

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.172/2017
with
OA No.170/2017

Reserved on: 05.04.2018
Pronounced on: 06.04.2018

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

OA No.172/2017

Smt. Zubeda aged about 35 years,
Widowed wife of late Sh. Mohd. Naim Ahmed
s/o Sh. Shafeeq presently died on 20.2.2011
in accident while functioning as CLTS conferred
w.e.f.10.07.97 in the establishment of RTS
& Depot Sharnpur (UP) under
Administrative Control of RVS (RV-1)
QMG's Branch AHQ Min. of Defence,
R/o Village Ghogheryki Post Sadak Dudhli,
Distt. Saharanpur – 247 001.

...Applicant

(By Advocate: Sh. VPS Tyagi)

Versus

Union of India through

1. Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Director General of RVS (RV-1)
QMG's Branch AHQ,
IHD of MOD (Army)
West Block-III, R.K. Puram,
New Delhi – 110 066.
3. The Controller General of Defence Accounts,
(CGDA),
Ulan Batar Marg,
Palam Delhi Cantt – 110 010.
4. The Controller of Defence Accounts (Army)
Belvadier Complex,
Meerut Cantt (UP)-250 001.
5. The Commandant,
RTS & Depot
Sharanpur – 247 001.

...Respondents

(By Advocate: Shri M.S. Reen)

OA No.170/2017

Smt. Saraswati aged about 36 years,
Widowed wife of late Sh. Govinda
s/o Sh. Laxman presently died on 03.01.2009
while functioning as CLTS conferred
w.e.f.01.10.97 in the establishment of RTS
& Depot Sharnpur (UP) under
Administrative Control of RVS (RV-1)
QMG's Branch AHQ Min. of Defence,
R/o Rampuri Colony, Khalasi Line Rampuri,
Colony, Shahrampur – 247 001.

...Applicant

(By Advocate: Sh. VPS Tyagi)

Versus

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...Respondents

(By Advocate: Shri M.S. Reen)

ORDER

Since common question of law and fact is involved in both the OA, they are being disposed of by this common order. However, for the sake of convenience, OA

No.172/2017 is being taken as a lead case wherein the applicant has prayed for the following main reliefs:-

- a. *Direct the respondents to make payment of the service gratuity to which she has become entitled on account of demise of her husband occurred on 20.02.2011 while was working as Casual Labour conferred with Temporary Status (CLTS) by operation of law under DOP&T OM dated 10.09.1993 which fell due w.e.f. the date of death along with 9% interest p.a. w.e.f. 20.02.2011 till the payment is made;*
- b. *Direct also the respondent no.5 to work out the payment of leave encashment to which the applicant's husband had become entitled upto 20.02.2011 by also working out interest @ 8% on the leave encashment amount which became due.*

2. Brief facts of the case are that the applicant's husband Mohd. Naim Ahmad was inducted as daily wager w.e.f. 01.01.1987 at the age of 18 years and he was being paid monthly wages on muster rolls out of contingency. He was conferred with temporary status by operation of law vide DOP&T OM dated 10.09.1993 reckoned w.e.f. 10.07.1997. The applicant submits that her husband died on 20.02.2011 in an accident while working as CLTS in RTS & Depot Shahrampur and after the demise of her husband, the respondents did not release the amount of leave encashment and gratuity which became due to her on the ground that the applicant's husband was not entitled to leave encashment since he had not worked for more than

240 days in a calendar year as per para 5 (ii) of DOP&T OM dated 10.09.1993 which, as contended by the applicant, has not been correctly interpreted by the respondents. The applicant submits that the respondents have also not understood the rule position qua computation of leave in respect of CLTS as that of the applicant's husband as has been observed by this Tribunal in the case of **Jaipal Singh vs. Union of India & Ors.** [OA No.1255/2013 decided on 13.03.2015], relevant paragraph 10 whereof is reproduced as under:-

“10. As regards the applicant's grievance of non-payment of benefits of leave encashment, the respondents have contended that the applicant is not entitled to the benefits of leave encashment. In support of their contention, the respondents have referred to paragraph 5(iii) of the DoP&T's O.M. dated 10.9.1993 wherein it has, inter alia, been stipulated that casual labourers with temporary status will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service. We are not inclined to accept the contention of the respondents inasmuch as the applicant retired on 31.8.2011 on attaining the age of superannuation and, therefore, neither his service can be said to have been terminated, nor can he be said to have quitted his service on 31.8.2011. Rule 39(2)(a) of the CCS (Leave)Rules, 1972 stipulates that where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to grant leave shall, suo motu, issue an order granting cash equivalent of leave salary for both earned leave and half pay leave, if any, at the credit of the Government servant on the date of his retirement subject to a maximum of 300 days. The respondents have not produced before this Tribunal any material or executive instruction issued by the Government of India laying down that benefits of leave encashment are not admissible to casual labourers with temporary status. Therefore, we are of the considered view that the applicant is entitled to be paid benefits of leave encashment on his retirement from service as casual labourers with temporary status. Though the

applicant has claimed to have more than 300 days of leave available in his leave account, yet no document has been produced by him in support of his aforesaid plea. Accordingly, the respondents are directed to determine the benefits of leave encashment of the applicant as per the leave account and pay the same with interest at 8% per annum for the period from 31.8.2011 till the date of actual payment.”

