

PRINCIPAL BENCH, NEW DELHI

OA.No.2570/89

Dated this the 21st Day of November, 1995.

Hon'ble Shri S.R. Adige, Member(A)

Hon'ble Dr. A.Vedavalli, Member(J)

Shri A.R. Saini

S/o Late Choudhary Ram Kishan

R/o Srinagar, employed as

Deputy General Manager,

Telecommunication,

Kashmir, Sri Nagar. ...Applicant.

By Advocate: Shri Jog Singh.

versus

1. Union of India through Secretary,

Ministry of External Affairs,

New Delhi.

2. S.R. Arora, Second Secretary and

HOC, Embassy of India, Sana'a, Yaman

through Secretary, Ministry of

External Affairs, New Delhi ...Respondents

By Advocate: Shri N.S. Mehta.

O.R.D.E R (Oral)

(By Hon'ble Shri S.R. Adige)

In this application, Shri A.R. Saini, Deputy General Manager, Telecommunication, Sri Nagar has sought various reliefs in respect of payments of allowances to him while he was on deputation to the Government of Yemen from 18.6.86 to 18.6.89. We had called upon the learned counsel for the applicant to furnish us a statement containing the calculation of claims of the applicant on the basis of this OA and that statement was filed on 15.9.95 on which date, it was taken on record.

2. In this connection we have heard the learned counsel for the applicant Shri Jog Singh as well as the learned counsel for the respondents Shri

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N.S. Mehta, Shri Jog Singh states that ^{may} we proceed to examine the applicant's claims on the basis of the statement of calculation and we do so accordingly.

3. The first claim by the applicant is on account of the so called loss owing to the alleged wrong fixation of the exchange rate of Yemeni Riyal with that of the Indian rupee. The applicant contends that whereas the exchange rate quoted by the commercial banks during the relevant period varied from 1.09 to 1.03 Yemeni Riyals to the Rupee, the rate at which he was paid foreign exchange was 0.50 Yemeni Riyal to the Indian Rupee. The applicant claims a total sum of Rs.89,494/- on account of this. In this connection, respondents counsel has invited our attention to the contents of Ministry of External Affairs Order dated 3.3.86 (Annexure 'M'), para-7 of which states that the scales of foreign allowance fixed by that order would take effect from 1.10.85 and that the exchange rate would be Rs.1/- = YR 0.50. It is well settled that a Government servant entitled to foreign allowance would be paid allowance at rates officially fixed by Government and Government is not obliged to release foreign exchange at rates prevalent in the money market or elsewhere. Furthermore, the exchange rates fixed by MEA order dated 3.3.86 would be applicable to every Government servant posted abroad and entitled to foreign allowance and the applicant, therefore, cannot claim that he has been subjected to hostile discrimination. Hence this claim fails.

4. The second claim is on account of alleged loss due to slab reduction in the foreign compensatory allowance. It is contended by MEA's Order dated 15.7.87 (Annexure-E), while the salaries of officers in Indian Missions and posts abroad were raised, pursuant to the recommendations of the IV Pay Commission, their foreign allowance were correspondingly reduced, and this reduction was arbitrary and illegal and the applicant has claimed a total loss of Rs.64,317.30 on this account. We note from the contents of this Order that it was issued by the respondents as a matter of policy and was made applicable not to the applicant alone but to all the officers posted in Indian Missions and posts abroad. Hence the applicant cannot claim that he was subjected to hostile discrimination on this account. Furthermore, we note that no specific relief has been sought in the OA against this Order dated 15.7.87 and there is no prayer contained in the OA that the said order should be quashed and set aside. Till such time as the order stands, it would continue to hold the field and if the applicant has been paid in accordance with this order, the respondents cannot be faulted. During the course of arguments, applicants counsel prayed for permission to amend the OA, so that, this order dated 15.7.87 could be specifically impugned. This prayer was resisted by respondents counsel on the ground that such an amendment of the OA could not be allowed at the fag end of the case when final hearing was under way, more particularly, when the applicant had not done so, despite no lack of opportunities in the past. These arguments advanced by respondents counsel are

eminently reasonable and the prayer now made for permission to amend the OA to impugn the order dated 15.7.87 is rejected. If the applicant has any grievance in respect of that order, it will be open to him to agitate the same separately through appropriate original proceedings in accordance with law, if so advised, subject to the law of limitation. This claim therefore, is also rejected.

