

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

OA No. 633 of 2016

**Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)
 Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Dr. Sukanta Chandra Das, S/o-Late Ajoya Kumar Das, Village-Dhamilo, Po-Kothapatna, Via-Phulnakhara, Dist-Khurda. At present working as Chief Medical Officer (SAG), Central Hospital, Joda. At/Po-Boneikela, Dist-Keonjhar, Odisha, Pin-758038.

...Applicant

-VERSUS-

1. Union of India, represented through the Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi, Pin-110003.
2. Secretary, Ministry of Health & Family Welfare, CHS Division, New Delhi-110011.
3. Secretary, Ministry of Labour & Employment, Shrama Shakti Bhawan, New Delhi-110001.
4. Welfare & Cess Commissioner, Govt. of India, Ministry of Labour & Employment, Plot No.7/6 & 7, IRC Village, Kendriya Shram Kalyan Sadan, (Benind ISKON Temple), Bhubaneswar, Pin-751015.

.....Respondents

For the applicant : In person
For the respondents: Mr. B.P. Nayak, Counsel

Heard & reserved on : 24.01.2020

Order on : 26.2.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A) :-

The reliefs sought for by the applicant in this OA are as under:-

- “I). To stay the order limiting transport allowance and to restore the limited payment of Transport Allowance from Rupees1600/- + D.A. thereon to Rupees 7000/- + D.A. thereon with effect from August 2013 & quashing of the orders in annexures A/1, A/3, A/5, A/7.
- II) To continue with the stay order of Hon'ble CAT on recovery of excess payment of Transport Allowance as ordered by the Welfare Commissioner in letter No.18/01/2016-A1 dated 08.04.2016. (Annexure-A/5) and A/7 beyond 01.09.2016 till the cases relating to T.A. are disposed of by this Hon'ble CAT and CAT Principal Bench, New Delhi.”

2. The applicant is aggrieved by the impugned orders by which the Transport Allowance at the rate of Rs. 7000/- per month plus DA being paid to him w.e.f. 2008 was withdrawn by the authorities with the order of recovery of excess amount of allowance paid to him. The applicant had earlier filed the OA No. 277/2016 before this Tribunal and it was disposed of with direction to the authorities to consider the applicant's representation. Accordingly, the respondent no. 4 issued the letter dated 27.7.2016 enclosing the order dated 30.6.2016 passed by the respondent no. 2 (Annexure-A/7 series), rejecting the applicant's claim for higher Transport Allowance. The case of the applicant is that he is entitled for Transport Allowance as claimed by him in view of the circular dated 11.5.2015 (Annexure-A/12) as he is enjoying the Grade Pay of Rs. 10,000/- w.e.f. 29.10.2008, which is at the level of Joint Secretary.

He also opposed to the decision that his post was not a Joint Secretary (in short JS) level post as he is enjoying the same Grade Pay as the JS.

3. In the Counter filed by the respondents, it is stated that the Principal Bench of the Tribunal in OA No. 363/12 held that the employees who were allowed Grade Pay of Rs. 10,000/- will not be entitled for the benefit of Transport Allowance at the rate of Rs. 7000/- per month plus DA (Annexure-R/3). Accordingly, the respondents have issued the order dated 29.8.2013 (Annexure-R/4) to stop drawing of the allowance at the higher rate of Rs. 7000/-. It is also stated that the respondent no. 3 has clarified vide circular dated 9.3.2015 (Annexure-R/6) that the Medical Officers of the Department are not of the level of Joint Secretary although they are getting the Grade Pay of Rs. 10,000/- and they are not entitled for the Transport Allowance of Rs. 7000/- per month plus DA. It is stated that audit had also recommended recovery from the Medical Officers of Safdurjung Hospital vide letter at Annexure-R/7. The order dated 8.4.2016 (Annexure-R/9 & A/5) was passed by the respondent no. 4 for recovery of the excess amount paid to the officers including the applicant.

4. It is further stated in the Counter that the applicant, instead of complying with the order of Government, had filed OA No. 277/16 which was disposed of with a direction to dispose of his representation. Thereafter, the matter was referred to the DoPT. It was clarified by DOPT that only those SAG rank officers who are declared Head of Department will be entitled for the Transport Allowance of Rs. 7000/- per month (Annexure-R/11) plus DA. The Ministry of Finance in OM dated 19.8.2016 (Annexure-R/12) has also clarified that the officers promoted to the Grade Pay of Rs. 10,000/- will not be entitled for the benefit in question.

5. The applicant has filed the Rejoinder, stating as under:-

“ In Para 4 the respondent has specified that clarification received from ministries are crystal clear that the applicant is not the level of Joint Secretary. But as per transaction of business rule the applicant is joint secretary level officer. I am to further draw the kind attention of the Honorable Tribunal to the order dated 30.05.2017 of Hon'ble High Court of Delhi (Annexure Rejoinder-I) in WP (C) No.4783/2017 staying on recovery of Transport Allowance, Consequent to impugned OM dated 19.08.16 (Ref. No.21 (2)/2016-E.II (B) of Ministry of Finance, Department of Expenditure, Govt. of India (Annexure R/12 series). The OA No.212/2017 on the order dated 19.08.16 of Ministry of Finance & Department of Expenditure is listed for hearing on 05.03.2018 at Honorable CAT Principal Bench, New Delhi.”