3. The applicant submits that her husband is no different than a retired employee since he expired on 20.02.2011 in an accident and, therefore, he is also entitled for payment of leave encashment in a similar manner. The applicant contends that she has also been denied the gratuity amount on the ground that the services of the deceased employee were not regularized during his life time, which is contrary to the Payment of Gratuity Act, 1972 which provides that even the CLTS who could not be regularized for any reason or are superannuated or died, they are covered under this Act. The applicant adds here that the act of the respondents in not releasing the dues pertaining to leave encashment and gratuity is contrary to the rules and against the principles of natural justice. The applicant, therefore, prays that the instant OA may be allowed in terms of the decision of this Tribunal in **Jaipal Singh vs. Union of India & Ors.** (supra).

4. The respondents have filed their written reply and refuted the claim of the applicant for leave encashment and

gratuity on the ground that since the services of the applicant's husband were neither regularized nor had he worked for more than 240 days in a calendar year as per para 5 (ii) of DOP&T OM dated 10.09.1993 which is the mandatory requirement. The learned counsel has relied upon the decision of the Hon'ble Supreme Court in the case of **General Manager, North West Railway & Ors. vs. Chanda Devi** [2008 (2) SCC 108] to state that Railway Rules make distinction between casual labourers having temporary status and temporary railway servant and, therefore, on this analogy, the applicant is not entitled for any of the reliefs prayed for in this OA.

5. The applicant has also filed a rejoinder to the reply filed by the respondents reiterating the averments made in the OA.

6. I have heard the learned counsel for the parties and perused the material on record.

7. During the oral hearing, learned counsel for the applicant relied upon the decision of this Tribunal in the case of **Smt. Rajo vs. Union of India** [OA No.708/2015 decided on 06.09.2017] wherein similar issue as involved, in this OA, was involved. In this case, OM dated 10.09.1993 by virtue of which the relief claimed by the

applicant has been denied, has been discussed and the OA was disposed of with the following observations:-

“10. On going through the facts of the case and I find merit in the submissions made by the applicant. In view of the clear provisions of para 5 (III) of DoP&T OM dated 10.09.1993, discussed in the foregoing paras, the applicant is entitled to benefit of this provision, since the deceased did not quit the service nor were his services terminated by the respondents. It is also seen that gratuity was paid to the applicant almost two years after the death of her husband. The husband of the applicant died on 28.12.2013 whereas gratuity has been paid to her only on 07.07.2015. 11. I, therefore, dispose of this OA with a direction to the respondents to pay the leave encashment amount due to the applicant as per rules along with interest @ 8% and interest on delayed payment of gratuity as per DCRG rules. This order shall be complied with within a period of 90 days from the receipt of a certified copy of this order. No costs.

8. When confronted with the situation, the learned counsel for the respondents stated that he is not aware if the decision in **Rajo's** case (supra) has been challenged before the higher court. To this, learned counsel for the applicant informed that the decision of the Tribunal in the aforementioned case has indeed been challenged by the respondents in W.P.(C) No. 2601/2018 to the extent of payment of interest only and is posted to 11.12.2018. In this view of the matter, the decision in **Rajo's** case (supra) insofar as the issue of leave encashment and gratuity is concerned, still holds the field. As regards the Apex Court decision in **General Manager, North West Railway & Ors. Vs. Chanda Devi** (supra) relied upon by the

respondents, it does deal with the subject in question. However, this ruling holds that Railway Rules make a distinction between casual labourer having temporary status and temporary railway servant. This issue is not in dispute here. The applicant here is one who is having temporary status and he is claiming the benefits which have been given in large number of cases to similarly placed other employees and, therefore, the relevance of the Apex Court ruling can be said to be only limited as far as this case is concerned.

9. In view of the above discussion, I am of the considered opinion that the case in hand is squarely covered by the decision of this Tribunal in **Rajo's** case (supra) and, therefore, both the OAs stand disposed of with a direction to the respondents to release the pro rata gratuity amount and also pay the leave encashment amount due to the applicants as per rules, within a period of three months from the date of receipt of certified copy of this order. However, the interest part over the said amount shall be governed by the decision of the Hon'ble High Court to be passed in W.P.(C) No. 2601/2018. No costs.

(Uday Kumar Varma)
Member (A)