



## CENTRAL ADMINISTRATIVE TRIBUNAL

### CHANDIGARH BENCH

O.A. No. 060/120/2019

(Order reserved on 12.02.2021)

Chandigarh, this the 2<sup>nd</sup> day of March, 2021

### **HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

Chandra Pal (now deceased), S/o Late Sh. Shankar Singh, R/o House No. 600, Sector 32-A, Chandigarh, Through LR's:

- i) Smt. Shashi Bala Widow of Late Sh. Chandra Pal, Aged 59 years, Address – 133, Lane No. 14, Rajeshwar Nagar Phase 2, PO Sahastradhara Road, Dehradun, Uttrakhand.
- ii) Ashwini Kumar S/o Late Sh. Chandra Pal, Aged – 29 years, Address - 133, Lane No. 14, Rajeshwar Nagar Phase 2, PO Sahastradhara Road, Dehradun, Uttrakhand
- iii) Nisha Singh W/o Sh. Sunil Kumar, D/o Late Sh. Chandra Pal, Aged – 38 years, Address - 133, Lane No. 14, Rajeshwar Nagar Phase 2, PO Sahastradhara Road, Dehradun, Uttrakhand
- iv) Karishma W/o Sh. Anand Kumar, D/o Late Sh. Chandra Pal, Aged – 36 years, Address – Flat No. 263, Lumbini Apartment, Kaushambi, Sector 14, Ghaziabad, Uttar Pradesh.
- v) Kavita W/o Sh. Pankaj Yadav, D/o Late Sh. Chandra Pal, Aged – 33 years, Adress – Flat No. 409, A R Reflections, Raj Nagar Extension, Ghaziabad, Uttar Pradesh.

.....Applicants

By Advocate: Mr. Ajay Singh Rawat

### Versus

1. Union of India through its Secretary, Ministry of Science and Technology, Department of Science and Technology, Technology Bhawan, New Mehrauli Road, New Delhi-110016.
2. Surveyor General, Survey of India, Hathi Barkala Estate, Post Box No. 37, Dehradun, Uttrakhand-248001.

.....Respondents

By Advocate: Mr. Mukesh Kaushik



## **ORDER**

### **AJANTA DAYALAN, Member (A):**

1. The present OA was filed by the applicant Chandra Pal who is now deceased. The OA is now being pursued through his legal heirs Shashi Bala and Others. The original applicant sought quashing of communications dated 01.05.2007 (Annexure A-1), 25.04.2017 (Annexure A-2) and 20.04.2017 (Annexure A-3) so far as these relate to him. Vide impugned orders, drawl of Transport Allowance at higher rate of Rs. 7000/- p.m. + DA was objected to and excess payment was ordered to be recovered from the original applicant.
2. In the OA, the original applicant stated that he was promoted to the post of Director, Punjab, Haryana and Chandigarh, GDC in 2003. The original applicant further submitted that his pay was fixed with retrospective effect from 2008 in the Grade Pay of Rs. 10,000/- under NFU. This scale being equivalent to Joint Secretary to Government of India, he was allowed Transport Allowance at the rate of Rs. 7000/- p.m. + DA as per Government of India OM dated 29.08.2008 (Annexure A-4).
3. The original applicant further submitted that an audit objection was raised on the payment of Transport Allowance at the rate of Rs. 7000/- p.m. + DA. As such, respondent No. 2 sought clarification from the Ministry of Science and Technology vide communication dated 21.03.2016 (Annexure A-5). After



issue of this communication, the payment of Transport Allowance at enhanced rate of Rs. 7000/- + DA was stopped. Thereafter, on 12.04.2016 (Annexure A-6), the Ministry clarified that SOI may recover excess Transport Allowance paid at higher rates to all Army officers appointed against supernumerary posts as well as officers appointed under the scheme of Non Functional Upgradation.

4. The original applicant further stated that on 20.04.2017 (Annexure A-3), recovery was ordered for excess payment of Transport Allowance. It was also mentioned therein that if in future any approval is received from the Ministry of Finance, the recovered amount will be refunded to the officer. The original applicant, therefore, argued that it is apparent from this order that the respondents themselves were not aware whether recovery should be made or not and despite this, directions were issued to recover excess payment of Transport Allowance.

5. Further, the original applicant submitted that another order was passed on 25.04.2017 (Annexure A-2) by the Western Region where the applicant was posted directing the applicant to take appropriate action. On the same date, the applicant submitted representation dated 24.04.2017 (Annexure A-7) requesting that till final decision is taken in the matter, no recovery be made. However, on 01.05.2017 (Annexure A-1), the respondents again passed an order for immediate recovery from pay of the applicant.



