IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

(13)

O.A.No. 2506/1997 & S.R. 2507/97 Date of Decision: 30 - 11-1998

Shri Sangwa .. APPLICANT

(By Advocate Shri Applicant in person

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri S.M. Arif

CORAM:

THE HON'BLE SHRI

THE HON'BLE SHRI S.P. BISWAS, 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?

(S.P. Biswas)
Member(A)
30.11.98

Cases referred:

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPLE BENCH

OA No. 2506/97 and OA No.2507/97

(14)

New Delhi, this 30th day of November, 1998

Hon'ble Shri S.P. Biswas, Member(A)

Shri S.R. Sangwa
D-10, Samru Place
Opp. Laxmi Narayan Mandir
New Delhi .. Applicant
(By applicant in person)

versus

Union of India, through

1. Secretary
Department of Expenditure
M/Finance, North Block
New Delhi

2. Mrs. Rama Murli
Joint Secretary (C&C)
Deptt. of Economic Affairs
M/Finance, New Delhi

3. General Manager
India Govt. Mint
D-2, Sector 1, NOIDA-201301

4. Accounts Officer (DDO)
o/o Senior Manager
Mail Motor Service
Naraina, New Delhi-28 .. Respondents

(By Advocate Shri S.M. Arif)

ORDER

The legal issues involved and the pleas raised by the applicant are common in both OAs and hence they are being disposed of by a common order.

2. The brief facts leading to the filing of these two OAs are as under:

OA No.2506/97

Applicant is aggrieved by A-1 and A-2 orders issued by R-3 on 17.5.96 and 17-25.6.96

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respectively. By A-1 order, respondents have indicated recoveries outstanding against the applicant to the extent of Rs.9330 in the Last Pay Certificate (LPC for short) issued. It has also been mentioned that the respondents are required to make necessary recoveries from the emoluments of the applicant herein. And by A-2 order, respondents have declined to accept applicant's request for waiving of the recoveries of overpayments. To indicate briefly, the applicant has chellenged respondents' action to effect recoveries of payments received by him in respect of Rs.3000 towards transfer grant, Rs.1200 for packing allowance and Rs.73 for daily allowance. As per the applicant, his claim for transfer grant is covered under order No.15 below SR 116 Note (b) (ii). For the purpose of TA, the term "same station" has to be interpreted to mean the area falling within the jurisdiction of the Municipality or Corporation, including such of suburban Municipalities, notified areas or contonment as are contiguous to the named municipality etc. And for transfer between two stations within short distance, if there is a change of residence as a result of transfer, full transfer travelling allowance is admissible. Again, if the distance between the two stations is over 20 KMs, lump sum grant of packing allowance is to be allowed if the office at the new headquarters station is beyond the radius of 20 KMs from the office at the old headquarters station. Applicant would submit that

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he was working at Naraina (new Delhi-110 028) in his parent department and had been transferred to NOIDA/Ghaziabad (UP) on deputation basis from the Ministry of Finance and the distance between Naraina and New Delhi is more than 25 KMs. The applicant submits that in these circumstances, it would be wrong to say that NOIDA falls within the definition of "same station". So far as places falling within the same urban agglomeration of the old hqrs. are concerned, they would be treated as transfer within the same station. While working in New Delhi(Naraina) the applicant has been transferred to Sector I, NOIDA (UP) which happens to be in a different state. Applicant would further contend that NOIDA does not fall under the jurisdiction of the Municipality/ Corporation of the same suburban notified area nor is it a contonment area contiguous to the Municipality of Delhi. In short, applicant's case is that as per SR 116-B for transfer within two stations though within short distance, if there is a change of residence as a result of transfer, full transfer TA will be admissible and if the distance between the two stations exceeds 20 KMs, transfer grant and packing allowance will also be admissible.

3. Respondents have treated NOIDA falling within the same station and as a contiguous area of Delhi/New Delhi Municipality, as per the instructions contained in Controller of Accounts (Ministry of Finance) letter No.CCA/Fin./INA/MO/IGMNoida/93-94/625 dated 23.3.94.

