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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(ORDER RESERVED ON 14.12.2016)

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Date of filing: 17.12.2014

O.A No.060/01133/2014

Date of decision: 16.12.2016

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

...

1. Vijay Kumar (aged 22 years) S/o Late Smt. Ram Kali and Late Sh. Jagminder S/o Jogi Ram, R/o H.No.523, Housing Board Colony, Sirsa Road, Hisar.
2. Ajay (aged 24 years) S/o Late Smt. Ram Kali and Late Sh. Jagminder S/o Jogi Ram, R/o H.No.523, Housing Board Colony, Sirsa Road, Hisar.
3. Ravi (aged 26 years) S/o Late Smt. Ram Kali and Late Sh. Jagminder S/o Jogi Ram, R/o H.No.523, Housing Board Colony, Sirsa Road, Hisar.

...APPLICANTS

BY ADVOCATE: Sh. N.R. Dahiya

VERSUS

1. Union of India through Secretary, Ministry of Agriculture, Krishi Bhawan, New Delhi.
2. Indian Council of Agricultural Research through its Secretary, Krishi Bhawan, New Delhi.
3. National Research Centre on Equines, through its Director, Sirsa Road, Hisar, Haryana.
4. The Senior Manager, Central Record Keeping Agency, National Securities Depository Ltd., 4th Floor, A Wing Trade World, Kamla Mills Compound Senapati Bapat Marg, Lower Parel, Mumbai 400013.

...RESPONDENTS

BY ADVOCATE: Sh. R.K. Sharma, counsel for respondents no.1 to 3.
None for respondent no.4.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A):-

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

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- "8 (a) That the impugned replies dated 20.09.2013 (Annexure A-9), and dated 15.02.2014 (Annexure A-8) be quashed.
- (b) That the respondents be directed to release all pensionary benefits including family pension and payment of GPF, and Death Gratuity etc. to the petitioners owing to the death of their mother who died while in service."

2. It is stated in the OA that Smt. Ram Kali, mother of applicants, had joined service with National Research Centre on Equines, Sirsa Road, Hisar on 11.03.2005 in the post of SSG-1 vide joining letter dated 11.03.2005 (Annexure A-1) in compliance with appointment letter bearing No.F.No.9-301/Misc/2004/ dated 07.03.2005 (Annexure A-2). Smt. Ram Kali, was in fact given appointment on compassionate grounds in place of her husband / father of the applicants, late Sh. Jagminder, who had expired earlier on 11.05.2003 while in service with the National Research Centre on Equines, Sirsa. Unfortunately, Smt. Ram Kali also expired on 08.08.2012 due to kidney failure.

3. On the death of Smt. Ram Kali her son, applicant no.1, approached National Research Centre on Equines vide his letter dated 27.08.2012 (Annexure A-5) for the release of all the amounts due to the applicants on the death of their mother. In the nomination for GPF, the names of all the applicants were entered. Besides, Smt. Ram Kali, was contributing towards New Pension Scheme (NPS). The applicants had also submitted the medical bills for treatment of Smt. Ram Kali for reimbursement vide letter dated 16.08.2012 (Annexure A-6-C). Since there was no progress in the release of the dues to the applicants, legal notice was issued by them on 15.07.2013 (Annexure A-7) and reminder was also sent on 01.02.2014. In response to the reminder, the respondent no.3 replied vide letter bearing F.No.4-62/PF/2005/5452 dated 15.02.2014

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(Annexure A-8) and enclosed the copy of the letter of their counsel dated 20.09.2013 (Annexure A-9) rejecting all the prayers of the applicants on the following unsustainable grounds:-

- (a) Ramkali had taken loan and same not yet returned,
- (b) Applicants are occupying govt. accommodation,
- (c) In the certificates of Ajay and Ravi name of mother is shown as Sunita, at the same time it was admitted that in the certificates of Vijay name of Ramkali is correctly mentioned.
- (d) The applicants are major, well educated and fully capable of maintaining themselves.

The applicants had vacated the govt. accommodation and paid the rent, while outstanding loan if any could be settled as per the Govt. policy. Since, the dues still remained to be released to the applicants, hence, this Original Application.

4. Written statement was initially filed on behalf of the respondents on 06.04.2015, which merely gave the status of the case, but it was clear that the dues of the applicants had not been released to them.

5. Replication was filed on behalf of the applicants on 05.05.2015.

6. On 23.09.2015, MA No.060/01032/2015 was filed on behalf of the respondents, wherein, para 3 read as follows:-

"3 That after filing of the reply the following exercise has been carried out by the answering-respondents:-

- (i) Provisional Family Pension and Death Gratuity to the family of deceased employee Late Smt. Ram Kali W/o Late Sh. Jagminder, Ex. SSS under New Pension Scheme has been authorized in favour of Sh. Vijay Kumar S/o Late Sh. Jagminder by NDRI vide their letter No.Pen/Audit/15/946 dated 16.06.2015 (Annexure R-10), and arrears of the pension have been released vide F.No.4-62/PF/2005/1221 dated 17.07.2015 (Annexure R-11).
- (ii) Family pension to Sh. Vijay Kumar S/o Sh. Jagminder (PP No.1070-ICAR-NDRI) has been authorized by Sr. Finance & Accounts Officer, NDRI vide their F.

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No.Pen/1101/Audit/2005/1681 dated 12.08.2015
(Annexure R-12).

