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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 188/99

OA No. 812/99

New Delhi, this the 29th day of September, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

OA 188/99

Sh. Asim Kr. Ghosh.

OA 812/99

Sh. S.Jaishankar & Ors.

....Applicants.

(By Advocate: Sh. S.S.Ray)

Vs.

Union of India
through Secretary
Ministry of External Affairs

....Respondent.

(By Advocate: Sh. A.K.Bhardwaj)

1. To be referred to the reporter or not? YES
2. To be circulated to other benches of the Tribunal? NO

GOVINDAN S. TAMPI
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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OA 188/99 & OA 812/99

New Delhi, this the 29th day of August, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S.Tampi, Member (A)

OA 188/99

Shri Asim Kumar Ghosh
Attache (Commercial)
Embassy of India
Tokyo, Japan.

OA 812/99

1. S. Jaishankar S/o, K.Subramanyam Minister & Deputy Chief of Mission.	12. K. Asokan S/o A. Kaliappan Attache (Administration)
2. M.N. Prasad S/o K.N. Prasad Minister (Economic & Commercial)	13. Amar Jit Singh S/o Anant Singh Attache
3. Amar Bhushan S/o Shreedhar Prasad Minister (Consular)	14. R.K. Sharma S/o D.R. Sharma Assistant
4. Vishnu Prakash S/o, Bhim Sain Counsellor(Pol & HOC)	15. Digvijay Nath S/o Banarsi Dass Assistant
5. V.T. Chitnis S/o T.N. Chitnis Counsellor (S & T)	16. N.R. Venkataraman S/o T.V. Narayanaswamy Assistant
6. T. Darlong S/o Piangliana Darlong First Secretary (Economic & Commercial)	17. A.B. Sahni S/o S.D. Sahni(Late) Assistant
7. S.M. Vadgaoakar S/o M.G. Vadgaoakar Defence Attache	18. P.S. Santhanaraman S/o P.S. Srinivasan Assistant
8. Balbir Kaur Teja S/o Pritam Singh Teja (Late) First Secretary (Trade)	19. Satyavir Singh S/o Hari Ram Assistant
9. Neeta Bhushan W/o Anurag Bhushan(Husband) Second Secretary (Information)	20. N.K. Sharma S/o Lakshmi Chand (Late) Personal Assistant
10. Anurag Bhushan S/o R.B. Sahu Second Secretary (Culture)	21. Chander Prakash S/o Chuni Lal (Late) Personal Assistant
11. Arijit Ghosh S/o Krishna Mohan Ghosh Third Secretary (I.T)	22. M.S. Prasad S/o P.K. Sreedharan Nari (Late) Personal Assistant

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23. H.L. Makkar
S/o Devi Dass Makkar
Personal Assistant

24. Sushil Kumar
S/o Shri Pyare Lal
Personal Assistant

25. P. Sahoo
S/o Sanatan Sahoo
Personal Assistant

26. B.S. Gosain
S/o Vijay Singh (Late)
Personal Assistant

27. B. Sarkar
S/o Swadesh Sarkar
Stenographer

28. R.S. Prashar
S/o Daya Ram Prashar
Warrant Officer

29. V.S. Shekhawat
S/o Mool Singh Shekhawat
Chief Petty Officer

30. Shyam Bihari Rai
S/o Janardan Rai
Security Guard

31. R.K. Chhetri
S/o K.B. Chhetri (Late)
Security Guard

32. Aboo Backer C.K.
S/o Kunhalan C.K.
Security Guard

[ALL AT THE EMBASSY OF INDIA AT TOKYO, JAPAN]

33. Anil Kumar S/o M.C. Sood (Late) Vice Consul	35. Vinay Kumar S/o Om Narain (Late) Assistant
34. Vijayan Machingal S/o P.S. Nair (Late) Vice Consul	36. Lalit K. Sagar S/o B.L. Sagar Personal Assistant

.....Applicants

(By Advocate : Sh. S.S. Ray)

VERSUS

UNION OF INDIA
Through the Secretary
Ministry of External Affairs
North Block
New Delhi.

.....Respondents.

(By Advocate Sh. A.K.Bhardwaj)

O R D E R

By Hon'ble Sh. Govindan S. Tampi, Member (A)

This combined order seeks to dispose of two applications - OA No. 188/1999 and OA No. 812/1999 - as the issues under dispute are the same, the applicants are identically placed, the pleadings made are common and argued together.

2. Challenge in these petitions is directed against the orders No. Q/FD/6918/22/98 dated 19-02-1998 and 16-09-1998, issued by the Ministry of External Affairs, modifying the Foreign Allowance (F.A.) of the India based officers and staff working in diplomatic missions/posts abroad.

