

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXXXX~~

O.A. No. 44/87 1987
~~XXXXXXXXXX~~

DATE OF DECISION 4.12.1989.

All India Postal Employees Union
Class III, & Ors. Petitioner

Mr. Sharad Pandit for Mr. Girish Patel Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. J.S. Yadav for Mr. J.D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh : Administrative Member.

The Hon'ble Mr.

- yes 1. Whether Reporters of local papers may be allowed to see the Judgement?
yes 2. To be referred to the Reporter or not?
No 3. Whether their Lordships wish to see the fair copy of the Judgement?
yes 4. Whether it needs to be circulated to other Benches of the Tribunal?

1. All India Postal Employees
Union Class III,
Mehsana Branch,
through its Secretary,
Shri K.G. Kandoi,
Sub Postmaster,
Mehsana Industrial Estate TSO
Mehsana - 384 002.

2. National Union of Postal
Employees Union Class III,
Mehsana Branch,
through its President,
Shri L.B. Vankar,
Mehsana - 384 001.

(Advocate-Mr. Sharad Pandit
for Mr. Girish Patel)

: Applicants

V/s.

1. Union of India,
(Notice through the Secretary,
Ministry of Communications,
Department of Posts,
New Delhi - 110 001.

2. Director General,
Department of Posts : India,
Dak Bhavan, New Delhi-110 001.

3. Supdt. of Post Offices,
Mehsana Dn, Mehana.

(Advocate-Mr. J.S. Yadav
for Mr. J.D. Ajmera)

: Respondents

CORAM : Hon'ble Mr. M.M. Singh : Administrative Member

J U D G M E N T

O.A./44/87

Date 4.12.1989.

Per : Hon'ble Mr. M.M. Singh : Administrative Member

All India Postal Employees Union, Class III,
Mehsana Branch, through its Secretary, Mr. K.G.
Kandoi, a postmaster of Mehana, and National Union
of Postal Employees Union, Class III, Mehana Branch
through its President Mr. L.B. Vankar jointly filed
this application under section 19 of the
Administrative Tribunals Act, 1985, questioning the

action of the respondents stopping the payment of Project Allowance to the various classes of employees of the Postal Department in Mehsana Postal Division and the order dt. 13.11.1986 effecting recovery from the allowance already paid for the period 1972-1975.

2. The application narrates the long history of the dispute. Letter No. F-7(4)E-11(B) dated 23.3.1960 from Ministry of Finance Department of Expenditure (Document No.1, pages 16 to 19) had laid down the general principles to govern the grant of the project allowance to the staff employed on construction projects. The Postal authorities thought that the allowance was admissible to the staff of P&T working in the Postal offices established in the eligible areas at the request of the project authorities. However, the decision of the President of India contained in DG P&T letter No. 7-16/63-PAP dated 6.12.1966 (Document No.2, page 20) stipulated that the allowance may be sanctioned to the P&T staff working in the P&T offices actually located in the project areas irrespective of whether such offices were opened at the request of the project authorities or not and also laid down the conditions which must be satisfied before the allowance is sanctioned. It is the allegation of the applicants that despite this decision, despite the proposal in this regard made by the concerned Postal authorities and despite the employees of P&T stationed at Mehsana and Kalol submitting a petition, the Project Allowance was refused (vide DG P&T New Delhi's No. 11/6/70/PAT dated 16.12.1971

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addressed to PMG Ahmedabad - Document No.3, page 22). This led to some P&T employees filing Special Civil Application No. 2160/74 in the High Court of Gujarat which was disposed off by a direction to the respondents to consider the question of granting Project Allowance in the light of the provisions contained in Ministry of Finance Department of Expenditure letter dt. 23.3.1960 (Supra). As this order of Gujarat High Court also failed to move the respondents to sanction the allowance, Special Civil Application No. 1244/79 was filed in the High Court of Gujarat which application was allowed with directions that the P&T employees of Mehsana and Kalol should be paid the Project Allowance on lines the P&T employees at Ankleshwar and Cambay were paid.

3. It was only after the above order of the High Court of Gujarat that the project allowance came to be sanctioned and paid to the P&T employees working at Mehsana and Kalol (No. 11-35/74-PAT (Vol.III) dated 14.4.1983 from DG P&T New Delhi, addressed to G.M. Telecom.,/PMG Ahmedabad in the record tendered by the respondents refers). However the P&T Department sanctioned the project allowance for the period 1972-1975 and then stopped the payment on the ground that the staff at Mehsana and Kalol was getting house rent allowance and therefore not entitled to the project allowance. As if that was not enough, the P&T Department issued allegedly illegal orders to effect recoveries from 249 employees of Mehsana and 104 employees of Kalol on the ground that the D.A. (Postal) Nagpur had, vide D.O. No. A/22/15/86/87 dated 13.11.1986, objected to overpayment made and that the same was required to be recovered with immediate effect.

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4. The arguments of the learned advocates representing the parties have been heard and the record has been closely examined.

