CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1864/2004
With
OA 1865/2004

New Delhi, this the 11th.... day of March, 2005

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

OA No.1864/2004:

Sh. Dilip Lahiri
S/o Late Sh. T.K. Singh
Ambassador, Embassy of India, Paris, France
C/o Govt. of India, M/o External Affairs
(PA-1 Section), South Block,
New Delhi. ...Applicant
(By Advocate Shri M.L. Chawla)

Versus

Union of India through
Foreign Secretary, Ministry of External Affairs
Govt. of India, South Block,
New Delhi. ... Respondent
(By Advocate Shri A.K. Bhardwaj)

OA No.1865/2004:

Shri R.K. Tyagi,
S/o Shri Om Prakash Tyagi,
Minister, Embassy of India, Madrid, Spain
C/o Govt. of India, M/o External Affairs
(PA-1 Section), South Block,
New Delhi. ...Applicant
(By Advocate Shri M.L. Chawla)

Versus

Union of India through
Foreign Secretary, Ministry of External Affairs
Govt. of India, South Block,
New Delhi. ... Respondent
(By Advocate Shri A.K. Bhardwaj)

ORDER

By Shri S.K. Malhotra, Member (A) :

The controversy involved in both the OAs is the same. These OAs are, therefore, being disposed of by a common order. For the sake of convenience the particulars and facts mentioned in OA No.1864/2004 have been taken into consideration in this order.

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2. The OA has been filed by the applicant with the prayer to quash and set aside the order dated 25.9.2003 and 2.4.2004 (Annexure-A, Annexure-AA) by which the request to review the indexation scheme has been rejected. It has also been prayed that suitable directions be issued to the respondents to consider him for compensation for the loss in emoluments to the extent of 768.24 Euro per month for the period from April, 2003 to May, 2004 when he was posted at Madrid (Spain).

3. The applicant is an I.F.S. officer, who had been working as Ambassador at Madrid during the said period from April'03 to May, 2004. He was drawing his Foreign Allowance (FA) in US Dollars prior to payment in Euro w.e.f. January, 2003. According to him there has been a huge erosion of emoluments and loss in purchasing power of the applicant, due to decrease in Foreign Allowance because of currency fluctuation coupled with increase in the cost of living. The payment of emoluments including FA is based on the pattern of UN, which is based on changes in index connected with cost of living prevailing in each country. A survey was carried out by the UN in February, 2003 in Spain which showed that the Madrid in area index excluding housing was 89.69. This was the basis of refixation of the FA in Spain. Later with the change in exchange rate of Euro vis-à-vis US Dollar from 0.931 to 0.849, all the persons at Madrid starting receiving their emoluments on the basis of post adjustment multiplier of 29.5 w.e.f. June, 2003 with a view to compensate for the erosion of their emoluments caused on account of depreciation of US Dollar vis-à-vis Euro. However, the Ministry of External Affairs (respondent no.1) did not follow the above rationale to compensate the applicant for this erosion. It has been stated by him that the respondents are refusing to review their policy during the course of the financial year, despite major fluctuations in the exchange rate. It has further been contended that while for the Government employees in India, dearness allowance is reviewed two times during the financial year, the same benefit is not being given to IFS officers who have to suffer the erosion and loss of actual purchasing power due to fluctuations in the exchange rate of the local currency

vis-a-vis US Dollar. The applicant claims that he has been suffering a loss in emoluments to the extent of 768.24 Euro per month since April, 2003 till he was relieved from his posting at Madrid to join in Paris in May, 2004. Hence the present OA.

4. Respondents have filed a detailed reply in which they have explained that the Foreign Allowance given to the officers is intended to cover the additional cost of living at the station where the officers are posted as well as expenditure which an officer, while serving abroad, has necessarily to incur either at home or abroad over and above that which an officer of corresponding category serving in India is expected to have to bear. While the basic pay of the Indian based official serving abroad continues to be denoted in Indian Rupees but have the option to draw either in the currency of drawal of Foreign Allowance or in Indian Rupees. As regards the F.A., the same is fixed for each category of officer at each station and it varies from time to time according to the circumstances. Until 1998, F.A. was fixed on the recommendations of the team of Foreign Service Inspectors who used to visit every Indian mission abroad and collect prices of all goods and services included in the pre-determined basket. However w.e.f. 1.1.1998, the Government has introduced an Indexation Scheme for fixation of F.A. Under this Scheme a joint team from Ministry of External Affairs and Ministry of Finance visits New York annually to collect the prices of goods and services and on the basis of the data, the F.A. for various categories of officials is fixed. The F.A. in different countries is then derived by extrapolating the figures of corresponding categories at New York by using United Nations Retail Prices Indices (UNRPI) without housing, relating to living expenditure of United Nations officials. The Foreign Allowance for all missions is fixed in US Dollars. It has been contended that UNRPI is a most reliable international index which takes New York as a base and has in-built adjustments, including interalia adjustments for rates of exchange between US Dollar and other currencies. The F.A. is revised w.e.f. Ist April every year. The adoption of Indexation Scheme for fixation of F.A. is bona