3. Facts leading to the filling of these applications are indicated as below. Shri Asim Kr. Ghosh, applicant in OA 188/99 is Commercial Attaché in Indian Embassy, Tokyo while the applicants in OA

812/99 are all the remaining officers and staff in the Indian Embassy, Tokyo and Consulate General in Osaka (except the Ambassador and the Counsulate General)

4. The emoluments drawn by the applicants have two elements i.e. pay fixed by the Pay Commission, and Foreign Allowance (FA) in lieu of Dearness Allowance (DA), to cover the additional cost of living at the station where the officer is posted as well as the expenditure which an officer while serving abroad has necessarily to incur over which an officer of corresponding category serving in India has to incur. Since 1954, this was fixed by Foreign Service Inspectors (FSI), an expert body, who visited the country and collected the prices of a "predetermined basket of commodities and services" including food, clothing, servants, transport, miscellaneous household requirements, laundry and electricity, water, electricity etc. This system provided for grant of weightages also when required and if worked well. FSI visited Japan last in 1983 and had fixed the FA vide office orders No. Q/7D/6918/4/84 i) ii) and iii) all dated 28-3-84 and fixed the Emolument Rate of Exchange (ERE) at Rs.1=27.2. Emoluments were being disbursed accordingly till 1998. This was sought to be changed by 'Indexation Proposal' as communicated vide MEA's letter No. 900/AS (AD & PU) of 27-1-98 which was described as a system based on objectivity transparency and visible accountability and furthermore, one where foreign allowance revision can be global and annual on the basis of objectively collected data." It was based on United Nation Retail

Price Index ((UNRPI) of December, 1997 which also had a warning. "It should be emphasized that since the indexes relate to United Nations Officials whose consumption patterns differ from those of the indigenous population, the indexes cannot be considered as reflecting the general Relationship of the price level in the cities shown."

5. The indexation proposal appeared to be detrimental to the applicants as it was based on New York index and all other stations were pegged on to it by UNRPI data furnished by International Civil Service Commissions, and Foreign Allowance was sought fixed in US \$ and Emolument Rate of Exchange for basic pay was to be replaced by Official Rate of Exchange (ORE) as soon 01.01.1998 and frozen till such time as the foreign allowance is revised. Still Order No. Q/7D/5918/11/98 dated 19.02.98. accordingly fixed rates of foreign allowance for the officers and staff of foreign missions retrospectively from 01.10.1998, and further directed that pay and usual deductions be calculated in US \$ and disbursed ORE of foreign allowance was to be taken as US\$= Rs.36.82.

6. Following the implementation of the Fifth Pay Commissions' recommendations, retrospective revision of ERE of Rs. 1=Yen=27.2 and the revision of ORE of US\$1=Rs. 36.82, ^{were made} on the ground, specified in MEA's letter dated 12.05.1998, that adoption of ERE for payment of arrears would have given rise to huge inter-se disparities, distortions." With the result after delaying the implementation of Pay Commission's report by 27 months, Ministry arbitrarily revised the

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ERE of Re 1=Yen 27.2 to ORE of US\$ 1= Rs.36.82, leading to a situation, where pay and allowances for the period 1-1-96 to 31-12-97 came to be paid at ERE while the arrears were disbursed only at ORE of US\$ 1 = 36.82 causing considerable financial loss. This has the added ^{to} ~~their~~ disadvantage in that as US \$ was weak against Japanese Yen. A number of representations were sent against the order dated 19.02.1998, 12.03.1986 22.04.98 and 02.09.1998, but they did not evoke any response. To add to the applicants' discomfiture, MEA's letter No. Q/7D/6918/22/88 dated 16.09.1986, further reduced the F.A. and ^{change} the ERE, resulting in cumulative reduction ranging between 26 to 42% in the emoluments. This was made retrospective from 01.04.1988, Keeping the above in abeyance, the Ambassador wrote on 28.09.98 to MEA, requesting that FSI team be sent, but instead MEA ~~say~~ by their letter dated 08.10.1998 ^{subj} sought to explain the validity and rationale of UNRPI, though admitting that "India based officers and staff in Tokyo have suffered losses on account of indexation proposal." A further letter from the Ambassador on 28.10.1998 was replied by MEA on the same day stating that the Indexation System has been implemented to rationalise FA structure and evolve a transparent and efficient review mechanism and also enclosing a note on the Indexation Scheme with solutions to possible doubts on the implementation. Thus the new system had been imposed on the Embassy Staff, ^{while} Officers and staff of other Govt. of India Offices working under Ministry of Tourism and Commerce and Indian PSUs in Tokyo, continue to draw pay and allowances at the old ERA. The applicants also say that in the report of Economic Intelligence Unit at

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London, published in Japnese Times on 19.01.1999 showed Tokyo as the costliest city in the world; showing their bad plight.

