

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00013/2020

Wednesday, this the 4th day of August 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Anish Kumar.S,
S/o.Sasidharan N,
Aged 42 years, Postal Assistant,
Thiruvananthapuram GPO,
Thiruvananthapuram-695 001.
Residing at Sreeja Nivas,
Poonthi Road, Kumarapuram,
Medical College P.O., Thiruvananthapuram – 695 011. ... Applicant

(By Advocate Mr.V.Sajithkumar)

versus

1. The Union of India,
represented by the Secretary to Government of India,
Department of Posts, Ministry of Communications,
Government of India, New Delhi – 110 001.
2. The Secretary to Government of India,
Department of Personnel and Training,
Government of India, New Delhi – 110 001.
3. The Chief Postmaster General,
Kerala Cirrcle, Thiruvananthapuram – 695 033.
4. The Senior Superintendent of Post Offices,
Trivandrum North Division,
Thiruvananthapuram – 695 001.
5. The Senior Postmaster,
Office of the Senior Postmaster,
Thiruvananthapuram GPO,
Thiruvananthapuram – 695 001.

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 13th July 2021, the Tribunal on 4th August 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant, Anish Kumar S, who is a Postal Assistant at the General Post Office, Thiruvananthapuram, has filed the OA as he is aggrieved by the rejection of his request for hostel subsidy for reimbursement of hostel fees for his son Anandu Krishna A., studying at Sainik School, Kazhakkottam. He submits that the said hostel subsidy is not being given to him on the ground that his residence is within 50 kms of the said Sainik School and that, as per the rules/circular in this connection, the hostel subsidy to the government servant is granted only if he keeps his children in a school hostel at a location which is beyond the distance of 50 kms from his/her residence. He attacks this condition as in Sainik Schools stay in hostel is compulsory for all students. He submits that the distance criterion should not be relied upon due to the special nature of compulsory hostel stay in Sainik Schools.

2. When this OA was first filed, it was allowed at the admission stage itself, vide order of this Tribunal dated 07.01.2020. It was stated in the said order that the prayer made in the original application is reasonable and fully justified. The relevant rules relating to 50 kms distance insisted upon should not hinder the claim for hostel fee in the case of a student who is studying at Sainik School. Accordingly, the prayer in the OA was allowed in full and it was ordered that the hostel fee paid till date was to be reimbursed to the

applicant forthwith and in any case within 30 days of receipt of the order. It was also indicated that in future also all such fees were to be reimbursed to the applicant. There was no order as to the interest.

3. The respondent, Union of India, filed an appeal in Hon'ble High Court of Kerala against this order in OP (CAT) No. 142/2020. The Hon'ble High Court on the date of admission on 13.08.2020 observed that the Tribunal's appears to have allowed the Original Application at the admission stage itself without affording any opportunity to the Department to file their reply statement. It was observed that the Tribunal should have given an opportunity to the department to file a reply statement before holding that the Annexure A3 O.M dated 31.05.2012 may not apply when the ward of the Government servant is compulsarily required to reside in a hostel as the case of a Sainik School. The Hon'ble High Court therefore directed as follows :

“4. We therefore set aside Ext.P2 order and remit the matter for fresh consideration of the Tribunal. The Tribunal shall permit the Department to file a reply statement and shall then decide the matter on merits. However considering the facts and circumstances of the case, we direct that the order to pay hostel subsidy to the first respondent shall be complied with, subject to the condition that the same will be recovered if, the Tribunal ultimately finds that the hostel subsidy was not payable. The amount of hostel subsidy due in terms of the relevant instructions shall be released to the respondent at the earliest and at any rate within two weeks from the date of receipt of a copy of this judgement.”

4. As per the above direction this matter has now to be considered afresh. It is seen from the OA that the son of the applicant got admission at the Sainik School, Kazhakkottam on the basis of an All India Entrance

Examination conducted on 15.01.2017. He got admitted in the 6th standard on 22.05.2017. On 15.03.2018, the applicant submitted a request claiming hostel subsidy to the Chief Postmaster General, Kerala Circle (3rd Respondent) through proper Channel. This request, which has been produced at Annexure A1, mentions that the applicant had served in the Army Postal Service (APS) for 7 years and being an 'Ex-APS person', his ambition was to prepare his son academically, physically and mentally fit for Armed Forces to serve the country. There is only one Sainik School in Kerala located at Trivandrum, and the distance between the school and the applicant's residence at Kumarapuram is less than 20 kms. As per the Hostel Subsidy Claim rules the distance between the school and residence should be 50 kms. However, as in Sainik School boarding is compulsory and parents are allowed to meet their children only on the second Sunday of every month, it was prayed to consider the Sainik School as a special case, and grant the hostel subsidy by relaxing the normal rules.