fide policy decision of the Government based on sound principles and is implemented after thorough study and analysis.

5. It is further contended that the Ministry of External Affairs was aware of the depreciation of US Dollar against various currencies including Euro and the consequential reduction of the local currency equivalents of Foreign Allowance in the year 2003 but this depreciation for given period of time was not considered a good enough reason for the Government to change its policy. However, in certain countries option was given to officers to draw F.A. in local hard currencies. This option stabilizes the F.A. in terms of local hard currency during the entire financial year till it was revised. It was felt that this was the only thing, which could be done at that time. The Embassy of India, Madrid where the applicant has been working has already been enjoying this option since July, 2002. This issue was further considered by the Competent Authority in 2004. The joint MEA-MOF team recommended that a mid-review foreign allowance twice a year instead of a year could be considered for a period of 2 years. Two members of the team visited the Euro-zone stations for on the spot price verification in view of the depreciation of US Dollar against Euro. They observed that F.A. for basic category on the basis of local price collection worked out to Euro 986.22 while on the basis of UNPRI, it worked out to equivalent to Euro 970.47. In view of the marginal difference between the two figures of Foreign Allowance, the team noted that it was a good enough indicator that UNRPI figures incorporate currency fluctuation to a large extent. Further the Consumer Price Index (CPI) for Spain during the period from April, 1999 to April, 2003 increased by 9.08 % from Euro 831.69 to 907.21. The actual Foreign Allowance fixed for the basic category at Madrid in April, 2003 was Euro 932.79. According to the respondents, this marginal difference does not call for any compensation. The applicant has shown the loss and demanded compensation with reference to any arbitrary period as convenient to him. There is no reason for comparison w.e.f. April, 2003 and not for say 5 or 10 years.

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6. We have heard both the counsel for the parties and have also gone through the pleadings available on record.

7. The main point raised by the learned counsel during the course of arguments was that due to fluctuation in the exchange rate of Euro vis-à-vis US Dollar, he has been suffering a financial loss of approx. 768 Euro per month. As against this, the learned counsel for the respondents was of the view that the indexation scheme for fixation of FA, in respect of which review is undertaken every year, is based on UNRPI with reference to goods and services with New York as base and this scheme has an in-built adjustments, including inter-alia adjustments for rates of exchange between US Dollar and other currencies. Secondly once the applicant has exercised his option to draw his FA in the local currency of the Country, instead of US Dollar, he cannot be compensated for day-to-day fluctuation in the currency exchange rate.

8. After hearing the rival contentions of both the parties, we have not been able to appreciate the arguments advanced either in the OA or during the course of discussions for revision in FA on account of fluctuation in exchange rate. . As explained above, the FA is allowed to officers working abroad to compensate them for additional cost of living in the respective Countries. The FA is reviewed every year and there is a proposal to conduct this review twice in a year also. This is being done to ensure that the officer is duly compensated for any increase in the cost of living in those countries. The indexation scheme under which FA is fixed, does take into consideration fluctuations in the exchange rate of US dollar vis-a-vis other currencies also to a large extent. But despite this, it can happen that in a particular year, due to fluctuation in exchange rate, an employee in a certain Mission may have to suffer some financial loss of FA drawn by him in terms of US Dollar during the course of the year. He can also stand to even gain if such fluctuations are in his favour. But the Govt. cannot go on making adjustments downwards or upwards in FA based on these fluctuations, which may be so frequent. The scheme envisages adjustments only once in a year.