5. The next claim relates to alleged loss suffered due to less payment of foreign compensatory allowance, as compared to applicant's junior Shri Varadarajan, who is stated to have been drawing lesser basic pay at the relevant point of time.

6. The respondents in their reply have admitted that Shri Varadarajan was drawing less pay (Rs.1800) than the applicant (Rs.2000) although both were in the same pay scale of Rs.1500-2000 and on that account were granted the same foreign compensatory allowance of Rs.10,845/- as both were equated with the First Secretary, Indian Embassy Sanaa, Yemen. Prima facie, it appears to us that if Shri Varadarajan indeed was paid a less salary than the applicant, he could not claim allowance equal to that of the applicant. Further more we note that respondents counsel Shri Mehta very fairly does not seriously oppose this claim. Under the circumstances, this claim for Rs.4336/- deserves to be allowed.

7. The next claim is on account of loss due to recoveries effected by the respondents for alleged over-payment of Servant Allowance. We are informed that the Servant Allowance was initially paid to the applicant, but thereafter on the ground of alleged mistake, it was recovered from him. Respondents counsel has very fairly conceded that no notice was issued to the applicant to show cause before effecting the recovery. It is well settled that such recoveries entail civil consequence and it has been held in a catena of judgements that in all cases entailing civil consequences, an opportunity should be given to the person concerned to show cause before taking action, which admittedly was not done in this case. Furthermore, we note that this claim is not seriously opposed by respondents counsel and accordingly that claim against wrongful recovery of Rs.7146.60 ps. deserves to be allowed.

8. The next claim relates to alleged loss due to non-payment of representational/entertainment grant amounting to Rs.42,276. The respondents have pointed out in their reply that as the applicant was not appointed as Diplomatic Officer but was appointed as a deputationist under IIEC Programme of MEA and was holding only an Official passport and not a Diplomatic passport and was not on any diplomatic assignment during the deputation period, he is not eligible for representational grant. In our view, the respondents averment above represents the correct legal position and for the reason contained in those averments, the applicant would not be eligible for the

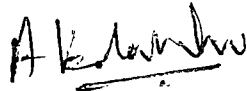
representational/entertainment grant. In our view MEA's order dated 25.3.86 (Annexure-L), attention to which has been drawn by applicant's counsel, which ~~removes~~ ^{removes} the distinction between rates of foreign allowances and rates of representational/entertainment grant admissible to IFS and non-IFS posted abroad, does not help the applicant because the applicant was not a diplomatic officer but was posted to Sanaa as a Technical Expert. Hence this claim of Rs.42,276/- is rejected.

9. The next claim is for Rs.7900/- on account of the alleged loss due to non-payment of air fare to the applicant's dependent daughter from Delhi to Sanaa and back to Delhi. The respondents in their reply have stated that during the applicant's deputation from 18.6.86 he was entitled to Children Holiday Passage in respect of his daughter who was studying in a college at Jaipur. In terms of rules governing ITEC Deputation, he should have applied in advance for grant of CHP. Instead, the applicant took his daughter to Sanaa on 27.6.88 at his own expense and requested the respondents to grant one way CHP for his daughter only in November 1988 which was high handed. While, no doubt the applicant should have taken prior permission from the Ministry for taking his daughter from Delhi to Sanaa under CHP in June 1988, it is also true that the respondents could very well have granted ex-post-facto sanction in this case. Moreover we note that payment of Rs.3100/- out of the claim of Rs.7900/- being the one way air fare from Delhi to Sanaa for the air journey performed by the applicant's

daughter has not been opposed by applicant's counsel, and under the circumstances, this payment of Rs.3100/- deemed to be allowed.

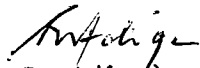
10. The prayer for interest on the above sums made by applicant's counsel is rejected, as there has been no wilful or deliberate delay on the part of the respondents.

11. The OA, therefore, stands partially allowed in terms of the orders dictated above. The respondents should ensure that necessary payments are made to the applicant within three months from the date of receipt of a copy of this judgement. No costs.



(Dr. A. Vedavalli)
Member(J)

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(S.R. Adige)
Member(A)