5. In this connection the applicant has produced (at Annexure A2) a copy of the Office Memorandum dated 02.09.2008, issued by the Department of Personnel & Training (DoPT), which conveyed the recommendations of the 6th Central Pay Commission (CPC) regarding the grant of Children Education Allowance (CEA) and Reimbursement of Tuition Fee. This memorandum contains the instruction that the Children Education Allowance and Reimbursement of Tuition Fee, which were hitherto payable separately, would now be merged and would henceforth be known as 'Children Education Allowance Scheme'. Under the Scheme of

Children Education Allowance, reimbursement can be availed by Government Servants upto a maximum of 2 children. Reimbursement would be applicable for expenditure on education of school going children only i.e., for children from classes nursery to twelfth, including classes eleventh and twelfth held by junior colleges or schools affiliated to Universities or Boards of Education. The reimbursement of Children Education Allowance shall have no nexus with the performance of the child in his class. In other words, even if a child failed in a particular class, the reimbursement of Children Education Allowance shall not be stopped. It was clarified that the reimbursement of the following items can be claimed under the Children Education Allowance Scheme :-

“Tuition fee, admission fee, laboratory fee, special fee charged for agriculture, electronics, music or any other subject, Fee charged for practical work under the programme of work experience, fee paid for the use of any aid or appliance by the child, library fee, games/sports fee and fee for extra-curricular activities. This also includes reimbursement for purchase of one set of text books and notebooks, two sets of uniforms and one set of school shoes which can be claimed for a child, in a year.”

6. The same Office Memorandum also fixed the annual ceiling fixed for reimbursement of Children Education Allowance as Rs.12000/- and in case both the spouses are Government servants, only one of them can avail reimbursement under the Children Education Allowance Scheme. As regards hostel subsidy the following was indicated:-

*“ Hostel subsidy will be reimbursed upto the maximum limit of Rs.3000 per month per child subject to a maximum of 2 children. However, both hostel subsidy and Children Education Allowance **cannot** be availed concurrently.”*

7. On May 31st 2012, the DoPT issued another clarification (which is one of the impugned orders produced at Annexure A3) defining the term "Hostel Subsidy" more clearly. It was indicated as follows in para 2(a) :-

"The term Hostel Subsidy would mean expenses incurred by the Government servant if he/she keeps his/her children in a hostel of a residential school/institution located beyond a distance of 50 kilometres from his/her residence. The reimbursement would be subject to other conditions laid down in the O.M. dated 02.09.2008 and subsequent instructions issued from time to time. It is further clarified that grant of hostel subsidy is not related to transfer liability of the Government servant."

8. The applicant submitted a request to the second respondent (Secretary DoPT) through a representation dated 15.05.2018, requesting further instructions governing hostel subsidy to the children of Government servants and any relaxation to the same. The second respondent replied through a letter dated 15.10.2018 (produced as Impugned Order at Annexure A4), stating that hostel subsidy is applicable only in respect of the children studying in a residential educational institution located at least 50 kms from the residence of the Government servant. A copy of the instructions in OM.No.A-27012/02/2017-Estt.(AL) dated 17.07.2018 (produced as an Impugned Order at Annexure A5) was also enclosed. This OM dated 17.07.2018 contains the consolidated instructions relating to the grant of Children Education Allowance (CEA) and Hostel Subsidy consequent upon the decision taken by the Government to implement the recommendations made by the 7th Central Pay Commission (CPC). It is indicated as follows at para 2 (c) :

“(c) The amount of ceiling of hostel subsidy is Rs.6750/- pm. In order to claim reimbursement of Hostel Subsidy for an academic year, a similar certificate from the Head of Institution confirming that the child studied in the school will suffice, with additional requirement that the certificate should mention the amount of expenditure incurred by the Government servant towards lodging and boarding in the residential complex. In case such certificate cannot be obtained, self-attested copy of the report card and original fee receipt(s/e-receipt(s) which should indicate the amount of expenditure incurred by the Government servant towards lodging and boarding in the residential complex can be produced for claiming Hostel Subsidy. The expenditure on boarding and lodging or the ceiling of Rs.6750/- as mentioned above, whichever is lower, shall be paid to the employee as Hostel Subsidy. The period/year will mean the same as explained above in clause (b) of this para.”

In addition, the following was also indicated at paras 2(f) and 2 (i) :

(f) The Hostel Subsidy and Children Education Allowance can be claimed concurrently.

(i) Hostel subsidy is applicable only in respect of the child studying in a residential educational institution located at least 50 kms from the residence of the Government servant.

