CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
NEW DELHI

131/88, 592/87, 593/87, 595/87 & 80/88

O.A. No. 198

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DATE OF DECISION 19-7-1990

All India Telegraph Engineering Union, Mehsana and others ~~Petitioner~~ Applicants

Mr. Girish Patel Advocate for the Petitioner(s)

Versus

Union of India and others Respondent s

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

CORAM :

The Hon'ble Mr. M.M. Singh, Admv. Member

The Hon'ble Mr. N.R.Chandran, Judl. Member

O.A.Nos. 592/1987, 593/1987,
594/1987, 590/1987, 30/1988 &
131/1988.

Coram:

Hon'ble Shri M.M. Singh Admv. Member

Hon'ble Shri N.R.Chandran Judl. Member

Dated: 19-7-1990

JUDGMENT

Per: Hon'ble Shri N.R. Chandran, Judicial Member.

The above applications have been filed by 1) All India RMS & MMS Employees Union, Mehsana Branch through Shri M.B.Patel, Cashier and Shri P.S.Rathod, LSG HSA, 2) Western Railway Employees' Union through its Secretary Shri R.P.Jha, 3) Shri A.K.Sinha, Assistant Superintendent, Office of the National Sample Survey of India, Mehsana, 4) Shri K.H.Upadhyay, Unit Secretary and Shri A.V.Mody, Unit Member, Gujarat Income-tax Association, 5) Mohmed Nizamuddin, Telephone Operator, Telephone Exchange, Kalol and 6) All India Telegraphs Engineering Union Class III, Administrative Telecom Branch, Mehsana through Shri K.P.Patel, President and Shri K.K.Solanki, Divisional

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President, against the Union of India and the respective Departments, claiming Project Allowance for their members and on behalf of other employees. Since the questions raised are identical in all these applications, they are disposed of by a common order. Since the facts are also identical in all these applications, we consider that it is not necessary to recount the facts in each of the cases and that it would be sufficient if the facts in O.A. 131/1988 are noted.

The Oil and Natural Gas Commission has a large project of drilling and exploration in the region of Mehsana and Kalol. The Government of India on 23-3-1960 decided to grant Project Allowance to employees who are employed on construction projects and reside within the project area or in nearby locality. The letter dated 23-3-1960 further prescribed that if a project is locacted in a city where HRA and CCA aremissible, no project allowance would be admissible. But if the project is situated in the proximity of city, 50 per cent of the project allowance would be admissible. Later, on 17-1-75

in supersession of the O.M. dated 23-6-1960, further guidelines were issued. By this Government order, project allowance was made admissible to staff as are employed on the project or nearby locality. It further extended the benefit of project allowance to all such Central Government staff and other departments who have their offices located in the project for the work of the project provided they reside within the project area or in the nearby locality. The O.M. dated 17-1-1975 also prescribed a limitation that if the project is located at a place where CCA or HRA or other special allowances are admissible, no project allowance would be admissible. An exception was also laid down to this condition permitting the grant of project allowance if the project is situated in the proximity of such a place with a ceiling of 50 per cent. In such a case, an individual will have an option to draw either the project allowance or CCA/HRA as may be admissible. On 19-8-1978 Government of India, Ministry of Finance (Department of Expenditure) clarified that the project

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allowance would be admissible even to employees not directly connected with the work of the project, but a ceiling of 50 per cent was imposed. As a matter of fact, the Ministry of Railways issued instructions to all the General Managers reitertaing the contents of letter dated 19th August, 1978 referred to above. It transpires that project allowance granted to the then P&T staff of Khambhat and Ankleswar from 1968 up to the end of 1975. Therefore, the employees of the P&T Department at Mehsana and Kalol filed Special CA No.2160/1974 in the High Court of Gujarat praying for the grant of project allowance since their case was similar to that of P&T employees at Khambhat and Ankleswar. The Hon'ble High Court of Gujarat, by an order dated 30-6-78 directed the Government to consider the case of the applicants therein for the grant of project allowance. Government refused the grant of project allowance and therefore Special CA No.1244/79 was filed in the High Court of