6. The applicant had argued that as held by Supreme Court, recovery from employees is not permissible if excess payment has been made for a period of more than five years before an order of recovery is issued. He also argued that OM dated 02.03.2016 (Annexure A-8) issued by Government of India regarding recovery of wrongful/excess payment made to Government servants in the light of the case of **State of Punjab & Ors. Vs. Rafiq Masih and Others**, SCT 2015(1) 195 is fully applicable in his case. As per para 4(iii) of these instructions, recovery from employees when the excess payment has been made for a period in excess of five years before the order of recovery is issued is impermissible in law. The applicant stated that he was to retire in February 2019 and had less than two months service left. He was suffering from cancer and as such, any recovery would be harsh and against the spirit of Supreme Court directions. The original applicant also pleaded that benefits under 6<sup>th</sup> CPC are based on Grade Pay which he was drawing and it is immaterial whether the Grade Pay is allowed on Non Functional Selection Grade or on actual promotion. He also stated that OMs issued prior to coming into force of 6<sup>th</sup> CPC cannot be made basis to give another interpretation to order dated 29.08.2008.

7. In view of all above, the original applicant concluded that he deserved the benefits sought in the OA.

8. The respondents have contested the claim of the applicant. Firstly, they have stated that the Transport Allowance



at the rate of Rs. 7000/- + DA thereon was stopped vide letter dated 21.03.2016. As such, cause of action, if any, arose from this date. However, the OA has been filed beyond the time line of one year from the date of issue of first letter of recovery. No explanation of any kind for delay has been given. Hence, as settled in the case of **D.C.S. Negi Vs. Union of India and Others**, SLP (C) No. 7956/2011 with CC No. 3709/2011 decided on 07.03.2011, the Tribunal is duty bound to first consider whether the application is within limitation and admit only if the same is found to be within limitation or for any justifiable reasons for extending the period of limitation. This OA is, therefore, liable to be dismissed on the ground of inordinate delay and laches on the part of the applicant for which there is no explanation.

9. The respondents have further averred that during internal audit in the office of Survey of India in January 2016, it was pointed out that as per Government of India OM dated 29.08.2008, officers on regular promotion drawing Grade Pay of Rs. 10,000/- and those in HAG who are entitled to use office staff car for commuting between office and residence in terms of OM dated 28.01.1994, were to be given the option either to avail themselves of the existing facility or to draw Transport Allowance at the rate of Rs. 7000/- + DA thereon as admissible from time to time. However, the applicant was holding regular post of Director in non-functional scale with Grade Pay of Rs. 10,000/-. Hence, he was not entitled for staff car and Transport Allowance at the rate of Rs. 7000/- + DA. He was entitled only for Rs.



3200/- + DA as admissible. Accordingly, it was recommended to recover excess amount paid to him.

10. The respondents have further averred that the officers who are drawing the Grade Pay of Rs. 10,000/- under the scheme of Non Functional Upgradation and holding the regular post of Director are not entitled for Transport Allowance at the rate of Rs. 7000/- + DA thereon. They have further stated that the post of Director is below the rank of Joint Secretary to the Government of India and as such, the applicant was not entitled for the excess amount drawn. Further, it is stated that only persons actually working on the position of Additional Surveyor General on regular basis are entitled to draw Transport Allowance at higher rate and the applicant was not working on the post of Additional Surveyor General in regular manner. Hence, the applicant was not entitled to Transport Allowance at higher rates.

11. The respondents have further contended that the applicant never approached any judicial forum for restoration of Transport Allowance at enhanced rate of Rs. 7000/- till the issue of recovery order of excess payment from 21.03.2016 onwards when Transport Allowance at the rate of Rs. 7000/- was stopped. Hence, the applicant was himself well aware that he was not entitled to the said benefit.

12. The respondents have further contended that the department sought clarification from nodal Ministry regarding entitlement of Transport Allowance. Accordingly, the applicant was informed that waiver of excess Transport Allowance was



subject to the clarification of Nodal Ministry. However, the Nodal Ministry clarified that officers in Grade Pay of Rs. 10,000/- under the scheme of Non Functional Upgradation are not entitled to this Transport Allowance. After receipt of this clarification, the competent authority decided that excess amount be recovered from the applicant. Further, seeking clarification of any doubt in regard to interpretation of rule position is a routine matter.

13. The respondents have further stated that all GDCs/offices were directed not to draw Transport Allowance at higher rate w.e.f. 01.04.2016 till clarification from Ministry is received. Administrative Ministry vide their letter dated 12.04.2016 directed recovery of excess Transport Allowance paid.

