



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No. 1059/2020

M.A. No.1308/2020

Friday, this the 25th day of September, 2020

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

1. Mr. Vinod Kumar Jindal
Aged about 57 years
S/o Late Shri Moti Lal Jindal
R/o D-28, Seemant Vihar
Kaushambi, Ghaziabad-201010.
Presently working as Principal Advisor (Cost)
Director General Trade Remedies
Jeevan Tara Building
Ministry of Commerce
New Delhi-110001.

2. Mr. S. Meenakshi Sundaram
Aged about 57 years
S/o Shri K. Subburaman
R/o D-304, Central Government
Residential Complex, Deen Dayal Upadhyay Marg
New Delhi-110002
Presently working as Adviser (Cost/Air)
Room No.26, L 1 Block
Ministry of Defence (Finance)
New Delhi-110002.

...Applicants

(By Advocate: Ms. Saumya Gupta)

Versus

1. Union of India
Through its Secretary
Department of Public Enterprises
Ministry of Heavy Industries & Public Enterprises
New Delhi.

2. Ministry of Housing & Urban Affairs



Through its Secretary
Ministry of Housing & Urban Affairs

Nirman Bhawan
New Delhi-110011.

3. Ministry of Commerce & Industry
Through its Secretary
Department of Commerce
Udyog Bhawan
New Delhi-110001.
4. Ministry of Defence
Through its Secretary
Department of Defence
South Block
New Delhi-110001.
5. Ministry of Finance
Through its Secretary
Department of Expenditure
Ministry of Finance
New Delhi.

...Respondents

(By Advocate : Mr. Piyush Gaur)

O R D E R (O R A L)

Justice L. Narasimha Reddy:

The applicants, who were working in the Ministry of Heavy Industries & Public Enterprises, were extended the benefit of Non-Functional Upgradation (NFU) in the year 2010. The benefit carried with it, the component of Transport Allowance also. Through an Office Memorandum (OM) dated 02.12.2019, the respondents have directed recovery of Rs.3,63,958/- from applicant No.1. Similar OM was issued to the 2nd applicant on 27.12.2019, proposing to recover a sum of Rs.1,95,522/-. This O.A. is filed challenging the two Office Memoranda, referred to above.



2. The applicants contend that they have been extended the benefit of NFU after due verification and there was absolutely no basis for withdrawing it. They contend that the respondents did not issue any Show Cause Notice (SCN) before taking such a drastic step of withdrawal of benefit and proposal for recovery. Another contention is that since it is not even attributed that they have made any misrepresentation, the recovery ought not to have been made. Reference is made to the representations made by them as well as the replies thereto.

3. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the applicants were not entitled to Transport Allowance at that particular rate and the mistake in that behalf was noticed only when the audit raised the objection. It is also stated that the various contentions urged by the applicants are taken into account.

4. We heard Ms. Saumya Gupta, learned counsel for applicants and Mr. Piyush Gaur, learned counsel for respondents, at length.

5. The applicants and several others were extended the benefit of NFU under the relevant scheme. One of the components is the Transport Allowance. The details of the benefit extended to the applicants are not before us. However, the respondents straightway issued OM dated 02.12.2019, which reads as under:

“Subject : Internal Audit Report of ”



Subject:-Internal Audit Report of Department of Public Enterprises, New Delhi for the Period from 01.04.2013 to 31.03.2018-reg.

The undersigned is directed to say that Internal Audit Wing, Ministry of Industry vide letter No. G-25017/IAW/2018-19/640/1182 dated 18.03.2019 (copy enclosed), informed that excess payment of Rs. 3,63,958/- (Rs. Three lakh sixty three thousand nine hundred fifty eight only) has been made on account of payment of transport allowance to Shri V. K. Jindal, Director then posted in Department of Public Enterprises during 24.05.2010 to 31.12.2014.

2. It is, therefore, requested that excess payment amounting to Rs. 3,63, 958/- (Rs. Three lakh sixty three thousand nine hundred fifty eight only) may be recovered at the earliest. A copy of recovery of excess payment may be sent to DPE to comply with the Audit observation of IAW, Ministry of Industry within a period of one month from the date of issue of this O.M.”

The one issued to the 2nd applicant is almost on the similar lines.

6. From a perusal of the OM extracted above, it is evident that the only basis for the recovery is an objection raised in the internal audit. Assuming that any irregularity or deviation was noticed, the basic requirement was to put the applicants on notice, so that they can come forward with their explanation if any. It is rather sad that the higher administration, in such an important department, did not take note of a basic requirement and straightway the OMs were issued.



7. The mere fact that the applicants submitted representations thereafter and some reply was given does not cure the initial defect, which emanated from the violation of principles of natural justice.

8. On the short ground of violation of principles of natural justice, we allow the O.A. and set aside the OMs dated 02.12.2019 and 27.12.2019. However, we leave it open to the respondents to issue Show Cause Notice to the applicants and then to take further steps. We also make it clear that till such orders are passed, the applicants shall be paid the Transport Allowance as per the revised rates but no recovery shall be effected.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

September 25, 2020

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