9. It was also noted by the second respondent, (DoPT) in the letter to the applicant at Annexure A4 that there is no provision of relaxation in the existing instructions. This was followed by another letter from the Department of Posts to the applicant dated 19.01.2019 (produced at Annexure A6), which rejected his request at Annexure A1, stating that since in this case the hostel of the Sainik School Kazhakuttom is less than 50 kms from the residence of the official and as there is no provision in CEA rules for extending any relaxation referring the case to Directorate is in vain and hence the case may be considered as closed. Further, the applicant also received a letter from the Sainik Schools Society, Ministry of Defence

(produced at Annexure A7) wherein in reply to an RTI application by him, it was confirmed by the said Society that as per the Sainik Schools Society Rules & Regulations approved by Board of Governors under the Chairmanship of Hon'ble RRM, "*Sainik School are wholly residential schools run on public school lines*". Thereafter, the applicant made another application dated 25.05.2019 addressed to the Director General, Department of Posts, Government of India, New Delhi (produced at Annexure A8) pointing out that his case had been considered and rejected by the CPMG, Kerala because the distance between his residence and the School was within 50 km distance. However, since his son had to stay compulsorily in the hostel of Sainik School as per the present rules, he has to pay the hostel charges fully. Since the Government decision is to reimburse the amount spent towards hostel charges for the students staying in the hostel, it was requested in this application that full reimbursement of hostel charges paid be given to him. Also, it was requested that if the present rules do not permit the same, to consider the amendment of the rules in this regard. However, this application too was rejected vide the impugned orders produced at Annexures A9 and A10 communicated by the 5th respondent, the Senior Postmaster, Thiruvananthapuram GPO stating that the DoPT, which had considered the request for relaxation of distance criteria, had rejected the case.

10. It is the applicant's contention that the Sainik Schools, being governed by different sets of rules and regulations and running in national interest, ought to be treated at a different footing from the schools running

under various managements. In the Sainik Schools parents are allowed to meet the children only on the 2nd Sunday of every week and the children studying there are not permitted to visit their homes or to be day scholars even if their house is situated next to the school. It is submitted that the respondents have failed to consider this aspect and have treated study in Sainik Schools as equivalent to the "ordinary" schools in violation of the basic principle laid down in Article 14 that "like should be treated alike". The actions on the part of the respondents in denying the hostel reimbursement to the applicant, mechanically relying on the distance factor, are arbitrary and illegal and violative of Article 14 and Article 21 of the Constitution of India. The reliefs sought by the applicant are as follows :

"(i) To quash Annexure A3, Annexure A4, Annexure A5, Annexure A9 and Annexure A10.

(ii) To declare that the distance factor of 50 kms prescribed for reimbursement of hostel fee for children of Central Government Employees prescribed in Annexure A3 and Annexure A5 would not be applicable to the students admitted to Sainik Schools wherein Hostel is compulsory and denial of reimbursement of fees to the parents like Applicant is highly unjust and discriminatory.

(iii) To direct the Respondents to release hostel fee from the Academic Year 2017-18 paid on behalf of the son of the Applicant at the Sainik School Kazhakkoottam in terms of Annexure A2 with interest at the rate of 12% from the day it became due till the date of repayment,

(iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and

(v) Grant the cost of this Original Application."

11. In response, the Respondents have filed a reply statement in which they submit that the Hon'ble High Court had disposed of the OP (CAT) with a direction for the case to be reconsidered by the Tribunal and also to comply with the order to pay hostel subsidy to the respondent, subject to condition that the same will be recovered if the Tribunal ultimately finds that the hostel subsidy was not payable. In accordance with the directions of the Hon'ble High Court, the Respondents have since issued sanction for payment of hostel subsidy subject to the condition laid down by the Hon'ble High Court. It is submitted by the Respondents that, the claim for reimbursement of hostel fees by the applicant for his ward is squarely covered and not allowable by the Annexure A3 order issued by DoPT. This has been further elaborated in the order at Annexure A5 in accordance with the recommendations of the 7th CPC. As per the said Annexure A3 order, the benefit of hostel subsidy is eligible for those officials who keep their children in hostels of residential schools/institutions located beyond a distance of 50 kms from their residence. Since the applicant has chosen to admit his ward in Sainik School, knowing fully well the compulsory mandate of the institution for hostel accommodation and also the limit of 50 kms envisaged in the rules for claiming the benefit of hostel subsidy, he cannot challenge the said rules and claim benefits which are not provided in the rules. The respondents can act only as per the instructions contained in the extant orders and providing relief beyond the purview of these orders is not within their powers.

12. It is submitted that the Annexure A3 orders were issued by the 2nd respondent, (DoPT), as per the recommendations of the 7th CPC, duly approved by the Government of India. As an employee having more than 10 years of service in the department, the applicant is expected to be aware of the rules relating to claim of hostel subsidy and he cannot claim any relief just because he admitted his ward in a Sainik School, where hostel accommodation is compulsory. Even before the admission of his ward to the Sainik School, the applicant had been claiming CEA for his ward, while the child was studying at Kendriya Vidyalaya, Pattom. It is therefore evident that he was well aware of the rules on the subject before he secured admission for his son at the Sainik School. As such it is submitted that he should be barred from challenging the Annexure A3 orders just because it stands in his way in claiming hostel subsidy for his ward.

