating increments.

These orders shall take effect from 1st November, 1973.

This order is applicable to work-charged and industrial employees also who are not engaged on a casual basis".

This provision suggests that the applicability of sanction of increments to those employees being admitted from the first of the month **is also** applicable to industrial workers and work-charged employees. However, it cannot be construed that this is applicable only to industrial workers or work-charged employees and not to other kind of employees. As a matter of fact, it is a provision that actually benefits an employee and, therefore, its ambit has been enlarged to include work-charged and industrial workers also.

12. From this perspective, the decision of the respondents for not granting her increment on 1.8.2004 seems to be in consonance with the rule position.

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13. As regards the fixation of her total emoluments at the time of her death, the respondents have invoked Note 3 of Rule 33 of the CCS(Pension) Rules, which reads as follows :-

"Note 3.- If a government servant immediately before his retirement or death while in service had been absent from duty on extraordinary leave or had been under suspension, the period whereof does not count as service, the emoluments which he drew immediately before proceeding on such leave or being placed under suspension shall be the emoluments for the purposes of this rule".

It is the contention of the respondents that since the mother of the applicant continued to be on extraordinary leave till her death, she will get the same emoluments which she drew immediately before proceeding on extraordinary leave.

14. Lastly, the request for counting her service as 12 years and she be given the benefit of senior scale, the respondents have stated that since the mother of the applicant had completed 11 years and 17 days of service and as per the instructions issued by the Ministry of HRD, Department of Education, Government of India, letter dated 12.8.1987, the senior scale will be given to those teachers who have completed 12 years of service, such a claim is inadmissible. In this case, the mother of the applicant has not completed 12 years of service and, therefore, she was denied the benefit of senior scale. In any case, this relief was being claimed on compassionate ground and not as per the rules.

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15. We have gone through the reliefs claimed by the applicant and find that the respondents have been able to explain satisfactorily the basis of the decision taken with respect to the reliefs claimed by the applicant. These decisions are in consonance with the relevant rules and it will be inappropriate to fault these decisions as illegal and in violation of rules. The case of the applicant's mother has been dealt with by the respondents as per the extant rules on the subject then and in our view; no injustice or financial loss has been caused to the son of the deceased employee, by wrong application of rules. We may also note here that in the OA, there is no challenge to any rule.

16. In view of the above, we do not find any ground to interfere in the present OA and the same is accordingly dismissed. No costs.

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- October 12, 2015.

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