

Central Administrative Tribunal, Principal Bench

Original Application No.280 of 1999

New Delhi, this the 16th day of December, 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman (J)  
Hon'ble Mr. R. K. Ahojja, Member (Admnv)

1. Delhi Prosecutors Welfare Association having their office at Prosecution Branch, Distt Court, Tis Hazari, Delhi through Sr. Prosecutor/Member Sh BS Joon
2. Shri B.S. Joon, S/o Shri Pratap Singh, R/o B 27, CPWD Flats, Vasant Vihar, New Delhi.

- Applicants

(By Advocate - Shri Sunil Malhotra)

Versus

1. Govt of NCT Delhi, through its Chief Secretary, 5 Shamnath Marg, Delhi.
2. Principal Secretary, Govt. of NCT Delhi - Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R (Oral)

By Reddy, J.-

The OA is filed by the Delhi Prosecutors Welfare Association and a member of the Association. The applicants seek the 'Court allowance' and facility of residential telephone to the eligible Senior Prosecutors, at par with the Prosecutors of the CBI. The applicants state that the Fifth Pay Commission has made recommendations for grant of Court allowance and the facility of telephone at the residence of the Prosecutors but the Government have not considered the payment of the same to the applicants. It is also stated that the applicants had made representations in this regard but they have not received any response from the respondents.

2. The learned counsel for the respondents, however, submits that the OA is not maintainable and

that the Government had not accepted the recommendations of the Fifth Pay Commission for payment of the Court Allowance and giving the facility of telephone at the residence of the applicants. Hence the applicants are not entitled for the said benefits.

3. The Association is said to be a registered body having hundred Prosecutors, who are in regular service, as members. Under Rule 4(5)(b) of the Central Administrative Tribunal (Procedure) Rules, 1987 an association, representing the persons desirous of joining in a single application, may also be permitted to file an application under Section 19 of the Administrative Tribunals Act, 1985. The applicants have filed a copy of the Certificate of Registration (Annexure-A-7) which also says that the Association was registered under the Societies Registration Act, 1860 as early as in 1979. The contention of the respondents that the Association is an association of the adhoc Public Prosecutors is factually incorrect as it is stated that the Prosecutors have been appointed on regular basis. The learned counsel for the respondents cited the case of Mahinder Kumar Gupta etc. Vs. UOI Ministry of Petroleum and Natural Gas, JT 1995 (1) SC 11 wherein the Supreme Court held that an association cannot file a writ petition as it has no fundamental right under Article 32 of the Constitution of India. In the present case the Association has been registered under the Societies Registration Act. Further, as stated supra under the CAT (Procedure) Rules even an association which has not been registered is entitled to

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file an application. The above decision applies only to the Writ Petitions under Articles 32 and 226 of the Constitution of India and the same principle cannot be applicable to the procedure that has been adopted by this Tribunal under the Administrative Tribunals Act, 1985. The OA is, therefore, maintainable. (11)


4. The applicants have also filed an MA No.284/99 seeking permission to file a joint application. In our view since the Association has been registered and the registered body is entitled to file a single application, the question of seeking permission to file a joint application will not arise. This MA, is, therefore, infructuous.


5. It is true that the Fifth Pay Commission had recommended in its report for payment of the Court allowance as also the provision of telephone facility at the residences of the Senior Public Prosecutors. It is stated in the counter affidavit that this recommendation has been considered by the Government but it has not been accepted by the Government. It is contended that the applicants are discharging the same functions and responsibilities as that of the Prosecutors of the CBI and as the Government have accepted the recommendations of the Fifth Pay Commission for payment of Court allowance to the Prosecutors in the CBI the applicants are also entitled for the same benefit. It should be kept in mind that when the Govt. of India having considered the recommendations had taken a decision not to accept the recommendations in regard to the payment of Court allowance to the applicants it should be

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treated as if the Govt. had rejected the recommendation in this regard. It is therefore not open to us to give the Court allowance to the applicants contrary to the decision taken by the Government. (12)

6. In this OA the Govt. of India is not a party. Hence the question of giving any direction to Govt. of India to consider the question afresh, cannot be considered nor any direction ~~can~~ be issued to them in this regard. However, it is open to the applicants to make a representation, if so advised, to the Central Government for payment of the Court allowance and provision of telephone facilities at par with the prosecutors of the CBI. In the circumstances of the case we do not find any ground to grant any relief to the applicants. The OA is accordingly disposed of. No costs.

  
(R.K. Ahooja)  
Member (Admnv)

  
(V. Rajagopala Reddy)  
Vice Chairman (J)

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