7. Grounds taken by the applicant therefore are :-

- i) Nobody's pay can be reduced from what he/she has been drawing for quite sometime and even if any reduction can be ordered it can only be prospective. and any reduction can only be prospective.
- ii) Respondents had not taken any step to rectify the anomalies in ORE/ERE which had resulted in huge financial loss to the applicants.
- iii) Payment of arrears from 1-1-1996 following the adoption of 5th CPC's recommendations should have been only in terms of ERE and not of ORE .
- iv) Govt's previous practice of drawing up a list of commodities in respect of which compensation based on pre-determined requirement and average prices was being paid, was given up.
- v) System of FSI should not have been given up merely because the number of missions has gone up or that FSIs were not themselves interested in visiting all the missions. This lapse should not have been permitted to continue.
- vi) The adoption of Indexation system was irregular as Govt. of India had no role at all in the fixation and/or review of UNRPI.
- vii) MEA's view that the new system had benefitted 79 missions, does not mean much, as 79 other missions have not so gained. Their contention

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that the changeover has benefitted those posted in difficult stations also is not borne out on facts.

viii) Selection of UNRPI System: was arbitrary and unjust particularly to those in Tokyo, as US \$ is weaker than Yen, and the index prepared at New York was not relatable to commodities and consumption pattern of many in Indian Missions, especially so in Tokyo.

ix) ICSC itself has itself warned that the index was relatable to UN officials whose consumption patterns, were different. The parametres followed by the UNRPI was different and among ICSC's packet of 258 items of grocery as many as 108 are of no relevance to Indian Missions. The position is the same in respect of household requirements as well.

(x) MEA has failed to appreciate the above as well as the impact by two factors like rate of exchange and the anticipated dollar driven expenditure. To set it right, the Ministry earlier used to calculate foreign allowance in local currency-Yen- and expressed it in Indian Rupees on a predetermined rate. The new provisions exposes the families to high fluctuation rate.

xi) While the UNRPI is going down, for Japan the cost of living has shown an upward trend, causing greater hardship to those like the applicant.

xii) Adopting of UNRPI based on New York is faulty and irrelevant.

xiii) UNRPI is not adopted by the Govt. of India itself when its officials go abroad and they are paid at different rates in different countries.

xiv) The indexation has caused hostile discrimination as far as embassy staff are concerned,

as Indian officers and staff working under Ministry of Tourism, Ministry of Commerce as well as those from Indian PSUs, located in Tokyo continue to get their allowances in the old ERE.

xv) The Govt. should have considerd a fresh modality for arriving at FA, in place of FSI's visit, if the same was faulty but till such time, it was done and new proceddudre adopted, the earlier practice should have continued.

xvi) Govt. should have granted options to the employees to adopt the new practice or continue with the earlier one, as it is indicated, that a few have benefitted from the new system elsewhere.

8. In view of the above, the applicants seek that the orders No. Q/7D/6418/22/98 dated 19.02.1998 and 16.09.1998 be quashed, the earlier procedure restored and the respondents be directed to pay the arrears on increase granted by 5th CPC at the ERE of Re 1=Yen 27.2 and refund the amounts recovered/sought to be removed from pay and allowances while implementing the impugned orders.

9. Contesting the pleas raised by the applicants, MEA, the respondents plead that the staff attached to over 150 missions abroad are taken care of by providing facilities commensurate with their rank and country's economic capabilities. In addition to basic pay and Foreign Allowance (F.A.) they are given Children Education Allowance, health care, free furnished accommodation, home leave passage, part payment of insurance on personal car etc. Foreign Allowance varies from country to country depending on

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the cost of living in the countries where the staff is posted while basic pay is expressed in rupees, which an official would have been paid in India. Till 1998, the foreign allowance was fixed by Foreign Service Inspectors teams, who visited the countries, collected the prices of goods and services, as indicated in the pre-determined basket of goods and services, fixed in 1954, keeping an average Indian family, and it was done in Indian Rupees. It was, however, given in local currency, at the rate of exchange which prevailed at FSI's visit (and was frozen till the next visit). This rate was called the Emoluments Rate of Exchange (ERE for short). This system worked satisfactorily, but over the years and with increasing number of missions a need for change was felt, on account of the subjectivity in FSI process and also as ERE ~~came to bear~~ ^{came to bear} no relation whatsoever with market realities and became totally unrealistic eg in Japan ERE remained at Rs.1= Y 27.20 while the official rate of exchange was Re.1= Yen 3.407. In UK they retrospectively there were 1 = Rs.15.05 and Rs. 62.72 and USA \$ 1= Rs. 14.79 and Rs. 36.82. A revised system which would impart objectivity, evenhandedness and transparency to allowances in all the missions became necessary to be adopted. 'Indexation scheme' was the result of the search for such a system.

10. In terms of the indexation scheme introduced w.e.f. 1-1-98, Retail Price Index prepared by the United National International Civil Service Comm. (ICSC) was taken as the basis; the cost of living of an average Indian family abroad was calculated and FA was fixed accordingly. F.A. was fixed in US \$ and pay and allowance were directed to

be paid at official rate of Exchange (ORE). After review adjustments were made w.e.f. 1-4-98. This, the respondents feel, is the correct procedure and greatly preferable to the excercise based on the F.S.I.'s visit and procedure attendant on it.