13. It is further submitted that the condition of 50 kms was prevalent right from the time of the 6th CPC itself and no exception of any kind was provided at that time also. The term Hostel Subsidy has also been defined to mean expenses incurred by the Government servant if he/she keeps his/her children in a hostel of a residential school/institution located beyond a distance of 50 kms from his/her residence. Since the distance between the place of residence of the applicant and the school in which the applicant's son is studying is less than 20 kms, these Rules do not grant any provision for reimbursement of hostel subsidy. The Department has acted only in accordance with the rules

in existence and there is no scope for granting any kind of exemption to the stipulation of 50 kms just because the applicant has put his ward in Sainik School.

14. The respondents in their reply have also produced a copy of an Office Note at Annexure R-1, addressed to the Department of Posts, (Establishment Division) from the DoPT Estt.(Allowance) section relating to the applicant's prayer for grant of hostel subsidy on a proposal sent by them. The note indicates as follows :

“Reference MOC(DOP) ID Note No: 33-02/2019-PAP dated 03.03.2020

The proposal received from Department of Posts seeking clarification/relaxation for grant of hostel subsidy claim in r/o Shri Anish Kumar, P.A., Trivandrum GPO, for his son studying in Sainik School located at a place less than 50 kms from residence of the Government servant, has been examined in this Department and to state as follows :

(i) That as per the existing instructions contained in O.M.No.A-27023/02/2017-Estt.(AL) dated 17.07.2018, Hostel Subsidy is admissible in respect of child studying in a residential school/institution located at 50 km or more from the residence of the Government servant. These instructions are in force the academic 2012-13.

(ii) That, prior to these instructions as per OM dated 31.05.2012 Hostel Subsidy was admissible in case the child was staying in a hostel of a residential school away from the station at which the Government servant was posted/residing and station was demarcated by the first three digits of the Pin Code of the area where the Government servant was posted/residing. The first three digits of the Pin Code indicate a Revenue District. However, it was observed that a district may span over 100 km or more and a child may have to be lodged in a hostel located at a distance exceeding even 100 km from a place of posting/residence of the Government servant but being within the same Revenue District and therefore not being eligible for reimbursement of Hostel Subsidy.

(iii) *That, accordingly, it was decided in consultation with D/o Expenditure by the Government to allow Hostel Subsidy if the Hostel of a residential educational institution is located at least 50 km from the residence of the Government servant. Thus, in effect the Government has reduced the minimum distance between residence and school of the Government servant for allowing CEA/Hostel Subsidy to 50 km or more.*

(iv) *That, it is also stated that as per OM dated 17.07.2018 under the scheme CEA/Hostel Subsidy is allowed for the children studying in a recognised school/institution. Recognised school/institution in this regard means a Government school or any education institution whether in receipt of Govt. Aid or not, recognised by the Central or State Government or Union Territory Administration or by University or a recognised educational authority having jurisdiction over the area where the institution/school is situated.*

(v) *Further that, this Department has received similar references from some other Government servants also i.e., requests for allowing Hostel Subsidy where the distance between the residence of the Government servant and the Hostel of the child is less than 50 km but they have not been agreed to. If such requests are accepted, many more such requests may come which may increase the financial burden of the Government. The Government has already increased the rates of Children Education Allowance (CEA) and Hostel Subsidy from Rs.1500 per month and Rs.4500 per month to Rs.2250 per month and Rs.6750 per month respectively. Further, the CEA and Hostel Subsidy, which earlier could not be claimed concurrently, can now be claimed concurrently. Thus, the financial burden of the Government has already increased substantially in this regard.*

(vi) *That, in view of the above facts, the request of applicant for allowing claiming Hostel Subsidy in respect of his child who is staying in a hostel which is less than 50 km from his residence cannot be agreed to.*

2. *This issues with the approval of the competent authority.”*

(Emphasis by way of underlining is added)

15. The respondents submit that they have no dispute as to the role and status of Sainik Schools in nurturing students for the Armed Forces. However just like Sainik Schools have a definite set of rules,

the Department of Posts is also governed by a set of rules beyond which the respondents cannot act. The stipulation of 50 kms has been laid down in tune with the guidelines issued by the 7th CPC and it is part of the policy decisions of the Government. The respondents have also drawn attention to the orders of the Hon'ble High Court of Delhi while adjudicating a similar matter relating to grant of CEA in 7871/2012 (**case of Nagendra Upadhyay Vs Government of NCT of Delhi & Ors**) in which the Hon'ble High Court held that "...*The Court cannot interfere with the policy decision of the Government unless the same are wholly arbitrary or malafides are there....*". It is submitted that the observation of the Hon'ble Court in a similar case like this one would be squarely applicable and settle the issue in favour of the respondents.

