

R

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

PRINCIPAL BENCH: NEW DELHI

OA NO. 1066/88

DATE OF DECISION: 17-4-1990.

S.S. SAAR & OTHERS

APPLICANTS

SHRI R.P. OBEROI

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI M.L. VERMA


ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. AMITAV BANERJI (CHAIRMAN)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal ~~No~~ _{ch}


(Amitav Banerji)
Chairman

19

R

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

PRINCIPAL BENCH: NEW DELHI

OA NO. 1066/88

DATE OF DECISION: 17-4-1990.

S.S. SAAR & OTHERS

APPLICANTS

SHRI R.P. OBEROI

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI M.L. VERMA

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. AMITAV BANERJI (CHAIRMAN)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A))

This application has been filed by Shri S.S. Saar and three others under Section 19 of the Administrative Tribunals Act, 1985 on June 2, 1988 against the impugned order dated 2.2.1988/7.3.1988, (Annexure X of the application) rejecting the request for waiver of recovery of an amount of Rs.33,576 from the applicant.

2. The applicant has prayed for the following reliefs:-

- i) The impugned order dated 2.2.1988 issued by respondent No.2 may be quashed and

2

- ii) The money received by the applicant from the Government of Bahrain during the period of deputation abroad as out of pocket expenses etc. should not be termed as fee.

The application was admitted on 7.6.1988 when the Tribunal passed an interim order restraining the respondents from recovering the amount in question.

3. The facts of the case briefly are that a team comprising 13 officials of the department of Archaeological Survey of India (including the applicant) was sent on deputation to Bahrain under Indo-Bahrain Archaeological excavation programme in November, 1984 vide order dated 28 November, 1984 (Annexure 1 of the application). The period of deputation initially was four months, and was later extended vide order dated 20.4.1985 (Annexure 2) by another two months. The applicant left India on 29.11.1984 and returned on 31.5.1985 on completion of the deputation period. The terms and conditions of deputation as given in order dated 28.11.1984 (Annexure 1) are:-

- a) The expenditure on air journey from Delhi-Bahrain -Delhi and internal hospitality in Bahrain would be met by the Government of Bahrain.
- b) The member of the team who are serving officials would be treated as on duty and would continue to draw their pay and allowances in India in Indian currency.
- c) The team will be entitled to medical facilities as admissible under the Rules framed by the

Ministry of External Affairs.

- d) The actual expenditure incurred on account of pre-departure formalities will be reimbursed.

The terms and conditions however did not specify payment of any cash allowance to meet incidental and out of pocket expenses. The applicant has submitted that the Director General, Archaeological Survey of India during the briefing session before departure, had assured the members of the team that out of pocket expenses would be admissible to them at appropriate scale, as applicable in Bahrain. The team was also advised that in case of any difficulty they should contact Indian Mission in Bahrain for assistance.

On reaching Bahrain the team found itself without any foreign currency, as each member had taken only an amount of \$ 20, normally allowed in foreign exchange. The leader of the team, therefore, approached the Indian Mission for assistance, who advised the team to collect the out of pocket expenses from the Ministry of Information, Government of Bahrain. The team was put up in a hotel by the Government of Bahrain alongwith other teams from countries like Iraq etc. who were also engaged under the excavation programme. The host Government paid out of pocket expenses uniformly at the rate of Bahrain Dinar 520 per month to each member except, the leader of the team who was paid at a slightly higher rate. Similar payments were also made to members of other teams.

5. After two months of return of the applicant to India the respondent No.2 asked the applicant vide his letter dated

17

31.7.1985 (Annexure III) to furnish the details of honorarium/allowance received by the applicant from the Government of Bahrain, as also the details of income furnished by the applicant to the Income Tax Authorities. The applicant furnished the requisite information on 7.8.1985 (Annexure IV), when the respondents vide their OM No.7-21/85-Vig (Pt.) dated 14.11.1986 (Annexure V) advised the applicant that:

"Government have now decided that the amount of Rs.1,01,928 only (BD 3,154.667) received from Bahrain Government should be regarded as fee in terms of FR 46 read with SR 12 and that one third of the amount so received in excess of Rs.400 should be refunded to the Government".