11. Following the adoption of the 5th Central Pay Commission's recommendations communicated to MEA on 30-9-97, necessitated revised calculations primarily on account of the merged portion of DA (in lieu of which FA is given) in the basic pay and also on account of adoption of a uniform rate of exchange to avoid disparities among missions while paying arrears. It was, therefore, decided that where payment was to be made in foriegn exchange i.e. (a) for officers serving in a mission or post and (b) for officers transferred to a mission/post abroad from another mission/post, for the period of service rendered by him in the previous mission/post ORE would be applied. This had become necessary as ERE had become totally unrealistic, more than over-compensated officers in certain stations. This had to be stopped. Accordingly it was decided to have the new indexation system and to make all payments in ORE. As the adoption of ERE would have provided unintended ^{to some} ~~nowd by 500 less 5~~ windfall to certain persons while disbursing arrears, it was correctly decided only to go by the ORE. For instance, payment to the officers of the same rank and entitled to same amount, as arrears ~~would be~~ at vastly different quantities. This would have given rise to heavy disparities and discrimination would have resulted among those posted out/returned in between.

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Unintended windfall to some and unintended loss to some have been avoided by the correct method adopted by the respondents, according to them.

12. Order No. Q/FD/6918/22/98 dated 19-2-98 was the revised policy decision intended to bring about transparency, objectively, and uniformity and to remove distortions. As alleged, basic pay has not been reduced, but only foreign allowance has been rationalised. Order No. Q/FD/6918/22/98 dated 16-9-98 was again a policy decision after a team of officers visited New York, collected the prices of commodities, for refixing the foreign allowance in tune with UNRPI. The index was 113 for Tokyo as against 100 for New York. Adjustments were also accordingly made. While fixing the revised FA.

13. Recommendations of the Fifth Pay Commission were adopted by the MEA, following Finance Ministry's letter dated 30-9-97, and keeping in mind all the circumstances, and special benefits being enjoyed by the mission. There was no delay at all in implementation, as alleged by the applicants.

14. Freezing of the ERE for years on end had led to a number of anomalies, especially as it had become totally unrealistic and, therefore, the adoption of US \$ based payment at ORE was totally correct and rational. Though, the adoption of indexation proposal was communicated in July 1998, no representation has been received from the applicants. In fact the adoption of scheme was immediately necessary as in some places including Tokyo,

emoluments were far in excess of the actual living cost, on account of the payment in ERE. What had happened is only the reduction in the size of the 'cushion' those posted in Tokyo were enjoying and not its removal as alleged.

15. It is wrong to state that those in Tokyo have been discriminated or their facilities were reduced by during the adoption of the 5th Pay Commission's Recommendations, by changeover into more uniform transparent and objective system. It is also wrong to suggest that it had affected them adversely that too retrospective effect, as arrears would not have neutralised the purchasing powers.

16. Besides, the scheme was not introduced overnight, but only after sufficient notice was given to all concerned, including those working in Indian Mission in Tokyo, about the implications of the scheme.

17. Following the above, all the grounds raised by the applicants have also been contested as incorrect, baseless and not to be admitted. UNRPI was a rational index adopted to determine the relative cost of living in missions/posts abroad. Most important and relevant aspect is that amounts of compensation provided to embassy personnel are adequate to meet additional cost of living in Japan through indexation of foreign allowance and through package of other benefits and facilities. Nothing has been shown by the applicants to prove that indexation

has detrimentally affected them. The application is, therefore, devoid of merit and should be rejected, I urge the respondents.

18. Heard the counsels for both the applicants and the respondents. Sh. S.S.Ray, the learned counsel appearing for the applicants, says that the MEA which was following a time honoured policy for fixing the foreign allowance, by visits and collection of data by the FSI, has suddenly given it up for a new concept called indexation system, which was not relatable to ground realities. A practice which was relevant only for the U.N.Officials and relatable to New York, was being sought to be imposed on the staff working in various Indian diplomatic missions, without any heed to the actual cost of living in the areas where they work and ignoring the fact that UN officials are entitled additional compensation and are paid at rates much higher than our diplomatic staff. The indexation system has hit, especially those working in areas like Japan, which are very costly - infact Tokyo is the costliest city in the world with the UNRPI itself touching 133 as against New York's 100 - and the applicants are, therefore, considerable financial losses. He points out that not only that the FA, permitted to them have been reduced on the plea of rationalisation, that also twice - w.e.f. 1-1-98 and 1-4-98 respectively - but the adverse effect has been compounded by replacing the Emoluments Rate of Exchange (ERE) which was frozen in 1984 to give some stability in income to the staff by Official Rate of Exchange (ORE) and that too in dollar terms. This has led to considerable financial

loss to the entire officers and staff posted in Tokyo and Osaka. Ambassador in Tokyo and Censul General in Osaka have also been similarly affected, but on grounds of propriety, they have not chosen to be parties in the applications. Perusal of the correspondence between the Embassy and MEA, which are part of the record would show that the diplomatic mission have strongly taken up the matter, with the MEA, but they were given even a short shrift in the matter and the scheme was put on stream, and with retrospective effect, to boot.