(17)

OA No.2507/97

4. In this OA, the applicant has challenged respondents' action in reducing the Deputation (Duty) Allowance (DDA for short) from 1.6.95 to 21.4.96 from 10% to 5%. It is the case of the applicant that as per Memo dated 7.4.93 i.e. offer of appointment as at Annexure A-10, he was entitled to get his pay fixed in the deputation post (Rs.3700-5000) under the operation of normal rules or draw pay of the post held by him in the parent organisation plus DDA in accordance with the conditions stipulated in the OM dated 4.5.61 of Ministry of Finance as modified from time to time. Applicant argued that before joining the new post on deputation basis, he contacted the CA and AO who had informed him that DDA would be @ 10% on joining the post at NOIDA. Accordingly, applicant had opted for second alternative and he was paid DDA @ 10% from 24.4.93 to 31.3.95. DDA @ 10% was actually paid for two years and hence, the action of respondent No.3 in suddenly decreasing it from 10% to 5% with effect from 1.6.95 is arbitrary and violative of the principles of natural justice. Had the applicant been informed that he would get DDA @ 5% on his joining the new post on 22.4.93, he would have opted for the scale of Rs.3700-5000. In other words, by giving incorrect information, applicant had been made to suffer heavy financial loss. Since it is the mistake on the part of R-3, principles of natural justice would require that

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the applicant should have been given an opportunity to draw pay in the scale attached to the post instead of DDA. To add strength to his contentions, applicant drew our attention to the order of the Tribunal in the case of **Janardhan Pillai Vs. Registrar, Customs Excise and Gold Control Appellate Tribunal (1991) 17 ATC 12**, wherein it has been held that terms and conditions of deputation must be intimated precisely before an employee accepts deputation assignment and that normally deputation must result in gain to the employee concerned. Applicant has also cited the case of **Chander Bhan Vs. UOI (1987) 3 ATC 432** to highlight that show cause notice should have been given before emoluments were modified to the disadvantage of the employee and that reduction in emoluments cannot be done unilaterally, adversely affecting the employee concerned.

5. Respondents have taken the stand that transfer from Delhi to NOIDA is transfer within the same station and hence payment of DDA @ 10% instead of 5% is illegal. The objections raised by the Audit, who noticed irregularity in the over-payments made, were examined and were found to be in accordance with the Government of India's decision in Order No.15 below SR 116 which stipulates the basis as to how the term (same station) has to be understood. Since NOIDA is contiguous to Delhi/New Delhi Municipality, it is termed as same station for the purpose of TA/DA and other allowances. Option once exercised, as in the present case, vide

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communication of the applicant dated 22.4.97 has to be treated as final and in the present case revised option was not permissible because it did not fall within the purview of circumstances leading to revision of option as mentioned in para 4.3, Section 1 of Appendix 5 of FRSR Part I. Recoveries of overpayments made in good faith cannot be waived as per directions contained in Rule 17(ii) of Delegation of Financial Power Rules (DFPR for short), 1978.

6. In the facts and circumstances aforementioned, the following issues fall for determination:

(i) Whether the proposal for recovery of overpayments made was in violation of principles of natural justice?

(ii) Whether NOIDA falls within the jurisdiction/definition of the same station or could be treated as a different station since hqrs. of the applicant stood changed and grants of TA/DA, transfer and packing allowance received by the applicant could be retained by him;? and

(iii) whether an employee, after having opted for a particular package of salary, could be permitted to change the same suiting to the developments of the case?

We shall now discuss the issues in seriatim:

7. It is well settled in law that any action that visits an employee with adverse civil consequences has to be preceded by a formal warning. In the present case, the applicant was pre-warned of the overpayments to the extent of Rs.9330 having been made to him and of the need for effecting recovery vide respondents' communication dated 30.3.96 addressed to him. Instructions to effect recovery

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of the aforeaid amount, as in LPC dated 17.5.96, were therefore preceded by a written communication in advance. It was only because of that prior intimation that the applicant could make large number of representations at different levels highlighting his grievances. Applicant, therefore, cannot take a plea of rules of natural justice having been violated.