The applicant was, directed to refund to the Government a sum of Rs.33,576 within one month from the date of the OM dated 14.11.1986 failing which the amount would be recovered from monthly pay and allowances/terminal benefits and pension etc. of the applicant. At this stage, the applicants requested the respondents to provide him a copy of the terms and conditions arrived at between Government of Bahrain and the Government of India regarding the Excavation Programme. He also submitted that the amount received by them from the foreign Government to meet out of pocket expenses did not constitute fee, as this was the only cash allowance paid for meeting expenses other than boarding, lodging and transport. The requests of the applicant to grant exemption from depositing/waiver of recovery of the said amount were turned down by the respondents on 12.11.1987 (Annexure-VIII) and on March 7, 1988 (Annexure X). The applicant was further

18

directed that the amount may be deposited in lump sum within a period of 15 days failing which the same would be recovered from the monthly salary commencing from April, 1988. Further representations to the higher authorities dated 4.4.88 (Annexure XI) and 27.5.1988 (Annexure XII) also did not yield any result. While some of the members of the team who were Central Government servants have been allowed to retire on superannuation with full retirement benefits, the applicant is being subjected to harassment by insisting on recovery of one third of the amount received by him from Govt. of Baharain.

6. The Ld. Counsel of the applicant has pleaded that FR 46 and SR 12 are not applicable in his case, as the amount received was a monthly allowance for meeting day today expenses in a foreign country.. Such a payment by its very nature can not be termed as fee. He further contended that the nature of payment made by Baharin Government as seen from D.O. letter dated 23rd July, 1988 from, Second Secretary, Indian Embassy, Baharain (Annexure R-I) is that of a monthly allowance which has neither the character of fee nor that of pay. The Ld. Counsel drew our attention to section III of the minutes of the discussion held between Shaikha Haya Al Khalifa, Director of Archaeology and Museums, Govt. of Baharain and Dr. M.S. Nagaraja Rao, Director General, Archaeological Survey of India held on 20th and 22nd October, 1984 and submitted that according to the understanding reached a monthly honorarium/allowance at the rate already decided by the Government of Bahrain was to be paid to each member of the team. The monthly allowance payable to the

18

applicant in Baharain was thus known to the respondents as they had themselves negotiated the quantum of the said allowance. The question of seeking prior permission to receive the payment by the applicant from the respondents therefore cannot be made issue of.

7. The respondents in their reply have stated that the applicant before receiving any amount on monthly basis from the host Government should have apprised the respondents and sought prior approval. The applicant was already drawing pay and allowances in India, and, therefore, the huge amount received from the Bahrain Government by the applicants was unauthorised. The respondents however have taken a lenient view of the matter and have decided to deem the payment received as fee thereby restricting the recovery to only one third of the unauthorised payment received in terms of FR 46 read with SR 12. It has been further contended that the amount received by the applicants at BD 520 per month can not be termed as out of pocket allowance, as the rate of out of pocket allowance would be only 75% of \$ 50.50 per day for Grade II/III officers (in which the applicants are placed) when boarding and lodging is to be arranged by the deputationists himself. In this case the expenditure on boarding and lodging and transportation was borne by the host country and therefore their entitlement was only to one fourth of the \$ 50.50 per day. Instead the applicants received BD 520 p.m. equivalent of Rs.17,300 p.m. approximately and such an amount cannot be treated out of pocket allowance. In fact the payment constitutes pay or fee received in contravention of the terms of deputation.

20

8.1 We have heard the Id. Counsel of both the parties and gone through the record very carefully. Before we go into the merits of the case, let us have a look at the Rules.

Fee is defined in FR9(6A) which reads as under:-

"Fee means a recurring or non-recurring payment to a Government servant from a source other than the Consolidated Fund of India, or the Consolidated Fund of a State [or the Consolidated Fund of a Union Territory] whether made directly to the Government servant or indirectly through the intermediary of Government, but does not include--

- a) unearned income such as income from property, dividends, and interests on securities; and
- b) income from literacy, cultural, artistic, scientific or technological efforts and income from participation in sports activities as amateur."