19. Further, instead of the practice earlier to draw the FA in Yen vis-a-vis Indian Rupee, the mode adopted now was to convert the emoluments in Indian Rupee to dollar terms and thence to Yen. As Rupee was weaker than dollar and as Yen was stronger than dollar, the applicants have been hit as both sides - by the escalation in the cost of living on the one hand and the reduction in their emoluments on the other. The relief they had been provided to deal with such situations - ERE - has also been arbitrarily taken away.

20. To add to their discomfiture, it has also been decided to effect the payment of arrears of pay and allowances, following the adoption of the recommendation of the 5th Central Pay Commission, also in ORE which was wrong in principle. Adoption of the new indexation scheme and the replacement of ERE by ORE would not by themselves justify such a step, as even by granting their relevance without accepting it,

they would not be relatable to 1996 and 1997, to which the arrears relate. MEA's decision in this regard was also faulty and calls for redressal, argues Sh. Ray.

21. Arguing forcefully on behalf of the respondents, Sh. A.K.Bhardwaj, the learned counsel stated that the pleas by applicants were misplaced and misconceived. MEA, the respondents who were following the practice of FSI's visits and collection of data regarding the price of a baskets of goods and services from 1954, for fixing the FA, had to give it up as the practice had outlived its utility in practical terms and as the visits by FSI had become few and far between and irregular. Besides, it was possible to get fresh authentic and upto date information without making long visits. That is why it was decided by the respondents to take recourse a fresh rational, open, transparent and objective systems, which had relevance to international practice. Adoption of the Indexation Scheme, based on United Nations Retail Price Index (UNRPI), issued on quarterly basis by United Nations International Civil Service Commission, with necessary adjustment for individual countries was logical step to be taken. That was what the MEA has done and the same cannot be faulted, argues Shri Bhardwaj. The new scheme was forward looking, efficient and impartial and therefore, recommended for adoption. The fact that while adopting it some missions, were placed at a disadvantage vis-a-vis the positions they enjoyed earlier, would not make it any less relevant as no system can bring total satisfaction to all concerned without exception. Such a situation is not feasible either.

22. Replacement of ERE by ORE was also necessary and logical as ERE had been frozen at the 1984 level and continued to be in force inspite of its having become totally anachronistic and unrealistice. It was fixed at a time as far as Tokyo was considered when Re 1 equalled 27 Yen and even when Re 1 had taken to the level of equally 3.049 Yen, it continued, with the effect that the officers and staff had the advantage in the rate of exchange to the tune of as many as eight times. This, with all other attendant facilities could not have been continued for ever by any reasonable administration and MEA had, therefore, correctly decided to put a stop to it. This could not, by any stretch of argument, be called wrong or arbitrary merely because it had taken away the unintended windfall of an advantage vis-a-vis those working in a member of other diplomatic missions/posts. Applicants do not at all have any legitimate grievance against the scheme, urges the counsel.

23. The learned counsel for the respondents also strongly contests the plea of the applicants for payment of arrears of pay following the 5th Pay Commission's recommendations at the ERA, as according to him, this was earlier permitted only for calculation of FA. The applicants have no right for such a claim and it has to be dismissed.

24. Written submissions filed on 22-8-2000 by the learned counsel for the applicants in the OAs, are summarised as below :

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i) Tokyo is the costliest city in the world and, therefore, all the officers and staff of Embassy in Tokyo and Consulate General, Osaka are adversely affected by the change over to Indexation Scheme, from the FSI system.

ii) Orders dated 19-2-1998 (w.e.f. 1-1-98) and 16-9-98 (w.e.f. 1-4-98) have reduced their FA, both in terms of the amount and also on account of the change in calculation from ERE to ORE. As rupee is weaker vis-a-vis dollar and dollar is weaker than Yen, the arrangement of conversion of rupee to dollars and thence to Yen has hit the applicants hard.

iii) As during the period 1-1-96 to 31-12-97, payment of pay/allowances were drawn at ERE, arrears of pay arising from the adoption of the recommendations of the Fifth Pay Commission should also have been on ERE.

iv) Delay caused in the implementation of the Pay Commission's recommendation and the arbitrary introduction of ORE, have put them into disadvantage. Their emoluments inspite of upward revision following the Pay Commission's recommendation, in fact had come down.

v) Arrears of 4th Pay Commission was unjustifiably given in ERE.

vi) Indexation proposal communicated on 27-1-98, itself had indicated that the ERE in respect of basic pay shall be replaced by ORE on 1-1-98. Therefore, it could not be retrospectively applied to the period 1-1-86 to 31-12-97.

