Central Administrative Tribunal
Principal Bench

O.A.No.2888/92

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 5th day of August, 1997

Shri M.M.Mathur
s/o Late Shri K.S.Mathur
r/o C-2/62B, Lawrence Road
Delhi - 110 035.
Additional Director General
Directorate of Revenue Intelligence
7th Floor, 'D' Block, I.P.Bhawan
I.P.Estate
New Delhi - 110 002. ... Applicant

(In person)

Vs.

1. Union of India through
the Secretary to the Govt. of India
Ministry of Commerce
Udyog Bhawan
New Delhi.

2. Secretary to the Govt. of India
Ministry of External Affairs
South Block
New Delhi.

3. Chairman & Managing Director
India Trade Promotion Organisation
Pragati Maidan
New Delhi.
(Successor of Trade Development Authority).. Respondents

(By Shri V.K.Rao, Advocate)

O R D E R(Oral)

This is the third round of litigation. The applicant, an officer of the Indian Customs & Central Excise Service, Group 'A' in the grade of Collector of Customs & Central Excise, was on deputation to the Trade Development Authority (now India Trade Promotion Organisation) from 12.6.1975 to 21.5.1989. During that period he was posted as Resident Director of Trade Development Authority at Tokyo in Japan from 21.8.1983 to 28.8.1987. According to the terms and conditions, he was to be paid foreign allowance as applicable to the officers of the rank of First Secretary at Tokyo in Japan. At the relevant time, the foreign allowance admissible to officers posted abroad was calculated on

the basis of so called IFS rates and non-IFS expressed in Indian rupees. The applicant was given the foreign allowances at the non-IFS rates. After his representation for grant of the IFS rates was rejected, he approached this Tribunal in OA No.303/90. Initially, the OA was dismissed but after Review Application No.99/90 was filed, the application was partly allowed on 30.8.1991 with the following directions:

"In the light of the fore going discussion and on reconsideration, we recall our Judgment dated 17.7.1990, allow the Review Application No.99/90 and dispose of OA No.303/90 with the following orders and directions:-

i) We hold that the applicant would be entitled to draw foreign allowance in the same scale as applicable to officers of the rank of First Secretary in Tokyo, Japan from 21.8.1983 to 28.8.1987. The Ministry of Commerce (Respondent No.1) shall refix the foreign allowance payable to the applicant addordingly and release to him the difference during the said period in the first instance and debit the same to the account of the Trade Development Authority (respondent Nos.3 to 6). This direction shall be complied with within a period of 3 months from the date of receipt of this order.

ii) The application is partly allowed to the extent indicated above."

2. An SLP was filed by the respondents which was dismissed by the Supreme Court against the above order (dated 30.8.1991) in RA. Thereafter, the applicant was paid a sum of Rs.36,695/- by way of arrears. The applicant not being satisfied with the same once again approached this Tribunal in the present OA.

3. The claim of the applicant is that the basic pay, foreign allowances and entertainment allowances payble to him while on foreign posting in Japan, though expressed in Indian Rupees, were actually paid in Yen converting the Indian Rupees in Yen @ Rs.1 = 27.2 Yen. The amount of foreign allowance short paid to the applicant, as worked out by the TDA, is not merely Rs.36,695/- but Yen 9,98,104 calculated at the rate of Rs.1 = Yen 27.2. The applicant claims that the payment of arrears due to him has to be calculated by giving the Indian Rupees equivalent, Yen 9,98,104, at the rate of exchange prevalent at the time of actual payment of the arrears. Since the Indian Rupee has depreciated against

the Japanese Yen in the intervening period since his repatriation from Japan to the date of actual payment i.e. 31.12.1991, the arrears due to him have to be calculated and paid along with interest at the penal rate.

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4. Respondent No.1 and 2, the Ministry of Commerce and Ministry of External Affairs respectively have not filed any reply. Respondent No.3, India Trade Promotion Organisation the successor of Trade Development Authority in its reply has taken two preliminary objections. Firstly, they state that the notification under Section 14(2) of the Administrative Tribunals Act, 1985 has not been issued in respect of India Trade Promotion Organisation (ITPO) and therefore relief sought is not within Tribunal's jurisdiction and therefore the OA is not maintainable. Secondly, they state that in the previous OA No.303/90 which was followed by RA No.99/90 filed by the applicant, the applicant had claimed the payment of foreign allowance at IFS rate but did not claim that the same allowances should be calculated by using the current official rate of exchange of the Japanese Yen and thus the present OA is barred by principle of resjudicata.

