

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.708/2015

Reserved on 4.09.2017
Pronounced on 6.09.2017

Hon'ble Ms. Praveen Mahajan, Member (A)

Smt. Rajo,
Aged about 53 1/2 years
W/o Late Shri Jaiprakash, Ex.CLTS
R/o Village Atuta,
Post Babugarh Cantt.
Distt. Hapur (UP)

.. Applicant

(Through Mr. V.P.S. Tyagi, Advocate)

Versus

1. The Union of India (Through Secretary)
Ministry of Defence,
South Block, New Delhi-110001
2. The Director General of RVS (RV-1)
QMG's Branch AHQ
IHQ of MOD (Army)
West Block-III, R.K.Puram,
New Delhi-110066
3. The Controller General of Defence
Accounts (CGDA), Ulan Batar Marg,
Palam, Delhi Cantt-110010
4. The Controller of Defence Accounts (Army)
Belvadier Complex,
Meerut Cantt-250001
5. The Commandant
Equine Breeding Stud
(EBS) Babugarh Cantt.
Distt. Hapur-245201

... Respondents

(Through Mr. R.K.Sharma, Advocate)

ORDER

The present OA has been filed before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- (a) Direct the Respondents to expeditiously release the 'Service Gratuity' relating to the applicants husband period of employment as per entitlement under Law without any further delay along with 12% p.a. interest accruing thereon from the day it fell due till it is paid to the applicant being the widowed wife of the deceased worker Ex-CLTS Late Shri Jaiprakash who died on 28.12.2013.
- (b) Hold and direct the Respondents that denial of payment of Leave encashment as per the entitlement to a CLTS who acquired such status by operation of Law under OM dt. 10.9.93 on having died during employment while being a left over CLTS was in the process of 'Substantive absorption against a regular post by regularization in terms of provisions of Law, is untenable in the eye of Law, hence payment need by released forthwith by way of entitled Leave encashment.
- (c) Pass and order or direction as deemed just and proper in the facts and circumstances of case with award of cost of this OA in favour of the Applicant against the respondents.

2. Brief facts of the case are that the applicant is the widowed wife of late Shri Jai Prakash, who was a casual labour with temporary status i.e. CLTS. Shri Jai Prakash died while serving as such on 28.12.2013. The fact that he was a daily wager since February 1980 and was granted temporary status, is not in dispute. It is contended that in terms of provisions of DoP&T OM dated 10.09.1993, the applicant is entitled to leave encashment. In support of this Sub para (III) of para 5 of DoP&T OM No.51016/2/90-Estt (C) dated 10.09.1993 has been relied upon. It is contended therein that leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work on casual basis. The employees will also be allowed to carry forward the leave at their credit on their regularization. However,

they will not be entitled to the benefit of encashment of leave on termination for any reason or on their quitting service. The applicant's husband was neither terminated from service nor did he quit the service.

3. The applicant has challenged the impugned communication dated 5.07.2014 (A-1) to the extent that it relates to denial of applicant's claim for payment of leave encashment. It is further argued that under the Scheme of DoP&T OM dated 10.09.1993, the accumulated leave of a casual labourer conferred with temporary status would be allowed to be carried forward on his regularization. The CLTS cannot be deprived of their entitled benefit of leave accumulated during employment as such on their superannuation or occurrence of death. Denial of payment of such benefits to CLTS, who belong to economically weaker sections of society, is arbitrary and violative of Articles 14 and 16 of the Constitution and hence is illegal and unsustainable in the eyes of law. Finding no redressal to her grievance, the applicant has approached this forum.

4. In their counter, the respondents have submitted that gratuity claim of the applicant's husband is under process and will be paid shortly. On the question of leave encashment, however, they have submitted that para 5 (III) of the DoP&T OM dated 10.09.1993 stipulates that individual terminated from service will not be entitled to the benefits of leave encashment. Hence the applicant is not entitled to any leave encashment.

5. Heard both the learned counsels and perused the record.

6. Learned counsel for the applicant, Shri V.P.S. Tyagi reiterated the points already made in his OA. He stated that similarly placed persons have been given the benefit which the applicant is claiming. He took the Bench through the DoP&T OM on the issue. Referring to sub-para (III) of para 5, he read out that **"Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of works casual or any other kind of leave except maternity leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service."** In view of the clarification given here, it is clear that CLTS are allowed to carry forward the leave at their credit on their regularization. The only time they are not entitled to the benefit of leave encashment is on termination of service or on quitting of service, which, in the instant case, is not applicable.

7. Shri R.K.Sharma, learned counsel for the respondents submitted that gratuity has already been paid to the applicant on 07.07.2015 and no cause of action remains for the applicant to contest the same now. As far as leave encashment is concerned, he submitted that as per sub para (III) of para 5 of aforementioned DoP&T OM dated 10.09.1993, the applicant is not entitled to the benefit of leave encashment since the aforementioned sub para categorically states that in case the individual is terminated from service, then he will not be entitled

to the benefit of leave encashment. On a specific query whether termination would mean termination from service, or termination as in death, he had no answer to give. The learned counsel also raised his objection regarding maintainability of the OA on the point of jurisdiction. He discussed Annexure R-1 letter dated 29.06.2016 from the office of the CDA (Army), Meerut Cantt. on the subject of payment of gratuity and leave encashment to casual labourers granted temporary status in terms of DoP&T OM dated 10.09.1993 and Annexure R-2 OM dated 26.02.2016 of DoP&T on the subject of Casual Labourers with temporary status-clarification regarding contribution to GPF and pension under the old pension scheme, annexed with his short affidavit, supporting his contentions. Citing the order dated 05.09.2007 in OA 1722/2005 with other connected cases bearing no.OA 9/2006, OA 1264/2006, OA 1668/2006 and 272/2007 decided by the Principal Bench of the Central Administrative Tribunal, he vehemently argued that the law is not in favour of the applicant.

8. I find from the order-sheet dated 04.02.2015 that the issue of jurisdiction already stands settled by the then Chairman, C.A.T., who held that-

"4. From the array of parties, it appears that offices of respondent Nos.1 to 3 are located in Delhi and, therefore, in view of the judgment of Delhi High Court rendered in Dr. K.P. Verma vs. Union of India and Others, CW No.517/2003 decided on 23.07.2003, Principal Bench also has territorial jurisdiction over the matter."

In view of this, the application was allowed.

9. Since the issue has already been decided two years ago, it is not understood as to why the learned counsel for the respondents chose to rake up an issue already decided in his presence.

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.

(Praveen Mahajan)
Member (A)

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