- (iii) The payment of Medical claim worth Rs.96197/- after deduction of Rs.15000/- as Medical advance i.e. Rs.96197-15000=81197.00 has been released vide letter no.4-62/PF/2005 dated 13.08.2015 (Annexure R-13).
- (iv) The case for the payment under New Pension System has been sent to Exceptional Handling Cell, Mumbai vide letter No.6-62/PF/2005/3368 dated 02.09.2015 (Annexure R-14), and further action will be taken on receipt of response from them."

7. The response to this MA was filed by learned counsel for the applicants on 24.10.2015 pressing that under Section 11 of the Pension Act, 1871, the pension was not attachable. Further in terms of Section 13 & 14 of Payment of Gratuity Act, 1972, gratuity was also not attachable and hence, the respondents could not have deducted the amount due on account of the House Building Advance drawn by the applicants from the Death-cum-Retiral dues of the deceased employee. It was also stated that although some payment had been made to the applicants, this was released after a long time and hence the applicants were also entitled to interest on account of the belated payment. Subsequently, MA No.060/00963/2016 was filed on behalf of the respondents, wherein, para 3 & 4 read as follows:-

"3. That the respondents have examined the Rule position and the action of the respondents in effecting recovery is justified in terms of the following position of the rules:-

- (i) That the respondent-institute i.e. National Research Centre on Equines, is a constituent of the Indian Council of Agricultural Research, New Delhi, which is a Society registered under Societies Registration Act, 1860, employees whereof are governed by the CCS (Pension) Rules, 1972 and not under the Pension Act, 1871. In terms of CCS (Pension) Rules, Rule 71, 73, read with Rule 80 (c), Payment of Gratuity Act 1972 is not applicable as service condition of employees of the

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respondent-institute are governed by the specific Rules, so the general rules governing gratuity i.e. Gratuity Act is also not applicable to its employees.

- (ii) That the House Building Advance is governed by the provisions of House Building Advance Rules and not by the G.F.R. and the recovery can be effected in terms of the House Building Advance Rules as well as in terms of Conveyance Deed. A copy of extract of House Building Advance Rules is attached (Annexure R-15) and Office Order F. No.2-48/B&A/08/2880-84 dated 02.09.2009 vide which House Building Advance was sanctioned in favour of mother of the applicants is attached as Annexure R-16.

4. That thus the Rules relied upon by the applicants are not applicable and the specific rules dealing with the recoveries are governed by CCS (Pension) Rules, 1972 and House Building Advance Rules. An extract of CCS (Pension) Rules, 1972 is attached as Annexure R-17."

8. Arguments advanced by learned counsel for the parties were heard, when learned counsel for the applicants stated that he had received the statement regarding the account of the House Building Advance in respect of Smt. Ram Kali from the counsel for the respondents. It was clear that interest had been recovered on the HBA up to June, 2015 and deduction had been made from the DCRG. Deduction was also made from the Dearness Relief from the arrears of Family Pension paid to the applicants. He again pressed his contention that as per the Pension Act and Gratuity Act, no recovery could be made from these dues payable to the deceased employee.

9. Learned counsel for the respondents stated that in case of Government Employees / Employees of Autonomous Organizations under the Government of India, there was provision for deduction of gratuity in respect of amounts recoverable from a retiring / deceased employee. However, learned counsel fairly submitted that as per

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Government of India's order issued vide OM No.10/15/59-H-III, dated 23.07.1962 and OM, dated 15.04.1965, where a part of the advance sanctioned to an employee under the HBA Rules or interest on the amount of advance is to be wiped off by adjustment either from Gratuity / DCRG, no interest should be recovered on the principal amount of outstanding advance beyond the date of retirement/death. From the statement of account that had been provided by the respondents, it was seen that recovery of interest had been made up to June, 2015, while the mother of the applicants expired on 08.08.2012. He stated that he would advise the respondent-department to recalculate the amount of interest to be recovered. Learned counsel also conceded that since Dearness Relief was part of the family pension, again deduction of the outstanding dues in respect of the employee Smt. Ram Kali could not be made from the arrears of family pension paid to the heirs of the deceased employees, Sh. Jagminder and Smt. Ram Kali. Hence revised calculation sheet had to be prepared regarding DCRG to be released to the applicants. Further, the dearness relief deducted from the arrears of family pension had also to be reimbursed to the family.

10. We have carefully considered the submissions made by learned counsel for the parties. The contention of learned counsel for the applicants that no deduction could be made from the DCRG cannot be accepted, since, the HBA Rules and FRs provide for recovery of outstanding advances from the retiral benefits of a deceased employee. However, keeping in view the concession made by learned counsel for the respondents, the respondents are directed to recalculate the amount recoverable on account of HBA drawn by Smt. Ram Kali and the amount

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now found due to the applicants may be released to them. Action in this regard may be completed within a period of three months from the date of a certified copy of this order being served upon the respondents. It is also observed there has been unreasonable delay in the finalization of this matter. Although Smt. Ram Kali expired on 08.08.2012 as per the respondents own admission the authorization regarding Provisional Family Pension and Death Gratuity as well as Family Pension have been issued in July / August, 2015. After the calculation is finalized, if some amounts are to be found due to the applicants, the interest on account of delayed payments may also be paid @ 6% calculating the amounts to be due from 08.12.2012 as a maximum period of four months can be considered to be reasonable for settling the pensionary benefits of a deceased employee. The present OA is disposed of with these directions. No costs.

(RAJWANT SANDHU)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.
Dated: 16.12.2016.

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