5. On the matter of actual calculation of the arrears and applicability of the relevant rate of exchange they state that as per Ministry of External Affairs instructions contained in the letter No.Q/FE/752/23/86 (EAI/82/I/3) dated 7.2.1992, Annexure G, the payment of arrears in respect of employees who were transfered to Headquarters is to be disbursed in Indian rupees after converting the amount payable in foreign currency into Indian rupees in the same manner in which emoluments are disbursed. In the present case the emoluments rate of exchange as per the letter governing the terms and conditions of the

deputation officer was Rs.1 to 27.2 Yen. The applicant was paid strictly in compliance with these instructions. According to the respondents, the applicant has no cause for action.

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6. I have heard the applicant in person and Shri V.K.Rao, learned counsel for Respondent No.3. In regard to the question of jurisdiction and resjudicata, I do not find any substance in the objections raised by the learned counsel for Respondent No.3. This is, as already stated, the second round of litigation on the same subject. The Tribunal had taken note of the objection regarding jurisdiction in Para 7 of its order dated 30.8.1991 (RA No.99/90 in OA No.303/90). While the Tribunal had concluded that the relief sought for by the applicant in respect of higher pay scale of Rs.1800-2250, as applicable to the post of Resident Director, could not be agitated before the Tribunal and the applicant will have to approach the proper forum for the purpose, the applicant could not be denied the IFS rates during the period of posting and the Tribunal while accepting jurisdiction in this respect had directed that the Ministry of Commerce shall refix the foreign allowance payable to the applicant accordingly and release to him the difference for the said period in the first instance and debit the same to the account of the Trade Development Authority. The SLP filed against the order in which these directions were contained was also dismissed. Therefore, the matter of jurisdiction as regards the payment of foreign allowance to be made by the Ministry of Comerce and debiting of the same to the Trade Development Authority has already been considered and decided upon by this Tribunal and the Supreme Court as well.

7. As regards the objection regarding constructive resjudicata, this objection also cannot be sustained since the rate of exchange for conversion into Indian rupees could not have foreseen while claiming the higher foreign allowance.

8. I now come to the main controversy. The applicant argued that the payment of arrears expressed in Indian rupee at the relevant time, should first be converted into Yen at the emoluments rate of exchange as provided for in the letter of terms and conditions of deputation. Thereafter the same Yen amount should be reconverted into Indian currency at the rate of exchange applicable at the time of payment. His reasoning is that if the payment was made to him much earlier, he would have saved the foreign currency and got it converted into Indian rupee at a later date. This may be so but it is admitted that the same could not have been retained in foreign currency on the repatriation to India. Therefore, the applicant could not have kept the savings in the foreign allowance with him in foreign currency beyond the period of time he was repatriated to the home country. Therefore, for this reason, he would have been obliged to convert the Japanese Currency into Indian currency on the date of his repatriation, namely, 29.8.1987. Learned counsel for Respondent No.3 has not been able to clarify as regards the actual rate of exchange at the time of repatriation of the applicant. In view of this, I consider that it would be fair to dispose of the present OA with the following directions:

> "The Ministry of Commerce, R-1, will calculate the arrears of foreign allowance payable to the applicant in Indian rupees on the basis of the rate of exchange existing between Indian rupee and the Japanese Yen fixed by Reserve Bank of India as on

29.8.1987, i.e, the date of return of the applicant to India. In case this comes to the amount actually paid to him, nothing further is to be paid to the applicant. However, in case such a calculation shows that the applicant was entitled to higher amount in Indian rupee, then the difference will be paid to him to that extent, i.e., over and above the amount already paid to him. The same shall also be debited to the Trade Development Authority. The above directions shall be complied within three months from the date of receipt of this order."

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OA is disposed of as above. No order as to costs.

(R.K.AHOOJA)
MEMBER(A)

/rao/