16. As regards the equality principle brought out by the applicant, it is contended by the respondents that they have not violated this principle. They pointed to the case of **Amita Vs. Union of India and another, (2005) 13 SCC 721** in which the Hon'ble Supreme Court discussed the expression "*equality before the law*" and held that ".....*the first expression "equality before the law" contained in Article 14, which is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual....*". Thus, going by this principle of '*equality before law*' there can be no special privilege and in this case, neither the applicants' son nor the institution where he is studying,

cannot claim any special privilege other than those envisaged in the rules. Thus the claim for hostel subsidy put forth by the applicant is not legally sustainable.

17. A Rejoinder has been filed by the applicant to the above contentions in the reply statement. It is reiterated by the applicant that the Sainik School, Kazhakkuttam is the only Sainik School in Kerala and his son, on the basis of his merit in the All India Entrance Examination, got admitted there. It is submitted that the applicant has no other choice but to get his son admitted in the School, which just happens to be 20 kms away from his residence. Even if a parent is having their house sharing the boundary wall with the Sainik School there is no option available as per the rules of the Sainik School for his child to be a day scholar. Furthermore, the Annexure A3 instructions have been issued by the respondents to meet the educational and hostel needs of the children of the employees who have been admitted to residential schools as they are not able to be day scholars. It is highly unfair for the respondents to reject benefits to a student admitted on merit to the Sainik School with compulsory hostel stay, merely relying on a distance criterion from home. It is fundamentally irrational to prescribe a distance factor with respect to a student admitted to a Sainik School with such compulsory hostel stay. Further, contentions regarding huge financial implications, are also incorrect. There will only be few students of government employees admitted to Sainik Schools in a state and the number of such students having their residences within 50 km radius will be minimal. Thus, relaxing the distance factor in favour of students admitted in

Sainik Schools will not create any serious financial implications for the Government. At the same time the state owes a responsibility to encourage and assist students who opt for Sainik School. The contentions raised by the respondents are therefore mere apprehensions and not applicable to the facts of the case.

18. It is contended that the Annexure A3 Office Memorandum which mandates the 50 kms distance is there only to ensure that Government employees who have no option but to let their children admitted to a hostel for their education are extended all the benefits of CEA Scheme. The Sainik Schools are wholly residential schools run on public school lines. Therefore extending benefits to a student admitted compulsorily in a hostel is well within the object and purpose sought to be achieved by the policy laid down through the Annexure A3 and Annexure A5 instructions. There are only 33 Sainik Schools spread over 24 states as per the 2021 Admission Notification for Sainik Schools in India. The relaxation prayed for is only required for the employees residing within the 50 kms radius of the Sainik Schools and getting their children admitted into Standard VI on merit, based on the All India Entrance Examination. If this relaxation is provided to the children going to Sainik Schools there will not be substantial impact on the exchequer. The apprehension of the respondents is totally misplaced and against the purpose and object behind Annexure A5 instructions. In any case, students having residences at a distance of more than 50 kms are already covered under the conditions in Annexure A5.

19. It is also submitted that the judgement referred by the respondents in *Nagendra Upadhyay (supra)* is not applicable to the facts of the present case. The issue dealt therein by the Hon'ble High Court of Delhi in the matter was the extension of Children Education Allowance to the 3rd and 4th child, which was expressly barred by the instructions and in violation of National Population Policy. The case of the applicant is an entirely different one and it is not against the purpose and object of the policy behind Annexure A3 and Annexure A5. The freedom to choose an educational institution for a child is a right guaranteed under Article 21 of the Constitution of India. The respondents cannot question the choice of the applicant and his son in getting admitted to the Sainik School after qualifying in the All India Entrance Examination. There is no dispute regarding the quantum or the recent increase of allowances in terms of the 7th CPC. It is further submitted that the applicant had raised question of equality on the ground of "like should be treated alike" and not "equality before law". In the instant case, the applicant has been discriminated on the basis of a "hyper-technicality" in the instructions, which is defeating the purpose of the Children Education Allowance Scheme. The denial of CEA on the basis of distance criteria in the case of the Sainik Schools where residential education is mandatory is absolutely unfair and unjust. The argument of the respondents relying on the principle of equality before law while the applicant is unjustifiably discriminated is thus absolutely absurd and unexpected from an instrumentality of the State.