5. It is necessary first to deal with the objections of the respondents against the application on grounds of limitation and jurisdiction. To the respondents, the application is premature and not maintainable under section 20 of the Administrative Tribunals Act, 1985 as other remedies were not exhausted before filing the application; that the unions which are the applicants in this case have no conditions of service and therefore the application is not maintainable; and that in so far as the application questions the action of the respondents not paying the project allowance after 1975, it in fact challenged in 1987 the decision of the respondents taken in 1975 which was twelve years before and the application therefore grossly time-barred. With regard to these objections at this juncture, suffice it to say that the same, as seen from the record, first figure in the respondents' reply dated 25.6.1987 to the application. The application had already been unconditionally admitted on 23.1.1987 by the Division Bench of this Tribunal. Even if it is presumed for the sake of arguments that the objections of the Respondents raised much after the application was ordered to be admitted have some legal weight and merit, it will be grossly unfair and unjust at this very late stage to press for summary rejection of the application on account of objections as should have been raised at the time of the hearing for admission. Besides, existence of alternative remedy (which the respondents have not identified) and not pursuing the same does not

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completely bar the jurisdiction of this Tribunal. The facts and circumstances of this case are such that even if discretion has to be exercised for which Subsection (1) of Section 20 of the Administrative Tribunals Act gives scope, the same impels adjudication on merits. The same with regard to the respondents' objection on grounds of limitation. The respondents' argument that the decision not to sanction the allowance is of the year 1975 is unacceptable in the light of the record, namely that the allowance came to be sanctioned vide order dated 14.4.1983 (Supra) pursuant to decision of the High Court of Gujarat.

6. Coming to the substantial pleas of the respondents, it has been contended that the allowance was sanctioned to the staff of Mehsana with effect from 1.4.1968 and to the staff of Kalol with effect from 1.10.1963 as per DG P&T New Delhi order No. 11-35/74-PAT (Vol.III) dated 14.4.1983 issued pursuant to the judgment of the High Court of Gujarat; that the allowance was sanctioned up to the date of the closure of the project or 31.3.1975 whichever is earlier and therefore the question of payment of the allowance after March 1975 does not arise; that the allowance was sanctioned as per rates and terms and conditions stipulated in M.O.F. instructions dt. 23.3.1960 and instructions dt. 17.1.1975; that as per paragraph 8 of these two instructions, a Govt. servant can draw either the project allowance or the house rent allowance and not both in classified towns and cities and that Mehsana and Kalol have been classified as C class towns from 1.8.1972 for purposes of admissibility of house rent allowance at the rate of $7\frac{1}{2}\%$ of pay;

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that in terms of paragraph 8 of the orders of 23.3.1960 and 17.1.1975, the admissibility of project allowance to the applicants is limited to 50% of the ceiling for various brackets of pay; that the entitlement of the allowance from 1.8.1972 was therefore to be worked out accordingly; that the postmaster Mehsana and Kalol paid the allowance resulting in excess payment; that the Audit Office Nagpur objected to the excess payment; and that accordingly orders for recovery of the excess payment made came to be issued. It is further contended that the allowance was sanctioned pursuant to the judgment of the Gujarat High Court on lines the allowance was being paid at Ankleshwar and Cambay and as the postmasters Mehsana/Kalol did not work out the allowance accurately, excess payment came to be made giving rise to audit objections and recovery order. It is further contended that recovery orders are proper and legal as no government servant has right to obtain or get any payment more than entitled under the relevant rules and orders of the Govt. and if an excess payment has been erroneously made, its recovery from the concerned government servant is a legal and valid step.

7. It is seen from the respondents' record that DG P&T's letter dt. 6.12.1966 (Supra) finds no specific mention in their reply despite the fact that the applicants heavily relied on it in support of their case. Even the implications of the provisions of this letter have not been visualized by the respondents as would be seen later. This letter of 6.12.1966 is very important as the same, like the instructions of 23.3.1960 before it which

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are referred to in its preamble and of 17.1.1975 after it, was issued as decision of the President of India. To quote the relevant parts of this letter of 6.12.1966 :

" The President is now pleased to decide that the project allowance may be sanctioned to the P&T staff working in P&T offices which are actually located in the project area irrespective of whether such offices were opened at the request of the project authorities or not. The admissibility of the project allowance to such staff will however be subject of the following conditions being satisfied :-

- (i) the staff concerned are not being subsidised in other form.
- (ii) the project allowance will be sanctioned only where such an allowance has already been sanctioned in respect of these staff of the project authorities. The allowance will be sanctioned at the same rate, upto the date and subject to the same terms and conditions as may be applicable to the staff of the project authorities.
- (iii) The project allowance would also be admissible to an employee residing outside the project area provided that he should be residing outside such area due to non-availability of residential accommodation in the area and not because such an arrangement is more convenient to him and provided also that no facility of free or subsidised transport is available to such an employee for the journey to and from the project.

2. Cases in which project allowance was not sanctioned in the past for the P&T offices staff working in the project areas on the ground that these were not established at the request of the project authorities, may now be reviewed very urgently in the light of the above decision subject to the necessary conditions being satisfied. It is proposed to sanction the project allowance to such staff w.e.f. 1.10.1966.

