

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

O.A. NO.863 of 2018

This the 19th day of July, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Late Shri Umesh Kumar Awasthi
through Mamta Awasthi (wife and legal heir),
Aged 64 years,
W/o Late Shri Umesh Kumar Awasthi,

Currently residing at :

C/o Shri Ajay Kumar,
B-661, Delhi Administration Flats,
Timarpur, Delhi-110054

....Applicant

(By Advocate : Shri Prateek Tushar Mohanty)

VERSUS

1. Government of NCT of Delhi,
through the Chief Secretary,
Fourth Floor, Delhi Secretariat,
I.P. Estate, New Delhi-110002.

2. The Secretary,
Weights and Measures Department,
117-118, C-Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110002.

.....Respondent

(By Advocate : Ms. P.K. Gupta)

O R D E R (Oral)

Heard learned counsel for the parties.

2. By filing this OA, the applicant seeks the following
reliefs:-

“8.1 allow the present Application;

8.2 quash and set aside the impugned Order dated
03.11.2017 [first Document of Annexure: A-1
(Colly)] is being bad in law;

- 8.3 consequent upon quashing of the impugned Order dated 03.11.2017 [first Document of Annexure: A-1 (Colly)], quash and set aside the second impugned Order dated 03.11.2017 [second Document of Annexure: A-1 (Colly)] as being bad in law; and
- 8.4 as a consequence of quashing of the impugned Order dated 03.11.2017 [second Document of Annexure: A-1 (Colly)], quash and set aside the last impugned Order dated 03.11.2017 [third Document of Annexure: A-1 (Colly)] as being bad in law;
- 8.5 consequent upon quashing of the impugned Order dated 03.11.2017 [first Document of Annexure: A-1 (Colly)] direct that the Period with effect from 12.11.2004 to 30.04.2009 is to be treated as Period of Duty for the Applicant for all Purposes;
- 8.6 consequently, direct the Respondents to grant annual increments to the Applicant for the entire period from 13.12.2000 onwards when the Applicant was placed under suspension;
- 8.7 consequently, direct the Respondents to pay to the Legal Heir of the Late Applicant the Full Salary and Allowances for the period from 12.11.2004 to 30.04.2009 on the basis of the re-fixed Salary;
- 8.8 direct the Respondents to pay to the Legal Heir of the Late Applicant the Full Salary and Allowances for the period of Suspension from 13.12.2000 to 12.09.2004, as the said Period has been treated as on duty for all purposes and as the Late Applicant received no Subsistence Allowance for the Period of Suspension, whether during the suspension or thereafter;
- 8.9 direct the Respondents to pay to the Legal Heir of the Late Applicant the Full Salary and Allowances for the Period from 13.09.2004 to 11.11.2004, which period does not seem to have been taken care of;
- 8.10 direct the Respondents to fix the basic Pension of the Late Applicant in terms of the recommendations of the Sixth Pay Commission with effect from 01.05.2009 and also in terms of the recommendations of the Seventh Pay Commission with effect from 01.01.2006;

- 8.11 grant all retiral benefits permissible under the Rules and the Law to the Late Applicant, including Gratuity, corrected Leave Salary, Pension, commutation of Pension and Family Pension;
- 8.12 grant compound interest on the delayed payment of such arrears of Salary and allowances and retiral benefits with effect from the date they were due, till the date they are actually paid;
- 8.13 issue any such and further orders/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and
- 8.14 allow exemplary costs of the application in favour of the Applicant."

3. Applicant is the legal heir of late Shri Umesh Kumar Awasthi, who was holding the post of Dy. Director now Asstt. Controller of the Weights & Measures Department, Govt. of NCT of Delhi, and has challenged the respondents' Office Order dated 3.11.2017 (first Annexure to Annexure A-1 (Colly)), vide which the deceased Govt. employee has been granted 420 days half pay leave even though the charge sheets issued to the deceased Govt. employee have been withdrawn. She further challenged the order dated 3.11.2017 (second annexure to Annexure A-1 (Colly)) vide which the pay of the deceased Govt. employee has been refixed at lower stages as a consequence of leave sanction order dated 3.11.2017. She also challenged the order dated 3.11.2017 (third annexure to Annexure A-1 (Colly)) vide which the leave salary of the deceased Govt. employee has been paid on the basis of the refixed salary at lower stages of the deceased

Govt. employee, as a consequence of pay fixation Order dated 3.11.2017 (second annexure to Annexure A-1 (Colly)).