FR 46 and SR 12 detail the circumstances and the conditions under which fee can be paid and the quantum thereof that can be retained by the recipient of the fee. The monthly allowance received by the applicant is from Government of Baharin with whom the Govt. of India had come to an agreement vide Minutes of the meeting at Annexure R-2 (pages 100 and 107 of the paper book). Thus the amount in question was paid by a sovereign and independent Government and not by an intermediary of the Govt. of India.

8.2. FR 46(A) further specifies the circumstances and conditions in which such a fee can be received:

"Subject to any rule made under Rule 46-A and Rule-47, a

21

Government servant may be permitted, if this can be done without detriment to his official duties and responsibilities, to perform a specified service or series of services for a private person or body or for a public body including a body administering a local fund and to receive a remuneration therefor, if the service be material, a non-recurring or recurring fee".

SR 12 regulates the quantum of the fee that can be retained. In the case under discussion the applicant was sent on deputation for a specified period in terms of agreement arrived between the two Govts.

8.3. We find that the circumstances and conditions in which the monthly allowance had been paid are neither analogous nor identical with those which attend the payment of fee in terms of FR 46. We are therefore of the view that the amount received does not have the attributes or the attending circumstance of fee as prescribed in FR 9(6A) and FR 46. Besides the Rules brought to our notice have been framed to regulate the payments received in India and in the environment and conditions obtaining in India and do not govern the amount received from the Government of Baharain at a pre-determined scale during the period of deputation in that country. No other rule or authority has been brought to our notice which can be invoked to appropriate a part of the allowance received in a foreign country for bonafide purposes.

8.4. The Minutes of the meeting at Annexure R-2 (page 102 and 107 of the paper book) gives the details of the "internal hospitality" to be extended to the members of the team. Section

22

III of the Minutes, relevant to the matter under disposal, is reproduced below:-

FACILITIES PROVIDED BY BAHRAINI AUTHORITIES TO THE INDIAN MISSION

(a) "free lodging and boarding in Aradus Hotel in the Capital of Bahrain. However, washing, telephone and such other charges will be paid by the members of the Indian mission.

(b) - Free transport for the team.

The archaeological site is about 30 minutes drive from the hotel.

(c) All the instruments, tools and plants for excavations will be made available."

It is seen from sub para (a) above that the Govt. of Baharin was conscious of need and nature of the incidental expenses which have to be defrayed by an individual in a foreign country and in a substantially different environment, when specifying the payment of monthly allowance in the memorandum of understanding at Annexure R II (page 100-107 of the paper book)-

"that each member of the team will receive monthly allowance at the rate already decided by the Govt. of Baharin".


The only objective of the monthly allowance paid by the Govt. of Baharain was to enable the applicant to meet expenses on miscellaneous incidental items like laundry, telephone, and other daily needs. These expenses cannot be met for obvious reasons from the salary and allowances received in Indian currency in India. The respondents have not brought to our notice any other provision or evidence to show if the applicant was paid by the


23

respondents any lump sum allowance etc. in foreign exchange in India before departure to meet out of pocket expenses during the period of deputation in Baharain.

In the facts and circumstances of the case, we are of the view that the provisions made in FR 46 and SR 12 cannot be invoked to appropriate 1/3 of the monthly allowance at BD 520 p.m. received by the applicant and others in Baharain as these rules are relevant only for regulating the payment received in India. Such payments cannot but be regulated in accordance with the arrangements worked out between the two Governments. We therefore hold that monthly allowance at BD 520 p.m. received by the applicant and others was in the nature of an allowance paid by the host Govt. to meet out of pocket expenses, to fulfil its obligation under the provision of "internal hospitality" as specified in Annexure-I No.3-25/84-Adm.I dated 28.11.1984 issued by the respondents.

Accordingly we quash the Office memorandum No.7-21/85-Vig(PT)ADM-I dated 2-2-1988/7-3-1988 issued by respondent No.2 directing the applicant ^{No.1} to pay in lump-sum Rs.33,576 or to face recovery of the said amount from his emoluments. We leave the parties to bear their own costs.


(I.K. Rasgotra) 17/4/90
Member(A)


(Amitav Banerji)
Chairman