

CAT/1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 219/97
T.A. No.

199

(6)

DATE OF DECISION 1-4-98

Sh. Asit Kadyan and Ors

Petitioner

Mrs. Meera Chhibber

Advocate for the Petitioner(s)

VSUS

UOI & Ors.

Respondent

Sh. R. P. Aggarwal

Advocate for the Respondent

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or not? *Yes*

2. Whether it needs to be circulated to other Benches of the Tribunal *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

OA No.219/1997

New Delhi this the Ist day of April, 1998.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri K. Muthukumar, Member (A)

In the matter of

1. Shri Asit Kadyan,
S/0 Sh. Prof. I. S. Kadyan
2. Shri Munish Shukla,
S/0 Prof. S. N. Shukla
3. Shri Ashutosh Jain
S/0 Shri S. K. Jain
4. Sh. Sanjay Kumar Varshney,
S/0 Sh. R. B. Varshney
5. Sh. Mdik Aggarwal,
S/0 Dr. V. K. Aggarwal
6. Sh. Roopender Kumar
S/o Jagdish Prasad
7. Sh. Bharat Kumar
S/0 Shri Banshi Das
8. Sh. Jagat Singh Kalsi,
S/0 Sh. Ajmer Singh Kalsi
9. Sh. Chandra Mohan Alda
S/0 Sh. Janardhan Alda
10. Sh. Darshan Singh Pal
S/0 Sh. Khushi Lal Pal
11. Sh. Prabhash Singh
S/0 Sh. (Dr.) S. N. Singh,
Area Manager.
12. Shri Charan Dass
S/0 Shri Parkash
13. Sh. R. Sathiya Narayanan
S/0 Sh. K. Ramatinagan,
D.G.M. (A)
14. Shri N. K. Bhoj,
S/0 Sh. Dhruva Charan Bhoi,
Director.
15. Shri A. K. Tiwari
Shri B. M. Tiwari, SDE.
16. Shri A. K. Sharma
S/0 Shri M. L. Dave, SDE
17. Shri P. P. Tripathi,
S/0 Shri Gadhadar Tripathi, SDE
18. Sh. Sushil Kumar Aggarwal
S/0 Shri B. N. Aggarwal

19. Sh.Tara Chand S/0 Sh.Ratur Singh
SDE.

20. Shri V.N.Yadav S/0 Sh.P.Yadav,
S.D.E.

21. Shri L.N.Singh S/0 Late Sadish Mr.Singh,
SDE.

22. Sh.Hari Singh S/0 Late Sh.Ghazi Ram
S.D.E.

23. Sh.Ram Pujan Gupta
S/0 Sh.Nageshwar Prasad,SDOT

24. Sh.C.L.Vishwakarma
S/0 Late N.L.Vishwakarma
SDE.

25. Sh.Kakeshwar Singh
S/0 Late R.P.Singh
SDE.

26. Sh.Bijaya Kumar Nayak,
S/0 Sh.Cambodar Nayak.

27. Sh.Premjit Lal
Sh.Sohanvir Singh

28. Sh.Gurdas Ram Bhadhan
S/0 Sh.Puram Chand

29. Shri Atul Sinha
S/0 Sh.Brahma Nath Sinha

30. Sh.P.Nath
S/0 Shri S.Nath

31. Sh.M.K.Meena
S/0 Late Shri N.R. Meena,
S.D.E.

32. Shri R.P.Singh
S/0 Late Shri Badan Singh

33. Shri Navoen Kumar
S/0 Sh.Kham Chand
DE(E 10B) GoB

34. Sh.A.K.Pandey
S/0 Sh.(Dr.)G.S.Pandey
AGM(CT) Jabalpur.

35. Shri A.K.Srivastava
S/0 Shri J.N.Lal
AGM(I) Meerut.

36. Shri A.K.Sharma,
S/0 Shri Ishwari Prasad,
SDE(P)Baraut

37. Shri Sanjeev Jyoti, AGM

Applicants

All applicants had been sent on deputation to Japan and are working under different Circles of DoT.

(By Advocate Mrs Meera Chhibber)

Vs

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1. Union of India
through Secretary,
Department of Telecommunication,
Sanchar Bhawan,
New Delhi.

2. Deputy Director General(Training),
Sanchar Bhawan, New Delhi.

3. Secretary,
Ministry of External Affairs,
New Delhi. . . Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicants are aggrieved by the Respondents' letters dated 15.11.1996 and 11.12.1996 reducing their Daily Allowance(DA) during the period when they were on deputation to Tokyo, Japan.