14. The respondents have further averred that the instant OA is not covered under the judgement in the case of Rafiq Masih (supra) as order regarding recovery of overpayment of Transport Allowance was made on 15.03.2016 itself. The applicant was due to retire on 28.02.2019. Hence, the recovery was ordered well before the period of one year of his retirement. As such, condition No. (ii) in case of Rafiq Masih cannot be applied in the instant case.

15. The respondents have also argued that the applicant was clearly placed on notice that payment found in excess would be required to be refunded. The officer also furnished an undertaking dated 09.09.2008 (Annexure R-1) while opting for revised pay scales and, therefore, he is bound by the undertaking so furnished.



16. Further, the respondents have submitted that recently the Apex Court has clarified in the matter of **Punjab and Haryana High Court Versus Jagdev Singh** which has also been followed by the Coordinate Bench of this Tribunal in order dated 04.09.2018 in OA No. 481/2018. Hence also, this Tribunal is bound to follow the same principles as settled by the Hon'ble Apex Court in the case of Jagdev Singh (supra).

17. In view of all above, the respondents have concluded that the applicant does not deserve the relief sought in the OA as he is not entitled for the same.

18. I have heard the counsel of the opposing parties and have also gone through the pleadings in the case. I have given my thoughtful consideration to the matter.

19. I observe that the matter is limited to payment of Transport Allowance at the rate of Rs. 7000/- + DA to the applicant. The two issues that require to be decided are whether the applicant was entitled for Transport Allowance at this rate and if he was not entitled, could the recovery of the excess amount paid be made from him.

20. First of all, I observe that Transport Allowance at the enhanced rate was first ordered to be stopped vide letter dated 21.03.2016 (Annexure A-5). It was clearly stated therein that in view of audit para in this regard clarification has been sought from the Ministry. It was further stated therein that till receipt of this clarification, payment of Transport Allowance at higher rate of Rs. 7000/- p.m. be stopped. It is not even denied by the applicant that he was drawing Transport Allowance at higher rate



at that point of time. However, this OA was filed only on 06.02.2019, that is, almost three years after the issue of these orders. This is clearly beyond the time line prescribed under Section 21 of Administrative Tribunals Act 1985. Despite the delay of almost two years, there is no MA filed for condonation of delay. Section 21 of the Administrative Tribunals Act, 1985 is very clear. No application can be admitted by the Tribunal if it is not given within the time line prescribed therein unless sufficient cause is explained to the satisfaction of this Tribunal. In the instant case – what to talk of sufficient cause, no cause whatsoever is explained and there is no application for condonation of delay. Hence, the case deserves to be dismissed on the grounds of limitation alone. However, in the interest of justice, I have also gone through the merits of the case.

21. I observe that as per OM dated 29.08.2008 (Annexure A-4), for Grade Pay of Rs. 5400 and above, the Transport Allowance in cities classified as A-1/A was fixed at Rs. 3200 + DA thereon. For other places, it was Rs. 1600/- + DA thereon. Para 3 of this OM reads as follows:-

"3. Officers drawing grade pay of Rs. 10,000 & Rs. 12000 and those in the HAG + Scale, who are entitled to the use of official car in terms of O.M. No. 20(5)-E.II(A)/93 dated 28.1.94 shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the rate of Rs. 7,000/- p.m. plus dearness allowance thereon."

Thus, it is obvious that only officers drawing Grade Pay of Rs. 10,000/- and Rs. 12,000/- and those in HAG + Scale who were entitled to use of official car, were given the option to avail of this existing facility or to draw Transport Allowance at the rate of



Rs. 7000/- p.m. + DA thereon. It was, therefore, not just Grade Pay of Rs. 10,000/- and above that was the necessary condition, but the fact that the officer should be entitled to use staff car in terms of OM dated 28.01.1994. This was relevant as only these officers had the facility of using staff car for purpose of transport from residence to office. Hence, logically, only they were given the option to continue this facility or to switch over to Transport Allowance at the higher rate of Rs. 7000/- p.m. allowed to them. Thus, the entitlement of official car was a pre-requisite for drawal of Transport Allowance at enhanced rate.

22. I further observe that the original applicant was allowed Grade Pay of Rs. 10,000/- under Non Functional Upgradation. His promotion to this Grade was not a regular promotion against vacancy, but was only an upgradation to the scale. The respondents have clearly averred that the original applicant was never in the position of Additional Surveyor General on regular basis. In view of this and the fact that he was drawing Grade Pay of Rs. 10,000/- only on Non Functional Upgradation basis, the original applicant was not entitled for the staff car. I also observe that though the original applicant has made numerous grounds, but he has nowhere stated that he was entitled for staff car. As such, the fact that the original applicant was not entitled for staff car is not disputed even by the applicant himself.