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3. This letter issues with concurrence of Ministry of Finance (c) vide their U.O. No. 5824/PTI/66 dated 29.11.1966. \}

(Emphasis supplied)

8. Not only the DG P&T's letter dt. 6.12.1966 has been omitted from the respondents' reply and record, ^{1 kept} though its provisions should have merited ~~that~~ close examination and special discussion as to how the respondents viewed them and acted on them for implementation, there is evidence to show that the respondents even rejected petitions and proposals for the sanction of the project allowance on irrelevant and extraneous grounds as seen from DG P&T New Delhi No. 11/6/70/PAT dated 16.12.1971 addressed to the PMG Ahmedabad (Document No.3, page 22) reproduced below :

"Sub:- Grant of Project (Drilling) Allowance to the P&T Employees at Mehsana.

I am directed to refer to your letter No. EST/18-39/137 dated the 27th October 71 on the above subject and to say that since none of the Central Government employees (other than those of the ONGC) and also the State Government employees at Mehsana, Becharji, Kadi and Tharad are getting project (Drilling) allowance, the P&T staff cannot, it is regretted be agreed to."

9. It is obvious from the above that the proposal came to be rejected because the Central Government employees (other than those of the ONGC) and the State Government employees were not getting the project allowance. This ground of rejection of project allowance is most untenable and is violative at least of condition (ii) of the DG P&T's letter dated 6.12.1966. Even in the instructions of 23.3.1960 which figure as preamble to the letter

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dt. 6.12.1966, there is no indication much less stipulation that the project allowance should not be sanctioned to the Postal employees unless the same has been sanctioned to the State Government employees. It is also surprising that while the decision of 16.12.1971 virtually admits that the ONGC employees are getting the project allowance, despite condition (ii) in the letter of 6.12.1966 which, inter alia, says that "The allowance will be sanctioned at the same rate, upto the date and subject to the same terms and conditions as may be applicable to the staff of the project authorities" (ONGC in the instant case) the allowance was not sanctioned. Thus the decision dated 16.12.1971 was clearly untenable as it was prompted by extraneous considerations and was contrary to the provisions of the President's decision contained in the letter of 6.12.1966. Even if instructions of 6.12.1966 are taken as revised by the instructions of 17.1.1975 because of the words "In suppression of OM No. 7/4/E II (B)/60 dated 23rd March 1960 as amended from time to time" figuring in its preamble, it cannot be denied that the applicants' case was required to be decided in accordance with the instructions of 6.12.1966. It is also clear from the record that the respondents did not decide the proposals and petition to sanction the project allowance in accordance with the prevailing decision of the President figuring in the letter of 6.12.1966 applicable to the Postal employees but invoked extraneous and irrelevant considerations to reject the proposals and petition as evidenced by the contents of DG P&T's reference of 16.12.1971.

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10. The applicant employees of the P&T Department were left with no alternative but to pursue their rights arising from the President's instructions of 6.12.1966 by knocking at the doors of the High Court of Gujarat twice and now of this Tribunal.

11. The respondents' contention is that the project allowance was sanctioned because of the decision of the High Court of Gujarat in Special Civil Application No. 1244 of 1979. The petition was allowed on the main ground that while the project allowance was being paid to the Postal employees in Ankleshwar and Cambay which were also in urban areas, there was no reason why the same should not be paid to the petitioners. The High Court therefore directed that project allowance should be paid to the petitioners "on the lines adopted in case of member of the staff of Posts and Telegraph offices at Ankleshwar, Cambay, etc.".

12. It clearly emerges from the above that the High Court nowhere said anything about how the project allowance should be calculated in the case of the petitioners and the period for which the same should be paid. The rate of payment of the project allowance has to be calculated on the basis of the decision of the President at the relevant time which, in the instant case and as established by the record, is the decision contained in DG P&T's letter of 6.12.1966. The period for which the payment has to be made is also liable to be decided accordingly.

13. In view of the above clear position from the record, it is not necessary to deal with the other grounds on which the applicants have assailed the impugned orders and the approach of the respondents. A fair and equitable principle with regard to such matters between governments and government servants is 'errors and omissions excepted' which has to apply to both the sides, namely, the governments as also government servants.

14. In view of the above reasoning, the application was to be allowed with appropriate directions to the respondents.

15. The application is allowed with the following directions :

(i) The respondents are directed to determine the scale and duration of payment of project allowance to the eligible employees of the Postal Department of Mehsana Postal Division in accordance with the President's instructions contained in DG P&T letter No. 7-16/63-PAP dated 6.12.1966 all along till new instructions came to be issued in M.O.F. OM no. 20011/5/73.E.IV(B) dated 17.1.1975.

(ii) The respondents shall not make the recoveries ordered in Memo No. A.22/15/86-87 dated 13.11.1986. Instead, the amount of project allowance admissible to each eligible employee when worked out as above shall be adjusted against the amount already paid to each employee and consequential action taken to pay the difference or recover any over payments already made, as the case may be.