vii) UNRPI with base in New York, relating to UN officials should not be applicable to Indian officers in various missions as they are not governed

by UN Scales of pay.

viii) Respondents have themselves admitted that staff posted at Tokyo have suffered loss due to the change over.

ix) Prices of the predetermined basket of reference commodities, are based in New York, but it would differ from country to country, which fact has not been kept in view while adopting the index.

x) Out of 158 mission, 79 have according to the respondents from the new scheme, which meant that the remaining 79 have been adversely affected.

xi) Officials working under other Ministries like Tourism and Commerce, but based in Tokyo as well as those attached to the PSUs continue to be governed by ERE and, therefore, there was no justification to bring about the new system only for the diplomatic personnel.

xii) FSI had not been fully given up the MEA, as even after the introduction of indexation proposal FSI had visited Myanmar.

xiii) Adoption of the index, with the base at New York was improper. If at all any change was required, MEA should have kept Delhi, not New York as the base.

xiv) ERE is still being applied for representational grant (entertainment allowance) in all missions.

xv) MEA's plea that the changeover is a policy decision also does not mean much, as policy decisions also can be called in question, if they are arbitrary, as they are liable to judicial review.

24. Rebutting the above submissions, on 4-9-2000, the learned counsel for the respondents states as follows :

(a) UNRPI adopted by the Govt. has taken care of relative cost of living in different countries including Japan.

(b) Adoption of indexation system and ORE are policy decisions based on sound principles. This has not reduced the FA of the applicant, but has only taken away the undue benefit they were enjoying.

(c) FA is fixed only in dollars and not in Indian Currency.

(d) Additional cost of living is covered by the payment of FA under indexation systems and ORE.

(e) The applicants are entitled to get the arrears of pay/allowances only in rupees and not in the currency of the country where they are posted, and that too at a rate wrongly fixed sixteen years ago i.e. 1984.

(f) Basic pay (arrears) cannot be claimed in Yen, but only FA can be claimed so, but that too at the current rate of exchange.

(g) The staff at Tokyo had not suffered any losses, but have only been denied the undue advantage they had been enjoying due to the faulty fixation of FA & ERE.

(h) The UNRPI has to be followed properly and there is no need for any positive or negative adjustment.

(i) FSI practice has been given up, on account of its discrepancies and as it had outlived its relevance, UNRPI is the better alternative.

(j) The policy decision taken by the Government (MEA) is rational, correct and objective and accepted by generally. This is not to be re-opened. The applications, therefore, have to fail, reiterates the counsel for the respondents.

26. We have carefully deliberated on the rival conventions, ably and forcefully canvassed by the rival counsels and have perused the records placed before us in the matter. The matters under challenge are two fold i.e. the adoption of Indexation System replacing FSI system for fixing Foreign Allowance (FA) along with substitution of Official Rate of Exchange (ORE) for Emolument Rate of Exchange) and the denial to grant arrears of pay and allowances on the adoption of the recommendations of the 5th Pay Commission calculated at ERE.

27. The officers and staff posted in Indian diplomatic missions abroad are paid pay and allowances at the rates in which their counterparts in India are paid subject to exchange rate fluctuation. Besides, in lieu of the Dearness Allowance paid to those working in India, they are also paid Foreign

Allowance. In terms of annexure III to the Handbook of Rules and Regulations relating to the Indian Foreign Service Vol.I, Foreign allowance is intended to cover the additional cost of living at the station where the officer is posted as well as expenditure which an officer, while serving abroad has necessarily to incur either at home or abroad, over and above that which an officer of corresponding category serving in India is expected to have to bear". The instructions goes on to state that the "Govt. may fix the foreign allowance admissible to each officer or each category of officers at each station or post abroad and may vary it from time to time according to the circumstances." It would mean, therefore, that while FA is meant to compensate the officer/employee towards the additional expenditure he is expected/called upon to incur in comparison to his counterparts in India the fixation or modification of the FA is in the clear domain of the Govt. depending on the circumstances. (emphasis supplied)

28. Foreign Allowance used to be fixed by the Govt. earlier by a team of Foreign Service Inspectors, (FSI) visiting the foreing country concerned, collecting the prices of a pre-determined basket of commodities and services which would be relvant for an average Indian family, identified in 1954, and making necessary adjustments. This was represented in Indian rupees, but permitted to be drawn in local currency, worked out at the rate of exchange prevailing during the visit of FSI and this

rate which came to be called Emoluments Rate of Exchange (ERE) was frozen till the next visit by the FSI.

29. However, as the time went on, the number of missions went beyond 150 across the world, FSI visits became difficult to organise and irregular, need was felt for devising a new system. It also became necessary, as the freezing of ERE for a long time led to situations wholly unrealistic, as the ERE came to bear no relation to contemporary market. The following table given by MEA shows the picture clearly.