20. The applicant also submits that the respondents have not addressed the actual issue pointed out by the applicant which is the non-consideration of the Sainik Schools as an exception to the distance rule because hostel accommodation is mandatory for all the students admitted to Sainik Schools. The attempt of the respondents appears to be only to deny the relief to the applicant by citing a hyper-technical distance rule, while evading the actual issue of fulfilling the purpose and object of a policy decision. The objective of the Children Education Allowance Scheme itself is destroyed by the arbitrary and unjust action displayed on the part of the respondents in evading the issue in the Annexure R-1 note. The respondents have not addressed the grievance of the applicant by relying on a literal interpretation of the rules, deviating attention from the issue pointed out by the applicant. As such it is arbitrary, illegal, unjust and violative of the Fundamental Rights guaranteed under Article 14, 21 and 21A of the Constitution of India.

21. We have gone through the documents provided by the learned counsel for the applicant, Mr.V. Sajith Kumar and Mr.N.Anilkumar, SCGSC, learned counsel for the respondents. We have also closely heard their arguments during our hearings and have perused the notes provided by them. To some extent the issues for adjudication can be identified more clearly if attention is given to the possible purpose behind the grant of hostel subsidy to the children of Government servants staying in school hostels and why the distance criterion was prescribed therein in the first place. At the outset it is to be noted

that prescribing a measure like distance in the grant of hostel subsidy is not something new, having existed ever since the period of the 6th CPC. It would be instructive in this regard to once again go through the note of the DoPT to the Department of Post, produced by the respondents in their reply statement at Annexure R-1 and reproduced in full at paragraph 14 above. It is to be noted therein that the criteria relating to residential schools/institutions being located at 50 kms or more distance from the residence of Government servants have been in force since the academic year 2012-13. Prior to these instructions the hostel subsidy was also admissible in cases where children were staying in a hostel of a residential school away from a station at which the Government servant was posted/residing. At that time the distance criteria was demarcated by mandating that the first three digits of the pin code of the area where the Government servant was posted/residing were to be different as compared to the first three digits of the pin code of the hostel of the school. However, since the first three digits of a pin code only indicate a Revenue District, and it was observed that some districts may span over 100 kms or more in length, it could be possible that a child may be lodged in a hostel located at a distance exceeding even 100 kms from the place of posting/residence of the Government servant, but within the same Revenue District. Such Government servants were not therefore eligible for reimbursement of Hostel Subsidy. It was then decided by the Government to allow Hostel Subsidy, if the Hostel of a residential educational institution was located at least 50 kms from the residence/place of posting of the Government servant. In effect, therefore, the Government has reduced the minimum distance

between residence/place of posting and school by allowing Hostel Subsidy to any Government servant residing/working 50 kms or more from the hostel.

22. The main point to be noted from the above is that some kind of distance criterion was always part of the decision to grant hostel subsidy right from the beginning of the policy of grant of the subsidy. Further, we note that CEA/Hostel Subsidy is being allowed for children studying in any kind of recognised school or institution. The definition of a recognised school/institution in this regard means a Government school, or any education institution whether in receipt of Govt. Aid or not, recognised by the Central or State Government or Union Territory Administration or by University or a recognised educational authority having jurisdiction over the area where the institution/school is situated. The distance requirement of 50 kms has only now made it possible for parents who are putting their children in residential school within the same district also to claim the said hostel subsidy. What is to be noted is that no distinction was being made in the policy right from the beginning about the type of school which was to be covered, i.e., whether it was Government or private or aided or the purpose for which the school was set up. The only point which was being considered was the distance between the school's hostel and place of residence/posting and nothing more.

23. Notwithstanding this, learned counsel for the applicant has emphasized the necessity to clearly understand the intent of such rules before taking any decision relating to their applicability. He contends that it is not enough to consider just whether the rules are malafide or irrational. He points to the meaning of "interpretation" in **Anurag Mittal Vs. Shaily Mishra Mittal, 2018 (9) SCC 691** as clarified by the Hon'ble Apex Court is as follows :

"21.Interpretation is the process by which the Court determines the meaning of a statutory provision for the purpose of applying it to the situation before it."

In this case, his contention is that Annexure A3 and A5 are just welfare enactments intended only to fulfill the object of granting hostel subsidy to the children of government employees. Para 2 (a) of Annexure A3 defines the term "hostel subsidy" to mean expenses incurred by the Government Servant if he/she keeps his/her children in a hostel of a residential school/institution located beyond a distance of 50 kms from his/her residence. Here, the object of the instruction is to grant hostel subsidy to the government servant and the precondition for the same is that the government servant is keeping his/her children in a residential school/institution. The authorities, in the instant case, have anticipated the situation of a child of government servant studying in a residential school/institution located beyond a distance of 50 kms on the premise that within 50 kms, there would be no requirement of hostel accommodation. However, in the case of Sainik Schools, there is no option of being a day scholar and the child has to be admitted to the hostel even if his house is

sharing a compound wall with the Sainik School. Therefore, a literal interpretation would defeat the intent of the instruction and would result in injustice, contradicting the actual intent.