8. We find that the Ministry of Finance (Department of Expenditure) vide its order dated 31.1.90 has stipulated that Central Government employees whose place of duty is within the industrial township of NOIDA shall be paid HRA and Compensatory (City) Allowance (CCA for short) at the rate applicable to Delhi. If NOIDA is treated as part of the same station for the purpose of HRA & CCA, it cannot be held to be a different station for the purpose of grant of DDA. We find that applicant has challenged OM dated 1.8.89 wherein Faridabad has been declared as contiguous to Delhi and submitted that what is applicable for Faridabad is not applicable for NOIDA. Such a contention cannot be supported in view of the following:

"6.LIST OF STATIONS WHERE HRA AND CCA ARE ADMISSIBLE UNDER SPECIAL ORDERS
(Swamy's - FR&SR, Part V)

Faridabad Complex Ghaziabad Municipality, Air Force Station-Hindon Gurgan MC, NOIDA Township	HRA and CCA	At Delhi rates

(Authority OM dt. 5.2.98)

9. Applicant's contention based on Directorate of Census Operations' letter dated 20.10.97 that NOIDA does not form part of Delhi/New Delhi cannot be relied upon. This is because the said communication was issued as a measure of clarifications required by the Department of Posts as regards issues on postal zones. Mere change of working station or hqrs. does not make a case of change for the purpose of TA/DA and packing allowance etc. Instructions contained in Ministry of Finance (Controller of Accounts) OM dated 23.3.94 clearly indicates the position that NOIDA is within the same station & to be treated as contiguous area of Delhi/New Delhi. Such evidences lend support to the contention that NOIDA is a part of the same station - Delhi. The applicant, on the contrary, has not produced any direct proof to indicate that NOIDA is outside the contiguous area of Delhi entitling Central Government employees DDA, CCA and HRA at rates other than applicable to Delhi.

10. We find that the applicant by his letter dated 22.4.93 had given his option indicating that "I hereby opt to draw payof the post held by me in the parent organisation which may kindly be accepted". Subsequently, on receipt of communication dated 30.3.96, applicant submits that had CA/AO or PAO given proper advice/guidance, he would have never opted for deputation pay. Accordingly, he submitted his fresh option for fixation of pay in the scale of Rs.3700-5000 of the deputation post. Applicant

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has tried to approbate and probate which is not permissible as per law. Option once exercised is treated as final and revision of the same is not permissible in terms of rules/provisions contained in para 4.3 of FRSR Part II. Situation under which an employee can be permitted to revise his/her option is not found in the present case, in terms of the aforesaid rules. As regards recovery, the OM No.F24(5) EGI(A) 62 dated 6.2.62 provides the following:

> "Recovery of overpayments made to Government servants should not be waived merely on the ground that the overpayment was made in good faith and that recovery would cause hardship. In this connection, attention is invited to para 5 of the report of the Military Accounts Committee on the Appropriation Accounts for 1943-44, wherein it was emphasised that every overpayment of money to a public servant is, and must be regarded as, a debt owed to the public and all possible action should be taken to recover it with despatch. The policy of the Government will be to enforce recovery in all cases where it is possible and where the Government servant concerned is not clearly entitled to the money in question, even after it has been drawn in good faith. It is not, however, intended that the extreme criterion of physical impossibility to recover the dues should be enforced, where such recovery might cause, in the opinion of the competent authority, undue hardship or distress in genuine cases."

11. We find similar provisions are also available under Rule 17 of the DFPR, 1978.

12. In the background of the circumstances aforementioned, the claims of the applicant in both the OAs lack merit and cannot be sustained in terms of rules/regulations on the subject. Both OAs are devoid of merits and are accordingly dismissed.

There shall be no order as to costs.

(S.P. Biswas)
MEMBER(A)

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