23. In view of the clear provisions of para 3 of OM dated 29.08.2008 (Annexure A-4) and the fact that applicant was not



entitled to staff car, it is clear that applicant had no entitlement to Transport Allowance at the rate of Rs. 7000/- p.m.

24. Having settled the first question, the question arises whether the recovery can be made from the original applicant. In this regard, I note that the applicant had relied on the law settled in the case of Rafiq Masih (supra) claiming that recovery in his case is not permissible in view of the facts that he was due to retire within one year and also because he had drawn payment in excess of five years.

25. Firstly, I note that the applicant was due to retire in February 2019. However, the first order of stoppage of payment of Transport Allowance at higher rate was issued on 21.03.2016 (Annexure A-5) – that is almost three years prior to his retirement. Hence, it is clearly not covered under condition (ii) of the conditions laid down in the judgement in Rafiq Masih case (supra). Further, he was placed on notice and he had also given an undertaking dated 09.09.2008 (Annexure R-1) to refund any excess payment made to him. As such, he is bound by the Principle of Estoppel and cannot challenge the recovery now. Besides, even though the payment of Transport Allowance at the rate of Rs. 7000/- p.m. was stopped vide order dated 21.03.2016, the applicant did not challenge it through OA even till February 2019. Thus, he kept quiet for almost three years during which period he was fully aware about his non-entitlement to Transport Allowance at the rate of Rs. 7000/- p.m.

26. As regards excess payment having been made to him for over five years, I observe that the original applicant



himself has stated that his pay in the Grade Pay of Rs. 10,000/- was fixed retrospectively. He has however not stated as to when this retrospective fixation was done. Hence, his case is not at par with the case of another person who is receiving Transport Allowance at a higher rate on a monthly basis continuously for five years. Besides, in view of the judgement in case of Jagdev Singh (supra), the case of the original applicant is not covered and in view of general principles of financial propriety, excess amount paid to him is to be recovered.

27. Besides, it is also observed that the original applicant was a Group 'A' Officer and at a very senior position in Central Government. He should have been well aware of his entitlement especially considering the clear provisions of the OM quoted above. Government servants in senior position cannot be allowed to draw over and above their entitlement in violation of clear provisions of the instructions applicable.

28. Incidentally, amount involved in recovery has nowhere been worked out or stated even in approximate terms by the original applicant or by the respondents.

29. I also observe that the two impugned orders dated 20.04.2017 and 25.04.2017 are all general orders and are not for applicant alone. These are related to the audit para which has been taken up by the Audit Department in the various offices of Surveyor General of India. It is not only the applicant himself who is affected, there are numerous other officers who have drawn Transport Allowance at the rate of Rs. 7000/- merely on the ground that they were in the Grade Pay of Rs. 10,000/- and



above. However, they did not fulfil the essential and necessary condition that these officers had to be entitled for staff car to avail of Transport Allowance at higher rate.

30. The above condition is clear in the original order of 29.08.2008 itself as quoted in preceding para 21. This condition is also logical as vide this OM, the officers entitled for use of staff car for the purpose of transport between office and residence were given the option to either continue existing facility or to surrender the same in lieu of Transport Allowance at the rate of Rs. 7000/- p.m. Hence, this was a uniform policy decision taken by the Government of India and deviation thereof in the office of Surveyor General of India was pointed out by Audit Department. Thereafter, this practice was stopped. The Surveyor General of India office got the matter clarified from the concerned Ministry. The Ministry clarified that the officers who were in the Grade Pay of Rs. 10,000/- on the basis of Non Functional Upgradation were not entitled for staff car and hence they were not entitled for enhanced rate of Transport Allowance. This was perfectly logical clarification and thereafter recovery was ordered by the office of the Surveyor General of India.

31. The applicant's case is only one such case. There could be many other cases similarly situated. The policy of 29.08.2008 is very clear and logical and as per this policy, the applicant was not entitled. Recovery can also be ordered by the respondents in terms of the undertaking given by the applicant himself and the law settled by the Apex Court in the case of Jagdev Singh (supra).



32. In view of all above, it is clear that there is no ground for the relief sought in the OA. As such, OA is dismissed, both on limitation and on merits.
33. There shall be no order as to costs.

**(Ajanta Dayalan)**  
**Member (A)**

Place: Chandigarh  
Dated: March 2<sup>nd</sup>, 2021  
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