24. It is submitted by the learned counsel for the applicant that the above scenario was not envisaged by the creators of Annexure A3 and A5, and this has resulted in the injustice to the applicant. The Hon'ble Apex Court while addressing the issue of literal interpretation resulting in injustice to the objective of the enactment, devised the doctrine of “purposive interpretation” in **Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla, 2016 (3) SCC 619**. The Hon'ble Apex Court observed as follows :

"31. The principle of "purposive interpretation" or "purposive construction" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "purpose" behind such a provision.....

32. xxxxxx

33.Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well."

25. It is submitted that the Annexure A3 instructions mandate the distance requirement of 50 kms only to ensure that Government employees who have no other option but to let their children admitted to hostel for their

education, are extended the benefits of CEA. The Annexure A5 instructions further clarifies that hostel subsidy is applicable only in respect of the child studying in a residential educational institution. In the instant case, the applicant is having no other option but to avail/join at the hostel as mandated in the Sainik School Rules. Therefore, extending benefits to a student admitted compulsorily in a hostel is well within the object and purpose sought to be achieved by the policy laid down in Annexure A3 and Annexure A5 instructions. The judgements produced by the respondents are not applicable to the facts of the present case because the issues dealt with by the Hon'ble Apex Court pertain to the period between 1950 to 2008 wherein the Apex Court followed the golden rule of literal interpretation to address the ambiguity in the provisions of the enactment. The latest judgement of the Hon'ble Apex Court in *Shailesh Dhairyawan (supra)*, has clearly laid down the principle of purposive interpretation to be the true guiding principle for interpretation.

26. In contrast to this, learned SCGSC reiterates the stand of the respondents that once there is no ambiguity in wording and the purpose is clear, further interpretative reasoning is not required. The Hon'ble Supreme Court in **Commissioner of Agricultural Income-Tax, Bengal Vs. Sri Keshab Chandra Mandal**, AIR 1950 SC 265 dated 09.05.1950 held that "*hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute*". Learned counsel has also pointed to the judgment of the Hon'ble Supreme Court in **State of Kerala Vs. S.G. Savotharna Prabhu** in 1999

(2) SCC 622 dated 26.02.1999 wherein it has been held that "*intent of the legislature has to be ascertained from the language of the statute. If the words are unambiguous, clear and explicit, there need be no recourse to any rules of interpretation*". Further, in **Jagannadham Vs. Jammulu Ramulu 2001 (7) SCC 71** dated 23.08.2001, the Hon'ble Apex Court has stated as follows :

"13. We have considered the submissions made by the parties. The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

Finally, learned counsel has also drawn attention to **Common Cause (A Regd. Society) Vs. Union of India and others, 2008 (5) SCC 511** wherein the Hon'ble Supreme Court said that "*if there is any lacuna or defect in the Act, it is the Legislature to correct it by a suitable amendment and not the Court.*"

27. Drawing from the above, it is submitted by the counsel for the respondents that the Annexure A3 and Annexure A5 do not require any other purposive interpretation apart from what is spelt in the statute. The Postal Department is bound to follow the orders and instructions issued by DoPT and hence hostel subsidy cannot be paid to an employee whose ward

is in hostel which is within 50 kms of his residence. If any such an order for payment is allowed it will open a Pandora Box as government employees throughout India would claim for such subsidy for their wards studying and staying in residential hostels within 50 kms of their residences/place of work. Similar requests from other departments have been rejected by the DoPT and there is nothing special or different to this applicant alone. In other words, the respondents have relied on the fact that there is no ambiguity in the wording of the circulars, its purpose is clear, there is no malafide or irrationality in the order and, thus, no further interpretation or reasoning, including purposive interpretation is required in these circulars.

28. We have carefully considered these arguments. On balance, we are persuaded by the points made by the respondents in this case. The issue of interpretative reasoning or purposive interpretation would come up only in cases where there has been a definite ambiguity or confusion caused by the instructions in the minds of those who are reading it or those who are guided by it. In this case there is no such confusion or ambiguity in the Annexure A3 or Annexure A5 office memoranda. We have already noted that the distance criterion is a policy built in the matter of grant of hostel subsidy in one way or the other *ab initio*. Nor has there been any discrimination suggested or exercised regarding the type of school to be covered or that by certain types of schools have to be given any special preference in all the policy pronouncements. It appears to us that even applying the touchstone of purposive interpretation to the OM's prescribing a distance of 50 kms that it is mainly intended to help Government servants

who have been forced, due to certain exigencies or circumstances beyond their control to put their children in a hostel, for which they had to undergo extra expenditure and they had no choice in the matter. Perhaps such situations are precipitated by the lack of proper schools in many parts of the country where the Government servants are in service, particularly in extremely hilly, remote, rural or other geographically difficult areas. It is indeed a possibility that there may not be suitable schools (or indeed even schools of any kind) in some of the places that the Government servants are posted to work and thus they may be forced to keep their school going children even from a very young age in hostels somewhat far away from the place of residence whether they wanted it or not. Hence, it was decided to reimburse the hostel fees by way of hostel subsidy in such cases. Thus even if for arguments' sake we go by purposive intent of the circular, this appears to be the more likely reason given the distance criterion and not any other reason including that in some kinds of schools hostel stay is compulsory.