9. It is observed that the employees working in Madrid (Spain), including the applicant had opted to draw their FA in the local hard currency (Euro) instead of US Dollar. While fixing the FA, it was specifically mentioned in the order dated 20.5.2003 (Annexure-D) that the FA will be effective from 1.4.2003 to 31.3.2004. There was no provision for any mid-term revision due to exchange rate fluctuations between Euro and US Dollar. Having exercised his option, he cannot be allowed compensation just because he has to undergo some financial loss due to fluctuation in exchange rate, during the course of the year. The respondents in their counter reply have explained that there has been a decrease of only 12.60% in April, 2003 over April, 2002 and 1.96% in April, 2004 over April, 2003 in the FA in terms of Euro. This fall which has been due to a transient phase of economic adjustment in the nascent Euro-zone, does not merit any panicky or precipitous action.

10. The basic point to be decided is whether there is need for any mid-term adjustment in the payment of FA, due to fluctuations in exchange rate. There is no such provision in the rules to do so. Having opted for drawing FA in Euro, the applicant should be prepared to live with the exchange rate fluctuations vis-à-vis US Dollar. Let's presume that the fluctuation in exchange rate was in his favour, i.e. he would have notionally drawn more US dollars than what was initially fixed in the beginning of the year. Would he have offered to return the extra dollars of FA to the Govt! This point can be explained by giving another example. IFS officers are given basic pay in Indian rupees but they have the option to draw the same in the currency of drawal of FA or in Indian Rupees. The official rate of exchange for US dollar was Rs. 36.82 in December, 1997 and was Rs. 45.47 in March, 2004. Thus, the fluctuation in exchange rate has been approx. 25% during this period. In other words, if an officer had opted to get his basic salary in US Dollars in December, 1997 based on exchange rate prevailing at that time, his gain due to fluctuation in exchange rate of US Dollar vis-à-vis Indian Rupees would have been approx. 25% during this period. But has any officer ever offered to return the extra money received by them due to this change in

exchange rate? The answer is No. Following the same logic the request made in the OA for compensation in the grant of FA, due to fluctuation in exchange rate is totally misconceived.

11. Another point which requires consideration is as to why the applicant is converting his FA drawn by him in Euro into US Dollars. He has not to spend his FA in US Dollars while living in Spain. He has to spend the money on goods and services in Euro only. Conversion of Euro to US Dollar is only a mental exercise. As far as Euro is concerned, there has been an increase of only 9.08% during the period of 4 years between 1999-2003. In case one year period in question i.e. 2003-04 is taken into consideration, the increase may be insignificant. The applicant may stand to lose to some extent, only if he has to convert the Euro into US Dollars, which in our opinion should not be necessary as long as he spends his FA for the purpose it is given. Even if he wants to save some money out of the FA, he can save in Euro and thereafter get it converted into Indian Rupees. In the process he will certainly stand to gain substantially, as the fluctuation in exchange rate of Euro vis-a-vis Indian rupee has been in his favour during the period in question.

12. Apart from the above, it cannot be denied that any adjustment in FA due to fluctuation in exchange rate which is so frequent, is a policy decision to be taken by the Government. It not only concerns the applicant but all the employees working in the Embassy of Spain and many IFS officers, working in Missions/Embassies of various other Countries where the FA is allowed in local currency of that Country, other than in US Dollars. According to the respondents, this fluctuation in exchange rate is kept in view at the time of revision of FA under the Indexation Scheme every year. This being a policy issue, we will hesitate to intervene in the matter or give any directions which will have wider repercussions. In this connection, we are relying on the judgements in the case of <u>Technical Executives (Anti Pollution) Welfare Association vs. Commissioner of Transport Department and Anr.</u> [JT 1997 (4) SC 172] and <u>U.O.I. and others vs.</u>

Makhan Chandra Roy [JT 1999 (5) SC 144]. In these judgements, the Hon'ble Supreme Court has held that the Tribunal is not competent to give directions to lay down policy guidelines, which should remain in the domain of the executives. Any direction given in this regard would only amount to entrenching upon the area of policy making, which is exclusively within the purview of the appropriate Government. In any case, even on merit, we are convinced that the reasons advanced by the applicant are not good enough for any revision in FA, due to fluctuation in exchange rate of Euro and US Dollar, as explained in the foregoing paras.

13. The OA thus turns out to be totally devoid of any merit and deserves to be dismissed. It is accordingly dismissed. No costs. (Copy of this order may be kept in both the files.)

(S.K. Malhotra)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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