

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A No. 3816/2018

Reserved on : 10.10.2019

Pronounced on : 14.10.2019

Hon'ble Ms. Aradhana Johri, Member (A)

Smt. Champa, aged about 40½ years,
W/o. Late Shri Hari Bahadur,
Deceased CLTS, Grp 'C',
With TS No. 256 of RTS & Depot Hempur under
The Dte General of RVS (RV-1)
QMG's Branch AHQ,
Ministry of Defence
R/o. Durga Colony, Jaspur Khurd,
Distt. Udham Singh Nagar (U.K.),
Presently R/o. C/o. Shri Sanjay Gandhi
D-16/348, 2nd Floor, Sector-7
Rohini, Delhi – 110 085.

...Applicant

(By Advocate : Mr. V. P. S. Tyagi)

Versus

1. The Union of India
(Through Secretary)
Ministry of Defence
South Block, New Delhi – 110 001.

2. The Director General of RVS (RV-1)
QMG's Branch AHQ,
IHQ of MoD (Army)
West Block-III, R. K. Puram,
New Delhi – 110 066.

3. The Controller General of Defence Accounts
(CGDA),
Ullan Batar Marg,
Palam Delhi Cantt – 110 010.

4. The Commandant,
Remount Training School & Depot Hempur,
Post Office RTC Hempur – 244 716
Distt. Udham Singh Nagar.

...Respondents

(By Advocate : Mr. S. N. Verma)

ORDER**Ms. Aradhana Johri, Member (A)**

The husband of the applicant Smt. Champa was Late Shri Hari Bahadur PS No. 256, who was a casual labour granted temporary status (CLTS) with effect from 04.05.1996. He could not be regularised due to unavailability of vacancies during that period and died on 18.02.2009 before regularisation. He was not sanctioned gratuity or leave encashment as it was treated as termination of service by the respondents-Ministry of Defence.

2. It is the contention of the applicant that since her husband was conferred temporary status, he was entitled to service gratuity and leave encashment which has not yet been paid as per Gratuity Act, 1972. He was covered by the Gratuity Act, 1972 and gratuity was due to him. She has also claimed that DoP&T OM dated 10.09.1993 only speaks of CLTS who has been terminated or have quit service, but it is not applicable in the present case since the applicant's husband died in service. Therefore, as per the applicant her husband is entitled to leave encashment. She has cited judgment of the Hon'ble High Court in **Union of India & Ors. Vs. Rajo** in W.P. (C) No. 2601/2018, by which the Hon'ble High court has allowed leave encashment and gratuity to a person with CLTS status.

3. She has sought the following specific reliefs :-

(a) Quash and set aside the contention of the respondents whereby and where under the release of the Monetary due relating to release of the "Service Gratuity" and Leave encashment is denied. Under the impugned order (A-1).

(b) Direct also the respondents to make payment of the "Service Gratuity" as per the Payment of Gratuity Act 1972 computing arrear thereof working out the Applicants husbands' entire service right from his engagement as daily wager casual labourer till his death as CLTS occurred on 18.2.2009 with interest 9% p.a. on the delayed payment to which the applicant has become entitled w.e.f. 18.2.2009 till the date the arrears of "Service Gratuity" and Leave encashment are paid."

4. Respondents have filed a reply in which they have stated that since the applicant's husband could not be regularised due to unavailability of vacancies and died in the meantime, it was also earlier felt that he was not entitled to the benefits of gratuity. However, subsequently, it has been clarified that he is entitled to gratuity and the bill has been prepared which is under process. However, they have denied entitlement of leave encashment.

5. Heard Mr. V. P. S. Tyagi, learned counsel for applicant and Mr. S. N. Verma, learned counsel for respondents.

6. In W.P. (C) No. 2601/2018, the High Court of Delhi in its judgment dated 11.12.2018 (supra) upheld the order of this Tribunal in O.A No. 708/2015 by which leave encashment to the respondents as per rules along with

interest at the rate of 8% as well as the interest on delayed payment of gratuity as per DCRG Rules had been allowed.

The Hon'ble High Court held the following :-

"7. In so far as the payment of gratuity is concerned, as observed above, the same had been paid during the pendency of the OA before the learned Tribunal. The only dispute raised in the present petition was with regard to the interest on delayed payment. Although at the stage of admission of this petition, the deposit of the interest component was without prejudice to the rights and contentions of the petitioners, but when the matter was argued today, learned counsel for the petitioners fairly conceded that she would not press or contest the issue of interest component on payment of gratuity.

8. This Court is therefore now only concerned with adjudication of the issue with respect to leave encashment payable to the respondent. In so far as the entitlement to leave encashment of the respondent is concerned, a bare perusal of Para 5 (III) of the OM dated 10.09.1993 shows that it stipulates the benefits to which a casual labourer will be entitled on account of his temporary status. The relevant para is being extracted hereinunder for ready reference:

"5. Temporary status would entitle the casual labourers to the following benefits:- III) 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."

9. The above provision, on its own reading is very clear and needs no interpretation. It clearly stipulates that for a casual labourer with temporary status, leave entitlement will be on a pro-rata basis @ of one day for every 10 days of work. Casual or any other kind of leave, except maternity leave, would not be admissible. The only bar as discernible from this para, for the grant of leave encashment, is on the contingency of termination or of an employee quitting the service. This para also entitles an employee, on regularization, to carry forward the leave at his credit. There is nothing in this provision which even remotely suggests that leave encashment will be given only on regularization, and that a temporary status employee will not be entitled to the same. It is an undisputed fact that the respondent's late husband had died and his services were neither terminated, nor he had quit the service. It would be travesty of justice, if this Court was to consider 'death' as a mode of 'termination' of service as the word is ordinarily understood in service

jurisprudence. This Court thus finds that by virtue of Para 5 (III) of the OM dated 10.09.1993, respondent's husband was clearly entitled to leave encashment and the learned Tribunal has rightly allowed the OA granting the said benefit to the respondent. We thus find no infirmity in the judgment of the learned Tribunal.

10. There is no merit in the petition and same is hereby dismissed with no order as to costs. Pending application also stands disposed of accordingly.

11. Since the amount towards leave encashment has already been deposited in this Court, the registry is directed to release the said amount to the respondent alongwith accrued interest on the respondent taking necessary steps for its release."

7. The matter in question was also of a casual labour with temporary status (CLTS) who passed away before regularisation, which is same as the present case. Therefore, I find that this matter is squarely covered by the said ruling regarding which the learned counsel for applicant stated that this has also been implemented by the concerned organisation.

8. In light of the above, this O.A is allowed. The respondents are directed to release the gratuity and make payment of the leave encashment to the applicant in respect of leave accumulated by her husband while working as CLTS and standing to his credit at the time of his demise. She shall also be entitled to interest at the rate of 8% on leave encashment and on delayed payment of gratuity at GPF rates in accordance with the provisions contained in

Gratuity Act, 1972. These directions shall be implemented within a period of 90 days from the date of receipt of a certified copy of this order. No costs.

(Aradhana Johri)
Member (A)

/Mbt/