2. The applicants were selected in 2 batches by the O.M. dated 11.10.1996 and 1.11.1996 for training in Japan for a period of 8 weeks and 11 weeks when the DA payable to them was at US\$150/- per day in accordance with the orders passed by the Ministry of External Affairs dated 20.8.1996. They have submitted that they were required to execute a Bond at the face value of Rs 6 lacs for Operators and Maintenance for 8 weeks, and Rs 8 lacs for Installation and Planning batch undertaking 11 weeks training. They have submitted that when they went on training, the respondents/that in the event of their non-fulfilment of the terms and conditions of the Bond, they were bound to return either Rs.6 lacs or Rs.8 lacs and similarly the DA at \$150/- per day during the period of duration of training was also a condition of the Bond. However, on 15.11.1996 they were informed that instead of US \$ 150/-, their DA was reduced to US \$100/- in terms of the Ministry of External Affairs order dated 11.11.1996.

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3. Mrs. Meera Chhibber, learned counsel for the applicants has submitted that MEA order dated 11.11.1996 cannot be applied, as they were already in Japan for training from 14.10.1996 to 3.11.1996 and their terms and conditions cannot be adversely affected by the reduction of their DA. They have submitted that the revised DA rates can apply to such trainees who have left the country after 11.11.1996. She has also relied on the Bond which has been taken by the respondents in which there is a Note which states that the lump amount of refund, in case of breach of the conditions of the Bond shall include all monies paid to the Govt. servant concerned or extended on his account during training, such as pay and allowances, leave salary, cost of fees, travelling and other expenses etc. She has also submitted that in the MEA order dated 20.8.1996 the DA payable in respect of persons on training to Japan was US\$150/- The learned counsel has also referred to the news item appearing in Japan Times dated 26.11.1996 that the living expenses in Tokyo were very expensive and, in fact, 59 per cent higher than in New York in 1995. The applicants have also contended that as they have left India on deputation on the premise that they would get DA of US\$150/- per day and had planned to stay in Japan under those conditions, the respondents should be restrained from altering that position unilaterally. They have also submitted that the rate of US\$150/- was required for meeting the normal expenses at Tokyo and there was no justification to reduce the DA rates mid way of their training. In the circumstances of the case, they have sought a direction to the respondents to give them the arrears of the amount of DA of \$150/- per day and to quash the decision of the respondents to reduce the DA to US\$100/- per day for the balance of their training period.

4. The respondents in their reply have submitted that the deputation of Government servants out of India is governed

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by statutory provisions i.e. FRs 50 and 51. They have submitted that in pursuance of the fundamental rules regarding deputation, the orders regarding pay and allowances and other related matters are issued by the Government from time to time. They have referred to the O.M. dated 5.8.1976 which provides that the rates of DA will be those prescribed by the Ministry of External Affairs for the station in respect of officers of corresponding rank posted in Indian Missions abroad.

In accordance with these rules, Shri R.P. Aggarwal, learned counsel, has submitted that the Ministry of External Affairs, which is the competent authority, have from time to time issued revised rates of DA applicable to Government servants on training abroad. They have stated that when the applicants went on training to Japan, according to the MEA order dated 20.8.1996 the DA was payable at US \$150/- till the rate was revised by the order dated 11.11.1996, which superseded the earlier order whereby the rate became US \$ 100/- per day. They have explained that as the cost of living world wide keeps changing, DA structure requires revision periodically which is done by the competent authority, i.e. the Ministry of External Affairs with the approval of the Department of Expenditure. They have stated that the consumer price rate was computed on the basis of the United Nations Consumer Price Indices and revised by the order dated 11.11.1996 for Japan and accordingly there was nothing wrong in that as the applicants were paid the rates which became applicable to deputationists

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on training to that country. They have also referred to the earlier rates which were applicable in 1987, i.e. US \$ 75/- and in Nov, 1996 - US \$ 100/- to show that the rates keep fluctuating. They have also submitted that although the DA is one of the factors to calculate the amount spent on training abroad, including pay and allowances, travel costs, fees, etc., the amount of refund stipulated in the Bond cannot be taken as the basis for calculation of the DA, which varies from time to time. In the circumstances, they have prayed that the application may be dismissed.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. FR 51(2) provides that a Government servant may, in addition to his pay and allowances, be granted a compensatory allowance in a foreign country of such amount as the President may think fit. Both the learned counsel have referred to the consolidated orders dealing with Delegations abroad of officials sponsored by the Government in Appendix 6 of Swamy's Compilation of FR/SR. Under Para C - Pay allowances, etc., there is a provision for payment of DA, accommodation, additional Foreign Allowance, etc. Para 29 provides:

"29. Entitlement to these allowances for various periods of deputation and the corresponding rates are given in sub-paras, (i), (ii) and (iii) below. Rates of daily allowance will be those prescribed by the Ministry of External Affairs for the station in respect of officers of corresponding rank posted in Indian Missions abroad. (See Section IV in this Appendix for the rates of DA effective from 1-2-1989). However, they are not subject to reduction after a certain period as provided for in the Indian Service Rules.

