

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1939/2015

Order Reserved on: 10.07.2017

Pronounced on:13.07.2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

Shyam Kumar Saini, aged 50 years,
s/o Sh. Satinder Kishore Saini,
working as Instrument Mechanic,
in 509, Army Base Workshop, Agra (UP),
R/o H.No.37A/129, Madhu Nagar,
Agra (UP).

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. Union of India through the Secretary,
Ministry of Defence, Govt. of India,
New Delhi.
2. Directorate General of EME (EME Civ),
Master General of Ordnance Branch,
Integrated HQ of MOD (Army),
DHQ Post Office, New Delhi-110011.
3. The Commandant,
509, Army Base Workshop EME,
Agra Cantt. (UP).
4. The Secretary,
Ministry of Personnel,
Dept. of Personnel & Training,
Govt. of India, North Block,
New Delhi.

-Respondents

(By Advocate Shri Piyush Gaur)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985.

2. The brief facts of the case are as under:

2.1 The applicant is presently working as Instrument Mechanic, which is a civilian post, at No.509, Army Base Workshop, Agra. He has three children, two daughters and a son. His elder daughter Ms. Soniya is severely physically handicapped with 90% disability. He has produced a certificate dated 08.04.2009 issued by the Chief Medical Officer, Agra to this effect.

2.1 The Central Government, based on 6th Central Pay Commission (CPC) recommendations, introduced "Children Education Allowance (CEA) Scheme", which was notified vide OM dated 02.09.2008. According to the Scheme, CEA is available to a Government servant upto a maximum of two children. The relevant portion of the Scheme is extracted below:

"Subject: Recommendations of the Sixth Central Pay Commission- implementation of decisions relating to the grant of Children Education Assistance and Reimbursement of Tuition Fee.

Consequent upon the decisions taken by the Government on the recommendations made by the Sixth Central Pay Commission and in supersession of all earlier orders on the subject of Children Education Allowance and Reimbursement of Tuition Fee, the President is pleased to issue the following instructions:-

(a) Children Education Allowance and Reimbursement of Tuition Fee which were hitherto payable will be merged and will henceforth be known as 'Children Education Allowance Scheme'.

(b) Under the Scheme of Children Education Allowance reimbursement can be availed by Government servants upto a maximum of two children."

2.2 The applicant had, in terms of the CEA Scheme, applied for reimbursement of the expenses incurred on education of his other two physically abled children, namely, Ms. Priyanka (daughter) and Master Anurag (son) for the year 2012-13. His claim, however, has been declined by the respondent no.3 vide impugned Annexure A-1 order dated 08.07.2014 on the ground that under the CEA Scheme, "reimbursement can be availed by the Government servant for the two eldest surviving children only, except when the number of children exceeds two due to second child birth resulting in multiple births." His grievance is that the respondents have not considered the fact that his first child is 90% physically handicapped and cannot go to school and that he has claimed CEA only in respect of the remaining two school going children.

2.3 The applicant has further stated that the Department of Personnel & Training (DoPT) – respondent no.4 has issued an erroneous Annexure A-2 OM dated 25/26.09.2014 wherein it is stated that the CEA is admissible for two eldest surviving children only.

2.4 Aggrieved by the impugned Annexure A-1 letter dated 08.07.2014 and Annexure A-2 OM dated 25/26.8.2014, the applicant has filed this OA, praying for the following reliefs:

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned OM dated 25/26.8.2014 and OM dated 13.11.2009 (Annex. A/2 & A/3) only in respect of the issue of Children Education allowance declaring to the effect that the same are illegal and are contrary to main scheme dt.2.09.2008.

(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 8.7.2014 (Annex. A/1) and consequently pass an order directing the respondents to grant the Children Education Allowances in respect of second children namely Master Anurag, without putting the condition of Eldest Children with interest.”

3. Pursuant to the notices issued, reply has been filed only on behalf of respondents 1-3. Respondent no.4 did not file reply despite service of notice. In their reply, respondents 1-3 have made the following important averments:

i) CEA is allowed in terms of Annexure R-1 DoPT OM dated 02.09.2008 which stipulates that a Government servant can avail CEA upto a maximum of two children. Thereafter, the DoPT have issued clarification vide Annexure R-3 OM dated 13.11.2009, clarifying as under:

“This Department has also been receiving references seeking clarification whether Children Education Allowance can be claimed in respect of any two children by Government Servants who have more than two children. It is clarified that Children Education Allowance is admissible for the two eldest surviving children only, except when the number of children exceeds two due to second child birth resulting in multiple births.”

ii) In view of *ibid* two OMs of DoPT, action taken by the respondents in denying CEA to the applicant in respect of his third child cannot be faulted upon.

4. The applicant has filed rejoinder to the reply filed on behalf of the contesting respondents and by and large has reiterated his averments made in the OA.

