

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 634/88

Date of decision 9.2.1993

ALTAF AHMAD

...

Applicant

V/s

Union of India ...
and Ors.

Respondents

CORAM:

The Hon'ble Member Mr. C.J. Roy, Member (J)

For the Applicant ...

None

For the Respondents ..

Shri P.P. Khurana, counsel

(1) Whether Reporters of local papers may be allowed to see the judgement ?

(2) To be referred to the Reporter or not ?

JUDGEMENT

[Delivered by Hon'ble Shri J.C. Roy, Member (J)]

The brief facts of the case are that the applicant is employed in the Posts and Telegraphs Department. Prior to 1979 he was working in Buduan Division. From 1973 to 1976 he worked at Bilsa and from 1976 to 1979 at Bisauli. He claims that his children were stationed at Dabtora. He was paid Children Education Allowance. In 1979 he was transferred

to Moradabad Division and posted at Shahabad but he states that he kept his children at old place. He was paid Children Education Allowance upto January, 1980 for two children. From February 1980 one child stopped her education and the C.E.A. for the other was paid upto March 1986. During this period he claims that his child studied at Dabtera (old place) upto June 1982 and at Asafpur from 1983 to 1985 and from 1985/86 at Bisauli. He says that his appeals were verified and investigated and the amount was paid as claimed by the applicant.

2. The respondents No. 3 demanded a refund of Rs. 1860/- by order dated 6.12.1986 which is at Annexure 'G' numbered as A/CEA/Altat Ahmad/86-87, dated 6.12.1986 and started recovery of the amount from his salary. He made representation to the Senior Superintendent of Post Offices on 4.5.1987 but there was no reply in spite of reminders. He also made a representation to the respondent No. 2 on 25.5.1987 ^{per} as Annexure 'I'. Being irritated by repeated representations, the respondent No. 2 rejected his representations vide his letter

No. AB3/Misc./10, dated 1.12.1987. Hence this petition is filed by the applicant claiming a relief of Rs. 1860/-.

3. He has also prayed for interim order of stay/the recovery. There was no interim order granted.

4. The respondents have quoted the rules under P&T for CEA in terms of para 2(c)III of the communicated No. 6/14/76/PAT, dated 4.12.1976 issued by them which is reproduced below :-

" If a Government servant is transferr_ed from a station where there is no school of requisite standard to a station where there is such a school and he was in receipt of the allowance at former station in respect of any child or children he shall remain eligible for such allowances until the close of the academic year of school in which his child/children were studying at the time of his transfer provided they continue to study for that period in that school."

In terms of the above instructions, the applicant was entitled to the Children Education Allowance upto the period June, 1979 till his transfer from Buduan. After he was transferred to Moradabad, he was not entitled to draw Children Education Allowance because of a recognized permanent junior High School existed at the new place of posting. In spite of that, the applicant has never shifted his children though educational facilities were available at the new place of posting after the academic year is completed but continued his children at the old school only on his own choice and, therefore, he was disentitled to draw any Children Education Allowance after the end of academic year 1978-79.

5. The short point for consider is whether recovery is against rules and bad in law and that it should be refunded to the applicant. It is admitted that the applicant has not shifted his children from the old school but for his own convenience and on his own choice he kept his children only at the old place of posting though he was transferred to the new place of posting. The above quoted rules in the respondents' written statement is unambiguous, clear-cut that the allowance

could be paid only till the completion of the academic year, but not beyond the period of transfer to a different place. It is an admitted fact that in the new place of transfer also the same facilities were available but the applicant on his own choice sending the children for education to the old school only. He can act only in accordance with rules and claim refunds if they have been illegally recovered from him but in this case the action of the applicant is not in accordance with the rules. He cannot break the rules and pray the Tribunal to order recovery against the CEA. It is altogether a different case in the new place of posting if the same facilities of education are not available to the children of the applicant. It is a no nobody's case that such facilities are not available in the new place of posting. Not shifting to the new place of posting for educational purposes of his children by the applicant is not the fault of the Department.

6. Under the above circumstances I see no merits in the application. Besides, there is no stopple against law for the recovery of the excess amount paid by mistake by a Department. It can always be

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recovered from the applicant. I fail to see any
reason to interfere in this application. The
application is, therefore bereft of merits and is
dismissed with no order as to costs.

C. J. Roy
(C.J. Roy)
Member (J)