29. Bringing these considerations to bear in this particular case, we find no reason to consider the matter any differently. Specifically, in this matter the applicant is posted at the Trivandrum Head Post Office located at the heart of the capital city of the State. He lives in Kumarapuram. It cannot be his argument that there are no other good or suitable schools or no schools within this area where he can send his child to. He, therefore, had a clear choice in the matter and he exercised it by taking his child out of the Kendriya Vidyalaya, Pattom where he was earlier studying and placing him in the Sainik School. We are not persuaded by the argument that, because it

is a Sainik School where his child has been admitted and residence in hostel is compulsory that should call for any special favour. We have no doubt that the Sainik Schools are serving an important national purpose. However, this does not justify exceptions to be made only in the cases of Sainik Schools and not for any other kinds of schools. The instructions in the OM cover hostel fees in all different types of schools and have not classified or ranked them in any way. Making an exception in the case of Sainik Schools on the grounds that hostel accommodation therein is compulsory is going against the policy intent. Further it may be the case that some private recognised schools also prescribe compulsory hostel accommodation. Similar kinds of demands could well arise within the realm of possibility from other Government servants who place their children in such schools.

30. It is also to be noted that the Children Education Allowance is given for meeting expenditure incurred by parents on children including tuition fee and other fees as noted in the circular dated 02.09.2008 produced at Annexure A2. The Government as an 'ideal' employer has thus given more such facilities to the Government servants. The same is now allowed to be drawn concurrently along with hostel subsidy. Thus the amount of such assistance which is now available for the Government servants is not inadequate in any way to meet any extra expenditure incurred by putting their children in good schools.

31. We thus are not in agreement with the argument of the applicant that we need to make an exception in the case of Sainik School and allow the withdrawal of hostel subsidy on the ground of the compulsory nature of hostel stay for the students. We, therefore, do not allow the OA. Since it has been indicated by the respondents that the hostel subsidy has already been refunded as per the directions of the Hon'ble High Court to the applicant with the understanding that the same will be recovered if the Tribunal ultimately finds that the hostel subsidy is not payable, we direct that the applicant may refund the said hostel subsidy which has been given to him. This may be done by way of suitable installments which do not put him to excessive difficulty within a period to be decided by the respondents. No other costs are imposed on the applicant.

(Dated this the 4th day of August 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00013/2020

1. **Annexure A1** - A true copy of the request dated 15.3.2018 submitted by the applicant to the 3rd respondent through proper channel
2. **Annexure A2** - A true copy of the Memo No.12011/03/2008-Estt. (Allowance) dated 2.9.2008 issued by the 2nd respondent
3. **Annexure A3** - A true copy of the Memo No.12011/07/2011-Estt(AL) dated 31.5.2012 issued by the 2nd respondent
4. **Annexure A4** - A true copy of the reply letter No.Z-20025/05/2018-Estt.(AL) dated 15.10.2018 issued by the 2nd respondent to the applicant
5. **Annexure A5** - A true copy of the Memo No.A-27012/02/2017-Estt. (AL) dated 17.7.2018 issued by the 2nd respondent
6. **Annexure A6** - A true copy of the letter No.B/Staff/Tv GPO dated 19.1.2019 issued by the 5th respondent to the applicant
7. **Annexure A7** - A true copy of the reply letter No.39(17)/2019/D(SSC) dated 14.5.2019 issued to the applicant by the Sainik Schools Society, Sena Bhavan, New Delhi
8. **Annexure A8** - A true copy of the representation dated 25.5.2019 submitted by the applicant to the Director General, Department of Posts.
9. **Annexure A9** - A true copy of the letter No.C/CEAS/Digs/2019 dated 28.10.2019 issued by the 4th respondent to the 5th respondent
10. **Annexure A10** - A true copy of the letter No.B/PF/Anish Kumar.S dated 31.10.2019 issued by the 5th respondent to the applicant.
11. **Annexure R1** - DoP &T i.d.No.A-27012/02/2018-Estt.(AL) dated 04.06.2020.
12. **Document 1** - True copy of Judgement in CIT Vs Keshab Chandra Mandal (AIR 1950 SC 265).
13. **Document 2** - True copy of judgement in 1999(2) SCC 622.
14. **Document 3** - True copy of the judgement in 2001 (7) SCC 71.
15. **Document 4** - True copy of the Judgement in 2008 (5) SCC 11.