Station	ERE on 31-12-97	ORE on 31-12-97
Tokyo	Re.1 = Yen 27.20	Re.1 = Yen 3.407
London	£ 1 = Rs.15.05	£ 1 = Rs.62.72
Geneva	Re.1 = SFR 0.2279	Re.1 = SFR 0.0337
Washington	US \$-1 = Rs.14.79	US \$ 1 = Rs. 36.82

30. It is in the above context that the Govt./MEA decided to have a fresh look on the problem and decided to go in for a new procedure - in place of the FSI visits which have become few and far between - which was relatable to international standards i.e. adoption of the United Nations Retail Price Index prepared by United Nations International Civil Service Commission for various cities in the world, and updated on quarterly basis. The index, based at New York was adjusted for other places and FA was sought to be fixed accordingly. This method which came to be called the 'Indexation Scheme' and introduced w.e.f.1-1-98, fixed foreign allowances in US dollar terms with the direction that pay and allowances be paid, at the official rate of exchanges, common to for all missions and posts abroad. This was given effect to by the impugned orders No. 0/7D/6918/22/98 dated 19-2-98 and 16-9-98.

31. The applicants' plea is that the introduction of the indexation scheme and the attendant changes have hit them hard and that they have been affected adversely in two ways - first by way of reduction of FA and secondly by the direction that the emoluments would be paid in terms of ORE and not at the ERE. They point out in their letter dated 12-3-98 to the MEA that the Ambassador's Foreign Allowance would come down effectively from US \$ 6800 to US \$ 4545, i.e. reduction of 33 % from what he was drawing earlier which was harsh. Similar deductions would be ordered in the case of others as well. In fact, in terms of MEA's letter No. 0/7D/6918/22/98 dated 19-2-98 it has been fixed at US \$ 4364 and by

the letter of the same number dated 16-9-98 it is revised to US \$ 3619. It is this reduction/revision, which has been conceded by the MEA also, which they agitate against. Their plea is that this reduction cannot be seen by them as a "system based on objectivity, transparency and visible accountability". And, therefore, this should be given a go bye. Unfortunately, we are not convinced. A system long tested like the fixation of FA, after the visit and study by the FSI, would have had an advantage at an earlier time, while the number of missions were less and FSI undertook more visits. But, with the number of visits by FSI becoming fewer and irregular, and the communication facilities increasing with data becoming available at more frequent intervals the world over, there was no compulsion for the Government to hold on to a practice, which has outlived its utility, and has become totally unrelated to market conditions. MEA, the respondents have, therefore, correctly embarked upon the adoption of the indexation scheme based on UNRPI, an international index with reference to goods and services, based at New York, with necessary adjustments to local conditions in the other countries. This cannot be called in question, as the adjustments are inbuilt in the system and it acknowledges the very existence of higher or lower cost of living in various cities. In fact, the UNRPI, adopted by UN International Services Commission, concedes that the index for Tokyo is higher than that of New York, the former being the costliest city. Indexation Scheme has taken that factor also into

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consideration while fixing the FA for Japan. We are, therefore, convinced that the scheme adopted by MEA is rational, reasonable and not arbitrary.

32. While adopting a policy or modifying a policy, Govt. can only examine the issue from the various angles with reference to those who are affected, country's financial position and the need or otherwise to continue any system which would affect the majority. It is possible that the adoption of a new system can adversely affect certain individuals or group of individuals and can baulk them of the facilities to being enjoyed by them till the correctly or otherwise. In this case, those attached to the Embassy in Tokyo and Consulate General, Osaka were beneficiaries of a practice which had outlived its validity. On the basis of the ERE fixed and frozen 1984 they were getting the benefit of FA even as late as in 1997. The ERE fixed was at Re.1=Yen 27.20; and it continued till December 1997, when the official rate of exchange has slipped down to Re.1=Yen 3.407. This had given the applicants an unintended windfall uninterruptedly for over 14 years. It is this unfair advantage which they were enjoying vis-a-vis those posted in ~~may~~ other missions, which has been taken away by the adoption of the Indexation Scheme and the direction to have the payments effected in dollar terms at the official rate of exchange. The fact that the rupee has slipped vis-a-vis the dollar and that US \$ is sliding behind Japanese Yen over the years, is no reason at all for the Government to persevere with the earlier practice. In fact, the Govt. is aware of the

same as the following in the letter dated 8-10-98 from the Special Security MEA to the Indian Ambassador in Tokyo shows paras 4 & 5 :

4. " We are aware that India based Officers and Staff in Tokyo have suffered losses on account of the Indexation proposal. The reduction in total emoluments is both on account of reduction in UNRPI as well as change in exchange rate from ERE to ORE.

5. However, you may like to know that Indexation proposal has had a very positive world wide impact on FA of our officers posted in Missions and Posts abroad. There has been a net annual increase in financial outlay of over Rs. 20 crores as far as FA of all our personnel posted in Mission abroad is concerned. In fact the FA in 79 Missions has gone up as a result of Indexation proposal.