6. Heard the applicant who appears in person and submitted that as per the settled law and for the reasons mentioned in the O.A. no recovery from him is permissible. He also reiterated the averments in the OA/Rejoinder to justify his claims.

7. Respondents' counsel was also heard. He pointed out to the letter at Annexure-R/12 of the counter vide order dated 19.08.2016 of the Ministry of Finance in which it has been very clearly held that the officers who are not entitled for the use of official

car for commuting between residence to office and back, in terms of OM dated 28.01.1994, not be eligible for enhanced transport allowance as per OM dated 29.08.2008, even though they might be drawing the Grade Pay of Rs.10,000/- in PB-4. Hence, it was submitted that the applicant was not entitled to the said benefit which was wrongly granted to him.

8. We have considered the matter with regard to the pleadings and submissions. The question to be decided in this case is whether the applicant is entitled to draw the transport allowance at the rate of Rs.7000/- plus DA as per OM dated 29.08.2008 on the ground that he was drawing Grade Pay which is same as Joint Secretary. The extract of the Annexure-R/2 of the counter states the following with regard to the Transport Allowance:-

“ 4. **Officers availing Staff Car facility.**- Officers drawing grade pay of Rs.10,000 and those in HAG+ scale provided with staff car for commuting between office and residence can have the option to retain the facility or to draw Transport Allowance at Rs.7,000 p.m. DA thereon. If they opt for Transport Allowance, the staff car facility will be withdrawn from the date they opt for the allowance.”

9. The above position regarding eligibility of Transport Allowance on higher rate has been reiterated by the Ministry of Finance in their O.M dated 19.08.2016 (Annexure-R/12 series), which states as under:-

“2. Several references have been received in this Department seeking clarification on the admissibility of Transport Allowance to officers drawing Grade Pay Rs.10,000/- under Dynamic ACP Scheme or NFU Scheme. A few cases have also been filed in the Courts in this regard. Hon’ble Central Administrative Tribunal(CAT), Principal Bench, New Delhi, in Order dated 13.05.2014 in O.A. No.4062/2013 filed by Shri Radhacharan Shakiya & Others V/s Union of India & Others, held that the Applicants were not entitled to draw Transport Allowance @ Rs.7,000/- p.m. plus DA thereon. The said order of the Tribunal has also been upheld by Hon’ble High Court of Delhi in their Order dated 03.09.2014 passed in Writ Petition (Civil) No.3445/2014, filed by Shri Radhacharan Shakiya & Others.

3. Accordingly, it is clarified that the officers, who are not entitled for the use of official car for commuting between residence to office and back, in terms of DoE’s OM 20(5)/E-II(A)/93 dated 28.01.1994, are not eligible to opt for drawal of Transport Allowance @ Rs.7000/- p.m. + DA thereon, in terms of DoE O.M. No.21(2)/2008-E.II(B) dated 29.08.2008, even though they are drawing Grade Pay of Rs.10,000/- in PB-4 under Dynamic ACP Scheme or under the scheme of Non-Functional Upgradation (NFU).”

10. It is also seen that in O.A. No.363/12 of the Principal Bench of the CAT vide order dated 05.02.20013 (Annexure-R/3), it has been held under similar circumstances that the contention of the applicant that the Transport Allowance at the rate of Rs.7000/- per month plus DA thereon cannot be accepted. The applicant has enclosed copy of the interim order of the Tribunal in some other cases not to undertake recovery vide orders in Annexure-A/10 series and A/11 series, but the

final orders in those cases have not been enclosed by the applicant. Further the O.M dated 19.08.2016 (Annexure-R/12) has not been challenged in this O.A.

11. In view of the settled position as discussed above and taking into fact that there is nothing in the pleadings of the applicant to show that he was entitled to use the official car for commuting between residence and office as per the stipulations in the OM dated 19.08.2016 (Annexure-R/12), it is clear that the applicant is not entitled for the transport allowance as claimed by him although he was getting the Grade Pay of Rs.10,000/- per month.

12. Regarding recovery of excess amount, the respondents in their counter have submitted that excess payment towards transport allowance is to be recovered from three SAG officers i.e. the applicant, Dr. D. Behera, Chief Medical Officer (SAG), and Dr. S.K. Naik, Chief Medical Officer (SAG) vide order dated 12.02.2016 (Annexure-R/7 series). The respondents have also cited the DoPT OM dated 02.03.2016 (Annexure-R/8) to justify such recovery. In Paragraph 4 of this OM, some cases have been listed whose recovery of excess payment wrongly made to the employees would not be undertaken. But no final order has been enclosed.

13. The applicant, being a senior Government officer of SAG rank, had also worked as a DDO as stated in Paragraph 12 of the counter. The applicant has cited copy of interim order for not effecting recovery. In this OA also, similar interim order was granted vide order dated 19.09.2016. However, we are unable to find any justification furnished by the applicant in the OA to claim that the applicant is included in the category of employees from whom no recovery of excess transport allowance can be effected.

14. In view of the above discussions, we are not inclined to interfere in the matter. The O.A. is accordingly dismissed. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

K.B.