

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, CAMP AT NAGPUR

ORIGINAL APPLICATION No.2209/2017

Dated this Friday the 7th day of June, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Smt Kamla P. Desai
W/o. Late Premlal Mohanlal Desai
Age : 52 years, Occupation: Multi
Tasking Staff, O/o. Anthropological
Survey of India, Nagpur, R/o. Near
Pandya Aate Kei Chakki,
Surendra Garh,
Nagpur - 440 006. ... Applicant

(By Advocate Shri R.K. Shrivastava)

VERSUS

1. The Union of India,
through The Secretary,
Ministry of Culture,
Department of Culture,
Shastry Bhavan,
New Delhi - 110 001.
2. The Director, Anthropological Survey
of India, 27, J.L. Nehru Road,
Indian Museum Campus,
Kolkata - 700 016.
3. The Deputy Director Anthropological
Survey of India, Central Region,
C.G.O. Complex, Block A,
1st Floor, Seminary Hills,
Nagpur - 440 006. ... Respondents

(By Advocate Ms. Renuka Puranik Nalamwar)

Order reserved on 28.03.2019

Order delivered on 07.06.2019

ORDER

PER: Dr. Bhagwan Sahai, MEMBER (A)

Smt Kamla P. Desai, has filed this OA on 21.08.2017 seeking quashing and setting aside of impugned orders dated 12.07.2016 and 20.10.2016 (Annex A-1) to the extent of non-fixation of pay by including Grade Pay of Rs.1300/- and to modify it with Grade Pay of Rs.1800/- as on 01.01.2006, and direction to the respondents to pay her arrears of pay and allowances with the revised pay fixation alongwith 12% interest till the date of actual payment, including cost of the OA.

2. Briefly stated facts :-

2(a) The Late Shri Premlal Mohanlal Desai was appointed by respondent No.3 as Daily Wages Chowkidar on casual basis in 1991 and was granted temporary status under the 'Grant of Temporary Status and Regularisation Scheme, 1993'. Since his service was not regularised till 2012, he filed earlier OA No.2188/2012 which was decided on 30.07.2015 directing the respondents to appoint him on a suitable post. In pursuance to that order of the Tribunal, he was appointed to the post of

Chowkidar with effect from 03.06.2016 and his pay was fixed as Rs.7980/- with Grade Pay of Rs.1300/-. 2(b) After taking into account increment from 01.09.1993 and subsequent successful completion of training programme by late Shri Desai, by order of 17.10.2016 Respondent No.3 (i.e. Deputy Director, Anthropological Survey of India, Central Region, Seminary Hills, Nagpur) revised his pay in Pay Band-1 i.e. Rs.5200-20200 with Grade Pay of Rs.1800/-. 2(c) The applicant's husband applied for payment of arrears of pay and allowances from 1993 in his letter dated 09.12.2016. Then he submitted reminders but no reply was received by him. So he submitted an appeal to respondent No.2 on 12.05.2017. Thereafter under the provisions of Right to Information Act, he obtained some information, from which he learnt that in the orders of respondent No.3 dated 12.07.2016 and 20.10.2016, while his pay was correctly fixed on 01.01.2006, he has not been paid the Grade Pay due to him. Those orders do not display his Grade Pay and only Pay + DA has been mentioned.

2(d) Since the respondents have not replied to his letters and arrears of pay and allowances have not been correctly paid to him, this OA has been filed. After demise of Shri Premlal Mohanlal Desai on 31.12.2017, the present applicant has come on record in the OA as his legal heir.

3. Contentions of the parties :-

The applicant contends that -

(3)a. the orders dated 12.07.2016 and 20.10.2016 (Annex A-1) mentioned only total pay of late Shri P.M. Desai from 01.01.2006 without the inclusion of Grade Pay as per the fitment table, (a copy of which is annexed as Annex A-9). In this manner, the applicant's husband has been discriminated against because of filing of the earlier OA by him for regularisation of his service. Therefore the OA be allowed.

The respondents contend that -

(3)b. there is no substance in the OA filed by the applicant and it is liable for dismissal. Initially the pay of the applicant's husband had been fixed as per 6th CPC in the lowest Pay Band i.e. 1S with Grade

Pay of Rs.1300 but subsequently, he has also been granted the Grade Pay of Rs.1800/- in the Pay Band-1 i.e. Rs.5200-20200 w.e.f. 03.06.2016, when his service was regularised and he had completed his training (Annex R-3 and R-5). Increments due to late Shri Desai have also been calculated based on Grade Pay of Rs.1800/-. On implementation of 7th CPC recommendations, his pay has been fixed at level - 1 in pay matrix by considering his pay in Pay Band - 1 with Grade Pay of Rs.1800 as on 01.01.2016. In view of these correct details of fixing the pay of late Shri Desai alongwith applicable Grade Pay, there is no cause of action for the applicant for filing this OA. Hence, the OA may be dismissed.

4. Analysis and conclusion:-

4(a) We have carefully considered the averments made by the applicant in the OA and submissions of the respondents in their reply. We have also carefully perused the details of office order dated 20.06.2016 passed by Head Office of Anthropological Survey of India, Kolkata appointing late Shri P.M. Desai as Daily Wage Chowkidar from

03.06.2016 in pursuance to decision of this Tribunal in OA No.2188/2012 dated 30.07.2015 directing for regularisation of his service. We have also perused the details of office orders issued by respondents on 12.07.2016 and 20.10.2016 (Annex A-1).

4 (b) The main issue raised by the applicant in this OA is about inclusion of Grade Pay of Rs.1800/- in the pay sanctioned as on 01.01.2006 and payment of arrears accordingly. The office order of 12.07.2016 mentions Pay Band 1S Rs.4440-7440 + Grade pay of Rs.1300/- with implementation of 6th CPC from 01.01.2006. However, in the 2nd order of 20.10.2016, the pay of late Shri Desai has been fixed in Pay Band-1 i.e. Rs.5200-20200 with Grade Pay of Rs.1800/-. These details clearly show correct pay fixation of late Shri Desai from 01.01.2006 in the relevant Pay Band with Grade Pay of Rs.1800/-.

4 (c) The applicant seems to carry a wrong impression about non-inclusion of Grade Pay of Rs.1800/- from 01.01.2006. This is because of incorrect understanding of the office orders under challenge. Since the service of

late Shri Premlal Mohanlal Desai was regularised by the respondents with the order of 20.06.2016 w.e.f 03.06.2016 by appointing him to the post of Chowkidar, obviously the payment of arrears as per the pay fixed would accrue to late Shri Desai only from 03.06.2016. Therefore, he was not entitled for payment of arrears from 01.01.2006 as he was not holding the post of Chowkidar on regular basis from that date.

4(d) In view of these facts, we do not find any merit in the OA and deserves dismissal.

Decision:-

The Original Application is dismissed. The parties are to bear their own costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sakai) \
Member (A)

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JD
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