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(i) For deputation initially not exceeding six months -

The deputationist will be entitled to daily allowance at

- all inclusive rates throughout the period, or

- split rates (where prescribed) for a period not exceeding three months and thereafter at all inclusive rates, or

- split rate for the entire period, if it is certified by the Head of the Mission that the continued stay of the deputationist in a hotel beyond three months is absolutely necessary.

No other allowance will be admissible to him".

7. Mrs. Meera Chhibber, learned counsel, has submitted that under the aforesaid provisions, the applicants who are on deputation for less than six months were entitled for DA 'throughout the period' and the same could not have been altered to their disadvantage mid-term. It is not the case of the applicants that they have not received DA throughout their deputation period - the issue is one of rate. Para 29 provides that the rates of DA will be those which are prescribed by the Ministry of External Affairs for the station in respect of the officers of corresponding rank posted in Indian Missions abroad. In other words, it means that the officers of the rank of the applicants who were posted in Japan after 11.11.1996 will be entitled to receive DA at the rate of US \$ 100/- per day. The applicants are, however, claiming that since they had gone on deputation at the time when the MEA order dated

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20.8.1996 was in force which had prescribed US \$ 150/-, this rate cannot be varied by the respondents. From perusal of the Annexures of the reply filed by the respondents, it is seen that the rates of DA have varied from time to time upwards or downwards, as the case may be, depending on the cost of living in the particular place. The applicants were fully aware during their stay in Japan on training that the respondents have recalculated the DA payable to officers deputed to that country, on the basis of the United Nations Consumers Price Indices. It is also relevant to note ^{that B} by the MEA order dated 31.7.1987, the DA rate for Japan was then US \$ 75/- and remained so till 28.3.1995 when it was revised by the MEA order dated 20.8.1996 to US \$ 150/-. In the circumstances of the case, the revision of DA ~~permitted~~ ^B for Japan can neither be termed as arbitrary or unreasonable.

8. Mrs. Meera Chhibber, learned counsel, has vehemently submitted that once the applicants have already accepted the deputation terms and signed the Bond and left for training for Japan before the MEA order dated 11.11.1996 was issued, the respondents cannot unilaterally change the terms and conditions. We are unable to agree with this contention, ^{when B} as the purpose of DA is taken into account which is paid to officers on deputation on training abroad. There is no dispute at all that the applicants are entitled to DA throughout the period of their deputation on training in Japan.

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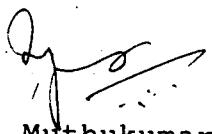
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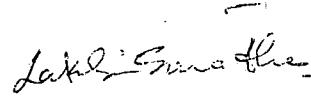
but it is subject to revision, both upwards and downwards, as determined by the competent authority. Fundamental Rules 50 and 51 are statutory rules governing the conditions of deputation of a Government servant out of India and provides, inter alia, that a Government servant on deputation may be granted a compensatory allowance in a foreign country of such amount as the President may think fit. It is also clearly mentioned in Para 29 of Appendix 6 that the rates of allowance will be those prescribed by the Ministry of External Affairs for the particular station to which the officers are deputed on training. In the circumstances, the rate of DA of US \$ 100/- per day for Japan as revised by the Ministry of External Affairs will apply to the applicants, at least from the date they were informed. The DA rate is related to the cost of living in Japan and the respondents' contention that they have taken care of their other needs and it was not meant as an unintended benefit to the applicants cannot be ignored nor does it justify any interference in the matter. The face value of the Bond by itself cannot have the effect of whittling down the statutory provisions contained in Fundamental Rules. It is also relevant to mention that it is not the case of the applicants that the revised rate after 11.11.1996 has caused them any undue financial hardship for their living in Japan for the remaining period of their training. Therefore, taking into account the purpose for which the DA has been sanctioned by the President, we are unable to agree with the contentions

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of the learned counsel for the applicants that the rate of DA to be paid to deputationists abroad in foreign exchange is a fixed amount because of the Bond and cannot be varied at all. If this contention is to be accepted, then it will act in a most unfair manner in the case of a government servant who is on deputation abroad and the cost of living index has shot up midway of his training and there has also been a upward revision of DA. In such a case, DA at the revised rate will become payable from the due date to take care of the needs of the deputationists. Therefore, it is applicable both ways and we see no good grounds justifying any ^{such} interference in the matter.

9. For the reasons given above, we find no merit in this application. The same is accordingly dismissed. No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'