4. Brief factual matrix of the case is that the husband of the applicant – Late Umesh Kumar Awasthi was issued a major penalty charge sheet vide Memorandum dated 25.8.2003 and on the day of his retirement, husband of the applicant was served with yet another major penalty chargesheet vide Memorandum dated 30.4.2009. While the said major penalty chargesheets were still pending, the husband of the applicant passed way on 14.4.2014 due to cancer.

4.1 According to the applicant, due to the demise of her husband, both the chargesheets had to abate and accordingly the period of suspension of deceased Govt. employee had to be treated as on duty. Incidentally, the deceased Govt. employee and her wife, who was a co-accused, have been cleared by the criminal court in the disproportionate assets case filed by the Central Bureau of Investigation.

4.2 When during his lifetime, Umesh Kumar Awasthi has not received a single passa as retiral dues, including gratuity, pension and family pension, he made representation dated 7.1.2014 to the respondents for disbursement of his retirement benefits but nothing was done in this regard. Thereafter, after the demise of Umesh Kumar Awasthi, the

applicant (wife of Umesh Kumar Awasthi) also submitted her representation on 27.6.2014.

5. During the course of hearing, counsel for the applicant submitted that after the death of Umesh Kumar Awasthi, this matter was referred to the Hon'ble Lt. Governor, Delhi and the Hon'ble Lt. Governor gave approval vide UO No.23387 dated 31.7.2015 that the period of suspension w.e.f. 13.12.2000 to 12.09.2004 in respect of Umesh Kumar Awasthi was treated as spent on duty for all purposes and despite the fact that both the major penalty chargesheets were dropped after the demise of Umesh Kumar Awasthi, the respondents had issued the impugned orders illegally, without application of mind and irrationally as they have not correctly apply the law on the subject, as the respondents illegally regularised the period from 12.11.2004 to 30.4.2009 by sanctioning the half pay leave and extra ordinary leave, which is illegal and not sustainable in law.

6. On the other hand, although counsel for the respondents has not disputed the fact that after demise of Govt. employee, the said major penalty chargesheets were closed and the Hon'ble Lt. Governor vide UO No.23387 dated 31.7.2015 gave his approval that the period of suspension w.e.f. 13.12.2000 to 12.09.2004 in respect of Umesh Kumar Awasthi was treated as spent on duty for all purposes. However, she could not give a plausible rely to the query that

when the major penalty charge sheet issued vide Memorandum dated 30.4.2009 in relation to unauthorized absence of deceased Govt. employee was closed by the respondents themselves then why the entire alleged period of unauthorized absence should not have been treated as on duty and under what authority the respondents have regularised the period w.e.f. 12.11.2004 to 30.4.2019 by granting HPL and EOL (PA).

7. It is further observed that respondents have themselves stated in their counter affidavit that during the pendency of disciplinary proceedings, U.K. Awasthi has passed away on 14.4.2014 and Directorate of Vigilance, Govt. of NCT of Delhi vide letter dated 27.11.2014 submitted the disciplinary case along with case records to the M/o Home Affairs for taking appropriate action under Rule 9 of the CCS (Pension) Rules, 1972 as the charged officer has already been retired from Government service and the M/o of Home Affairs vide order dated 17.12.2014 in pursuance to DOP&T OM dated 20.10.1999, which provides that in the event of death of the charged officer during pendency of the proceedings without charges being proved, imposition of any of the penalty prescribed under CCS(CCA) Rules, 1965, would not be justifiable, closed the disciplinary proceedings against late Shri Umesh Kumar Awasthi. When the chargesheet dated 30.4.2009 in relation to alleged period of unauthorized

absence of the deceased Govt. employee, is closed, then the impugned order dated 3.11.2017 at page 45 of the paper book, regularizing the period from 12.11.2004 to 30.4.2009 by sanctioning the HPL and EOL (PA) is not sustainable in the eyes of law and the said alleged period of unauthorized absence after closure of the said DE proceedings is required to be treated as spent on duty. As such the impugned order dated 3.11.2017 (first annexure to Annexure A-1 (Colly)) is quashed and set aside and accordingly the other impugned orders at pages 46 to 48 are also quashed.

8. In the above peculiar facts and circumstances of the case and for the foregoing reasons, the instant OA is allowed and the impugned orders dated 3.11.2017 (Annexure A-1 (Colly)) are quashed. The matter is remitted back to the respondents to consider this matter again in the light of the above observations and pass fresh orders within a period of 60 days from the date of receipt of a certified copy of this Order and to pay all dues found payable within 45 days thereafter. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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