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Gujarat and the High Court of Gujarat by its judgement dated 16-2-1981 directed that the staff in the areas of Mehsana and Kalol be paid project allowance on the same lines on which the P&T staff in Khambhat and Ankleshware are paid. Pursuant to this order, on 14-4-1983 the Director (TE), office of the Director General,P&T, New Delhi sanctioned the grant of project allowance to P&T staff working in Mehsana and Kalol from 1-10-163 and 1-4-1968 to 31-3-1975 as indicated below:

"Kalol Project area:

1. Kalol S.O.(Project allowance up to 30-6-68)
2. Inspector of Post Offices, Kalol
3. Kalol Desaiwada P.O.
4. Telephone Exchange, Kalol.

Mehsana Project areas:

1. Mehsana H.O.
2. Mehsana Divisional Office
3. Inspector of Post Offices Mehsana
4. Mehsana Bazar P.O.
5. Mehsana Rly. colony
6. Mehsana Collectorate P.O.
7. Telephone Exchange, Mehsana
8. Office of S.D.O.T. Mehsana"

Later on, Government decided to recover the amount and the P&T staff moved this Tribunal in OA 44/87. The Tribunal had allowed the application and set aside the order of

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recovery. When this is the position, on the basis of the recommendations of the Fourth Pay Commission, Government modified their earlier OM dated 17-1-1975 and had revised the rates of project allowance in their OM dated 23-9-1986. It also specified that Central Government employees of other departments whose offices have been located in the project and are not specifically for the work of the project authorities shall be allowed project allowance at 50 per cent of the rates mentioned therein. Subsequently on 28-7-1987 a further clarification was issued by the Ministry of Finance (Department of Expenditure) stating that in respect of unclassified cities they would be entitled to get the project allowance at the revised rates, but they would not be entitled to CCA/HRA. It has further been classified that in respect of A, B-1, B-2 and 'C' class cities the instructions dated 17-1-1975 would continue to be applied. The applicants, after the

recommendations of the Fourth Pay Commission and after the O. M. dated 23-9-1986 applied to the respondents for the grant of project allowance. The applicants in OA 131/1988 submitted representations to the respondents on 8-1-1987 and on 20-2-1987. The applicant in OA 80/1988 filed a representation to the General Manager, Telecom on 22-4-1987. On 30-6-1987, the General Manager, Gujarat Circle, Ahmedabad sent a reply stating that the case of project allowance is not considered for Mehsana Division by the Directorate in New Delhi, vide his letter No. 11-2/87-PAT dated 22-4-1987 addressed to G.M. Bombay and copy to his office. Being aggrieved by the order rejecting the claim of project allowance, the application OA 131/88 has been filed.

The learned counsel for the applicants drew our attention to the various circulars and submitted that the applicants would be entitled to project allowance. The applicants

have come forward with a prayer for the grant of project allowance from 1-4-1975. According to the learned counsel, the payment of project allowance was stopped from 31-3-1975 which would be improper. According to the learned counsel, it is the duty of the respondents to have reviewed this question in the light of the instructions given by the Fourth Pay Commission and having failed to do so, they erred in passing a cryptic reply, rejecting their request. The learned counsel also relied upon a decision of this Tribunal in O.A.44 of 1987. Accordingly, the learned counsel prayed that these applications be allowed.

On the other hand, the learned counsel for the respondents also drew our attention to the relevant circulars and submitted that the relief sought for cannot be granted because the prayer is for the grant of project allowance from 31-3-1975 till to date. Therefore, these applications are hopelessly

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barred by limitation and these cannot be entertained. The learned counsel for the respondents also submitted that since the cause of action arose before three years of the constitution of the Tribunal, the Tribunal cannot entertain these applications. He strongly relied upon paragraph 8 of the Circular dated 23-3-1960 and paragraph (viii) of OM dated 17-1-1975. In other words, the contention of the learned counsel for the respondents is that since the applicants have been receiving HRA/CAA, they are not entitled to project allowance. He would further submit that the applicants cannot rely upon the Fourth Pay Commission's Report since it is only recommendatory and does not bind the Government. He further submitted that in the light of paragraph 9 of the Reply Statement, it is not necessary to review the decision. With regard to the decision of this Tribunal in OA 44/1987, the learned counsel submitted that the decision dealt with the recovery of the arrears between 1963, 1968 to 31-3-1975 and therefore has no relevance. Accordingly, he prayed that these applications be dismissed.