5. On completion of the pleadings, the case was taken up for hearing the arguments of the parties on 10.07.2017. Arguments of Shri Yogesh Sharma, learned counsel for the applicant and that of Shri Piyush Gaur, learned counsel for the respondents were heard.

6. Shri Yogesh Sharma, vehemently argued that the applicant is claiming CEA only in respect of two children as mandated in the DoPT OM dated 02.09.2008 (Annexure A-4). He said that the applicant's first child, being 90% physically handicapped, is not able to go to school and as such his claim for CEA, in respect of his third child in lieu of the eldest child should be allowed and it will be in accordance with the spirit of Annexure A-4 OM of DoPT.

7. Shri Piyush Gaur, learned counsel for the respondents, on the other hand, stated that the DoPT in the context of the first child not being in a position to go to school due to profound mental retardation vide Annexure A-2 OM dated 25/26.08.2014 has clarified that CEA is admissible in respect of the two eldest surviving children only.

8. Shri Gaur further argued that the issue of CEA was also involved in OA No.4063/2011 before this Bench of the Tribunal, wherein, vide order dated 20.09.2012 it has been held that CEA

cannot be availed in respect of the children other than the first two. Shri Gaur further stated that the said order of the Tribunal has been upheld by the Hon'ble High Court of Delhi in W.P. (C) No.7871/2012 – **Nagendra Upadhyay v. The Govt. of NCT of Delhi & Ors.**, vide judgment dated 22.01.2013. He thus prayed for dismissal of the OA.

9. I have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

10. The short question which falls for consideration is whether a Government servant can claim CEA in respect of his 2nd and 3rd children when his first child is severely physically handicapped and is not able to go to school?

11. It is quite clear from a plain reading of the DoPT OM dated 02.09.2008 (Annexure A-4) that the intent of the Government is to grant to a Government servant CEA only in respect of two children. If a Government servant has got more than two children, in that case he is allowed CEA only in respect of first two children only. The DoPT has also issued certain clarifications to the OM dated 02.09.2008 vide Annexure A-2 OM dated 13.11.2009. I have read both these OMs thread bare. The issue of first child being severely physically handicapped and not able to go to school has not been dealt with in these two OMs. There is no dispute to the effect that

CEA can be availed only in respect of two children. In OA-4063/2011 the issue involved was in regard to the interpretation of DoPT OMs dated 02.09.2008 and 13.11.2009. The Tribunal in its order dated 20.09.2012 had interpreted that the CEA can be availed only in respect of first two children only, except when the number of children exceeds two due to second child birth resulting in multiple births. This view of the Tribunal was upheld by the Hon'ble High Court of Delhi in **Nagendra Upadhyay** (supra).

12. The issue involved in the present case is entirely different vis-a-vis the one adjudicated in OA-4063/2011. In the instant case the applicant's first child is physically handicapped upto 90% disability and as such cannot go to school. Hence, the question of availing CEA in respect of the first child simply does not arise. The applicant has, therefore, claimed CEA for his second and third children, which is perfectly in consonance with the intent of the DoPT OM dated 02.09.2008, wherein CEA is restricted to two children only born after 31.12.1987. I have considered the DoPT OM dated 11.11.2008 (Annexure R-2) wherein certain doubts raised in regard to OM dated 02.09.2008 have been clarified. I have also gone through Annexure R-3 OM dated 13.11.2009, wherein it has been clarified "that Children Education Allowance is admissible for the two eldest surviving children only, except when the number of children exceeds two due to second child birth resulting in multiple births."

13. Neither DoPT OM dated 11.11.2008 (Annexure R-2) nor DoPT OM dated 13.11.2009 (Annexure R-3) have dealt with the issue of first child being severally physically handicapped and is unable to go to school, as is the case in the present OA. A meaningful and constructive reading of all these DoPT OM_s dated 02.09.2008, 11.11.2008 and 13.11.2009 would indicate that CEA is restricted to just two children and in respect of a Government servant having more than two children, the CEA would be restricted to first two children only. In the instant case, as noticed hereinabove, the first child of the applicant is simply not in a position to go to school due to her physical disability. Hence, the applicant's contention that CEA in respect of his second and third children should be permitted merits consideration. Such a claim is perfectly in consonance with the spirit of the three DoPT OM_s, referred to hereinabove.

14. I, therefore, hold that the applicant, whose first child is severely physically handicapped with 90% disability and is not able to go to school, can claim CEA in respect of his 2nd and 3rd children.

15. In the conspectus of the discussions in the foregoing paras, the OA is allowed. The respondents are directed to grant CEA to the applicant in respect of his second and third children in accordance with the CEA Scheme propounded by the respondents vide DoPT OM dated 02.09.2008. This shall be done within a period of three months from the date of receipt of a certified copy of

this order. It is clarified that CEA shall be paid to the applicant from the date when he became eligible for it, in terms of the OM dated 02.09.2008.

16. No order as to costs.

(K.N. Shrivastava)
Member (A)

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