Obviously Government has gone ahead with the scheme, as it felt that this change in policy was in the best interest of the majority, notwithstanding the fact that quite a few others who were enjoying unintended benefits, that ^{for} too long would be forced to part with them and would have heartburning. But administration cannot continue with an obsolete practice, merely because it benefitted one chosen group. Therefore, the decision taken by the MEA after careful and long deliberations of the pros and cons of the issue and after putting all the persons likely to be affected on notice, through the letter dated No. 900/AS(AD & PU)/98 dated 27-01-1998 cannot in principle be called in question. We cannot, therefore, in law and in fairness interfere with the adoption of the impugned orders No. Q/7D/6918/22/98 dated 19-2-1998 and 16-9-1998; except to a slight extent with regard to the period of its implementation; as would be shown below.

33. Next we come to the date of implementation of the new policy. It is not disputed that the impugned letters dated 19-2-98 and 16-9-98 issued by the MEA, have brought on stream a policy which was totally at variance with the policy and practice hitherto followed. And it had affected the service conditions relating to pay and allowances of all the officers and staff posted at the diplomatic and consular offices in all parts of the world, most of them beneficially, but some not so beneficially. It was, therefore, necessary that the scheme could have been implemented only after putting all concerned on notice. The first indication from the MEA to that effect is by the letter dated 27-1-98, addressed by the Additional Secretary, MEA to all Heads of Missions. The letter, however, does not mention the date on which the new system for payment of FA becomes operative. This is done in the letter No. Q/7D/6918/22/98 dated 19-2-98 which states in para 8 as below :

"The order of Foreign Allowance will be effective from 1st January, 1998 (First January Nineteen Hundred and Ninety Eight) and would be valid till 31st March, 1998. Fresh orders would follow thereafter."

The next letter is No. Q/7D/6918/22/98 dated 16-9-98, which reads in para 8 as follows :

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"This order of Foreign Allowance will be effective from April 1, 1988 to March 31, 1999. Fresh orders will issue thereafter"

These orders attempt to give effect to the change over retrospectively from 1-1-98 and 1-4-98. These retrospective orders cannot be upheld as they are affecting at least a few from an earlier period, which is against fairness and propriety. Implementation of the orders can therefore, be permitted to be operative only from the dates of their issue i.e. 19-2-98 and 16-9-98 respectively.

34. Last point for determination in these applications relates to the payments of arrears following the adoption of the recommendation of the 5th Central Pay Commission w.e.f. 1-1-96. While the applicants strenuously argue that as the implementation of the recommendation was taken up by the MEA only by the end of December, 1997, it was not proper on their part to have directed that the same would also be only in tune with the new policy based on indexation scheme and on ORE. They have also protested the move to recover some portion of the arrears already given. The respondents, however, plead that the arrears specifically of the basic pay cannot be given in Yen, but only in rupees, and that the request of the applicants was misconceived. We have to differ, as the arrears related to the period of 1-1-96 to 31-12-97 - before the new scheme was thought of implemented. They should, therefore, naturally be governed by the practice prevailing during that period. In fact, para 3 (iv) of the letter dated

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27-1-98 from MEA to Heads of Missions clearly states, the Emoluments Rate of Exchange in respect of basic pay would be replaced by the official rate of exchange as on January 1st, 1998 and frozen till such time as the FA is revised again. Obviously, therefore, payment of arrears up to 31-12-97 (1-1-98) is sanctified by the earlier practice and the officers and staff would not be made to suffer any reduction in arrears, by reason of the adoption of the new policy on a later date. Arrears have been correctly worked out earlier keeping in mind the ERE and no recovery on the ground that the policy is changed would be justified. Applicant's plea on this ground, therefore, succeeds.

35. In view of the above, the applications succeed, but only marginally, and are accordingly disposed of with the following directions :

i) Validity of the MEA's letters No. Q/FA/6918/22/98 dated 19-2-98 and 16-9-98 ~~not~~ upheld.

ii) The two orders would come into force from 19-2-98 and 16-9-98 prospectively and not retrospectively from 1-1-98 and 1-4-98.

(iii) Payment of arrears of pay/allowance following the adoption of the recommendations of the Fifth Pay Commission, for the period 1-1-96 to 31-12-97 shall be based on ERE and not ORE. If any amount paid, working out on ERE has been recovered or sought to be recovered, such a step is set at nought. Respondents to take action accordingly.

36. Before parting with this, we should record that both of the learned counsels, provided proper and correct assistance to the Bench in analysing the issues and arriving at the decision. We appreciate that.

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37. Applications are accordingly disposed of.
Parties shall bear their own costs.

(Govindan S.Tampi)
Member (A)

V.Rajagopala Reddy
Vice-Chairman (J)

/vikas/

Original judgement placed in OA 188/99

Attached

C.G. Amritavar

31/10/2009

C.O. CW