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We have heard the rival contentions. Before dealing with the contentions of the parties, it is necessary to refer to the various O.Ms. issued from time to time, granting project allowance. The first O.M. is dated 23-1-1960. For the first time, the project allowance was given to all staff who are employed on the project and reside within the area or in the nearly locality. The allowance was mainly intended to compensate the staff for lack of amenities such as housing, schools, markets, dispensaries. The OM dated 23-3-1960 also imposed a limitation that if the project is located in a city where CCA/HRA is granted, no project allowance would be admissible.

On 17-1-1975 another OM (No.20011/5/73-E.IV(B) superseding the O.M. dated 20-3-1960 was issued. By the above O.M., the eligibility for the grant of project allowance was also extended to those Central Government staff of other departments who have their offices located in the project area for the work of the project provided they reside within the project area or nearby

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locality. This O.M. dated 17-1-1975 also prescribes a condition that in places where CCA/HRA or other allowances are admissible, then project allowance will not be admissible.. Since the learned counsel for the respondents relies strongly on this clause, it is necessary to refer to the said clause in full:

> "(viii) If the project is located at a place where compensatory allowance and/or house rent allowance or any other special compensatory allowance are admissible, no project allowance will be admissible. Where, however, the project is situated in the proximity of such a place, a project allowance may be sanctioned if justified, but the ceiling for the project allowance for such cases would be limited to 50% of the ceiling mentioned below. In such a case the individuals will have an option to draw either the project allowance or CCA/HRA as may be admissible. In cases where rent free accommodation or HRA in lieu of is given to an employee, as a condition of service or as a project concession, the project allowance will be reduced by 25%."

Subsequently on 19-8-1978, in O.M.No.F.20011/7/74/E.IV(B), the Ministry of Finance, (Department of Expenditure) modified/the then on the assumption that existing instructions that Central Government staff of other departments whose offices have been located in the project area not specifically for the work of the project

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would not be entitled to project allowance and ordered that such Central Government employees also would be entitled to project allowance at 50 per cent even though such employees are not directly connected with the project work. The Fourth Pay Commission introduced new rates of project allowance. After accepting the recommendations of the Fourth Pay Commission regarding project allowance, the Government of India, Ministry of Finance (Department of Expenditure) in their O.M. dated 23-9-1986 modified their OM dated 17-1-1975 and revised the rates of project allowance and paragraph 2 of the O.M. dated 23-9-1986 is important and it reads as follows:

> "2. Central Government employees of other Departments whose offices have been located in the project area not specifically for the work of the project authorities shall be allowed project allowance at 50% of the above rates."

As per clause 2 above, even those Central Government employees whose offices have been

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but not specifically for the work of the project shall be allowed project allowance at 50 per cent. It is also necessary to note O.M. dated 28-7-1987. In that para I(viii) of their earlier O.M. dated 17-1-1975 was amended. It was further decided that in order to ensure that there is no reduction in the emoluments of the employees who are entitled to project allowance, such allowance would continue to be paid at revised rates even in unclassified places. But such employees will not be entitled to CCA/HRA or other special compensatory allowances. The learned counsel for the applicants relied on this and contended that the applicants would be entitled to project allowance. He mainly relied upon the decision of the High Court of Gujarat in Special CA 1244/1979 and submitted that the discontinuance of the project allowance would be improper. He brought to our notice the letter dated 14-4-1983 where project allowance was given to P&T employees up to 31-3-1975. He also relied

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upon the letter dated 29-7-1975 from the Director, P&T, New Delhi addressed to the General Manager, Telecom, Gujarat Circle and letter dated 8th August, 1980 of the Government of India, Ministry of Communication (P&T Board), New Delhi, to the General Manager, Telecom, Ahmedabad and argued that there should have been a review. He also relied upon the decision of this Tribunal in O.A.44 of 1987. In that case, this Tribunal held that the respondents had not visualised the implications of the instructions dated 6-12-1966 which granted project allowance on par with the staff of the project authorities and therefore quashed the recovery of the amount already paid up to 31-3-1975.

On a net analysis, the following points emerge: Originally, project allowance was available only to persons employed in the project and reside within the project area. But if the project is located in a city where HRA/CCA are available, project allowance was not admissible. Subsequently, the project allowance was extended to employees of the project as well as to staff of all other

area would be entitled to project allowance if they satisfy the conditions referred to earlier. Even though we have held that the application claiming project allowance from 1975 is not maintainable, payment of project allowance being a recurring cause of action, the applicants would be entitled to project allowance if the applicants satisfy the eligibility criteria.

Even though it was not specifically stated either in the application or in the Reply Statement, the learned counsel for the respondents orally stated that the members of applicants' associations are receiving CCA/ HRA and other special compensatory allowance. Hence they cannot get theproject allowance. This stand does not appear to be right on perusal of the instructions since the OM dated 17-1-1975 grants the said allowance

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departments who have their offices located in the project. This allowance was not admissible if the project is located in a place where CCA/HRA are admissible. But if the project is situated in the proximity of such a place, the project allowance may be sanctioned with a ceiling of 50 per cent provided such employees do not draw HRA/CCA. Later on, the project allowance was extended to Central Government employees of other departments who have their offices located in the project not specifically for the work of the project on the same conditions as laid down by the O.M. dated 17-1-1975.

Before examining the merits of the impugned order, it is necessary to consider the objection of the learned counsel for the respondents that the application is belated as the relief sought for by the applicant is for the grant of project

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allowance from 1-4-1975. We are of the view that this relief cannot be granted by this Tribunal since the cause of action arose three years before the constitution of this Tribunal i.e. before 1-11-1982. If the members of the Applicant-Association are otherwise entitled to project allowance, then it being a recurring cause of action, the application would be maintainable for the period before one year from the date of filing of this application. Hence this application cannot be thrown out on ground of limitation. Turning to the impugned order, we notice that it is a non-speaking order. The order had been issued by the 3rd respondent communicating the decision of the 2nd respondent dated 22-4-1987. The order of the Directorate dated 22-4-1987 has not been made

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available to us. On the face of it, the order does not contain any reason. In the Reply Affidavit it is stated that project allowance would not be admissible where CCA/HRA are admissible. The relevant extract is as follows:

> 'It is submitted that no project allowance was admissible at places where compensatory allowance and/or house rent allowance or any other such compensatory allowance are admissible as per instructions issued by Director General P&T dated 15-2-1975."

Thus, the respondent has assumed that there is a total embargo on the grant of project allowance if house rent and city compensatory allowance are admissible. This stand does not reflect the correct position from the instructions on the subject. We have already noticed that the OM dated 17-1-1975 grants project allowance with a ceiling of 50 per cent in places in the proximity of the project

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provided the Government servant gives an option. CCA/HRA are payable at the duty point and therefore if the Government servant works in a place which is in the proximity to a project, he would be entitled to the project allowance provided he gives an option, either to get the project allowance or CCA/HRA. It is not made clear whether respondents 2 and 3 called for such options from those employees who will be governed under the above clause. Similarly, as per the O.M. dated 28-7-87, the project allowance is granted to a Government servant residing in unclassified areas in lieu of CCA/HRA. These factors require detailed examination and the impugned order does not refer to any of these details and has been passed on the assumption that the project allowance would not at all be admissible

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if HRA/CCA are admissible. It is to be noted that there is no factual averment in the Reply Statement that the members of the Association are in fact receiving HRA/CCA. Thus, we are of the view that the Government erred in passing an order without considering the above issues. Therefore, the impugned order dated 30-6-1987 which communicated the decision of the 2nd respondent dated 22-4-1987 is liable to be set aside.

The learned counsel for the respondents submitted that the application being filed by an Association, these factual details cannot be gone into. The learned counsel for the respondents is right in his submission and these details cannot be gone into in this application. But the respondents should have considered all these aspects. Therefore, we partly allow this application

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and direct the 2nd respondent to examine the question of grant of project allowance in the light of the observations made above. We also direct the applicant-association to submit a representation to the 2nd respondent for the grant of project allowance to its members. Such a representation should be submitted within a period of two months from the date of receipt of a copy of this order and the said representation should contain the following details:

(i) Name of the member of the association who claims project allowance;

(ii) Whether the member is in receipt of CCA/HRA;

(iii) Actual place where the member is working and residing;

(iv) Whether the project is in the place where the member is working;

(v) Whether the project is in the proximity of the place where the member is working; if so, the distance between** the project and the place of work.

(vi) Whether the member is working in an unclassified city;

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On receipt of the relevant information, the first respondent should consider them and pass a reasoned order within a period of four months from the date of receipt of the representation. O.A.131/1988 is allowed as above.

O.A.592 of 1987 has been filed by the All India RMS and MMS Employees' Union, Mehsana Branch through M.B.Patel, Cashier and P.S. Rathod, LSG HSA, claiming project allowance for its members. In paragraph 6.8 of the application it is stated that the applicant-association had made various representations. But no representation has been enclosed along with the application. They have also not produced any order in this regard, from the 3rd or 2nd respondent, rejecting their representation. However, in view of our above decision in OA 131/1988, we also direct the applicant-association to make a representation to the 2nd respondent enclosing the relevant

details mentioned in our order in OA 131/1988. The representation should be filed within a period of two months from the date of receipt of a copy of this order. On receipt of the relevant information, the first respondent should pass a reasoned order within a period of four months from the date of receipt of such representation.

O.A.593 of 1987 has been filed by the Western Railway Employees' Union, Mehsana, through its Secretary R.P.Jha, claiming project allowance to its members. In this case representations were made to the 2nd respondent but no orders have been passed. However, in view of our decision in OA 131/1988, we direct the applicant-association to file a representation giving relevant details mentioned in our Order in OA 131/1988. Such

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a representation should be filed within a period of two months from the date of receipt of a copy of this order. On receipt of such a representation, the 2nd respondent is directed to pass a reasoned order in the light of our judgement in OA 131/1988 within a period of four months from the date of receipt of such a representation.

O.A.595/1987 has been filed by the Fujarat Income-Tax Association, Mehsana through its Unit Secretary K.H.Upadhyay, for the grant of project allowance. The applicants made several representations to the 2nd respondent, but no orders have been passed. In view of our decision in OA 131/1988, we direct the applicant-association to submit a representation to the 2nd respondent giving the relevant details as per our decision

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in OA 131/1988 within a period of two months from the date of receipt of a copy of this order. On receipt of such representation, the 2nd respondent is directed to pass a reasoned order in the light of our directions in OA 131/1988 within a period of four months from the date of receipt of such a representation.

O.A.80/1988 has been filed by Mohmed Nizammuddin, Hon. Branch Secretary, A.I.T.E.E. Union for the grant of project allowance. In this case an order was passed on 30-6-1987 which is identical to the order set aside by us in O.A. 131/1988. In view of our decision in the said O.A., we direct the applicant-association to file a representation to the 2nd respondent giving all the relevant information as indicated in our judgement in OA 131/1988 within a period of two months from the date of receipt of a copy

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of this order. On receipt of such a representation, the 2nd respondent is directed to pass a reasoned order as per the directions contained in our judgement in OA 131/1988 within a period of four months from the date of receipt of such a representation.

O.A.Nos. 131/1988, 592/1987, 593/1987, 595/1987 and 80/1988 are partly allowed as indicated above.

Sd/
(M. M. Singh)
Administrative Member

Sd/-
(N.R.Chandran)
Judicial Member

s.v.

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M.A./136/91

in

O.A.595/87

Coram : Hon'ble Mr. P.H.Trivedi : Vice Chairman

Hon'ble Mr. R.C.Bhatt : Judicial Member

1/5/1991

Mr.D.C.Dave for Mr.R.P.Bhatt, learned advocate for the applicant seeks permission to withdraw the Misc. Application 136/91. Allowed. M.A./136/91 stands disposed of as withdrawn.

(R.C.Bhatt)
Judicial Member

(P.H.Trivedi)
Vice Chairman

a.a.b.