

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CAT/112

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AHMEDABAD BENCH
XXXXXX

O.A. No.

XXXXXX

606 OF 1988

DATE OF DECISION 11-8-1989

Shri R.C.Joshi & Ors.

Petitioner

Mr. Y.N.Oza

Advocate for the Petitioner(s)

Versus

Union of India and Ors.

Respondent

Mr.J.D.Ajmera & Mr.R.J.Oza

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Trivedi

: Vice Chairman

The Hon'ble Mr. P.M.Joshi

: Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(8)

1. R.C. Joshi
2. R.R. Bhatt
3. U.S. Shah
4. P.M. Misriya
5. D.M. Shrimali
6. K.R. Dabhi
7. M.H. Bhatt
8. A.H. Momin
9. A.S. Dataniya
10. P.M. Vaghela
11. P.L. Solanki
12. R.D. Shrimali
13. R.N. Shah
14. Kum. N.K. Shah

: Petitioners

Office at Dy. Director,
Director of Census,
Operation, Ahmedabad.

(Adv. : Mr. Y.N. Oza)

Versus

1. Deputy Director,
Directorate of Census
Operation, Gujarat,
Ministry of Home Affairs,
Kerawala Building,
Opp. V.S. Hospital,
Ahmedabad.
2. Registrar General, India,
Ministry of Home Affairs,
2-A, Mansingh Road,
Kotah House, Annexe,
New Delhi-110 001.
3. Additional Director
(Statistics), Directorate
of Health & Medical
Services & Medical
Education (Health Section)
Block No.15, Old Sachivalaya,
Gandhinagar.
4. Union of India,
Ministry of Finance,
North Block,
New Delhi.

: Respondents

(Adv. : Mr. J.D. Ajmera &
Mr. R.J. Oza)

J U D G M E N T

OA/606/88

Date: 11-08-1989

Per: Hon'ble Mr. P.H. Trivedi

: Vice Chairman

The question which has been agitated by the
petitioners in this case under Section 19 of the
Administrative Tribunals Act, 1985 is that the House

Rent Allowance (HRA) and City Compensatory Allowance (CCA) of the petitioners have been reduced by reason of the shifting of the office of the Director, Health Services to which they were attached from Ahmedabad to Gandhinagar. Ahmedabad is included in the category of Class-A and Gandhinagar in the category of Class-C. The scale of the HRA & CCA is determined by the category of the city which is the place of duty. All the petitioners are residents of Ahmedabad and were working in Ahmedabad when the Director of Health Services' office was at Ahmedabad. The Gujarat Government adopted a policy of shifting the office to Gandhinagar and, for this purpose, not only allowed the employees to retain HRA & CCA which they were getting at Ahmedabad but paid them a conveyance allowance also. The petitioners admittedly are Central Government servants and governed by Central Government Rules regarding HRA & CCA but they claim that it is unfair and discriminatory in the circumstances to deprive them of HRA and CCA as eligible and allowed for in Ahmedabad when by the accident of their being attached to the Director of Health Services, their place of duty has been shifted to Gandhinagar. They have further stated that they are not transferred or deputed and continue to remain on the books of the Central Government. The respondents' case on the other hand is that for HRA & CCA, it is not the place of residence but the place of duty which governs the scale and if the place of duty is admittedly Gandhinagar, these allowances can only be paid according to the scale of the city of category 'C' in which Gandhinagar is included and not in category 'A' in which Ahmedabad is included. Not only in the case of the petitioners but in the case of several Central Government departments this situation is

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encountered in which Central Government servants are residing in Ahmedabad but have their place of duty in Gandhinagar and they are not being paid the allowances admissible at Ahmedabad. During the course of hearing, we enquired if in any other place especially in metropolitan cities such a situation has been encountered and we have been informed that uniformly the Central Government has only allowed HRA & CCA according to the place of duty and not the place of residence. Both parties have pleaded that the petitioners who are working under the Director of Census Operation, Ahmedabad have been attached to the office of Director of Health Services under whose administrative Control they are placed by an arrangement arrived at between the Central Government and the State Government but, neither party has furnished a copy of this arrangement.

2. From the list of classification of cities for HRA furnished from Swamy's Compilation it is seen that Ahmedabad is in Class-A city and Gandhinagar is in Class-C. The relevant portion of the instructions governing the scale of the allowances admissible is reproduced below:

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 "3. (a) (i) The limits of the locality within which these orders apply shall be those of the named municipality, or corporation and shall include such of the suburban municipalities, notified areas or cantonments as are contiguous to the named municipality or corporation or other areas as the Central Government may from time to time, notify

(ii) The orders contained will automatically apply/cease to apply to areas which may be included within excluded from the limits of the named municipality or corporation by the State Government concerned, from the date of such inclusion/exclusion.

(b) (i) A Government servant whose place of duty falls within the qualifying limits of a city shall be eligible for both the compensatory (city) and house rent allowances, irrespective of whether his place of residence is within such limits or outside.

NOTE: 1 - Absence from place of duty during holidays, except those affixed to leave, will not affect the eligibility to the compensatory (city) and house rent allowance.

NOTE: 2 - For the period of tour, a Government servant's entitlement to these allowances shall be regulated with reference to his headquarters.

(ii) Government servants whose place of duty is in the proximity of a qualified city, and who, of necessity have to reside within the city, may be granted the compensatory (city) and house rent allowances admissible in that city. The Administrative Ministries/Departments, and the Comptroller and Auditor-General in respect of staff serving under him, are authorised to sanction the allowances under this clause provided they are satisfied that-

- (1) the distance between the place of duty and the periphery of the municipal limits of the qualified city does not exceed 8 kilometres;
- (2) the staff concerned have to reside within the qualified city out of necessity, i.e. for want of accommodation nearer their place of duty."

The respondents have also furnished a note by which the grievance of the employees in Directorate of Census Operation in Gujarat was considered. A special compensatory allowance has been granted also by a letter dated 23.2.1981 at the rate of 5% of basic pay to all Central Government employees belonging to Group-III & IV and also to non-gezettted Group-II employees of a certain category. The Registrar General of India referred this question also to the Finance Ministry which has given its view annexed at page-72 referred to earlier. The petitioners have further stated that in the case of Mr.R.R.Bhatt, he was posted vice Mr.Pithadia working at Gandhinagar by an order dated 31.7.1987 and he was posted after shifting of the Director of Health Services. In the case of Mr.R.C.Joshi and other applicants the question of issue of any transfer order did not arise since their services were placed at the disposal of the Additional Director, Health Services, Gujarat.

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3. Regarding the discrepancy between the treatment of employees residing in Ahmedabad but working in Gandhinagar, the petitioners have filed certain orders of the Gujarat Government from which, for the purpose of this case, it is clear that not only the employees residing at Ahmedabad have been allowed to retain the HRA & CCA on the scale of Class-A city although their place of duty is in Gandhinagar but even conveyance allowance has been given to them. To this the reply of the respondents is that the petitioners being Central Government servants cannot get the benefit allowed by the Gujarat Government to its employees but must be governed by Central Government Rules.

4. Neither party having placed on the record the arrangement by which the Central and State Governments have placed the Central Government employees at the disposal of the State Government, we can only go by the pleadings and other documents on the record of the case. It is clear that the Central Government servants have been attached to the Directorate of Health which initially was working in Ahmedabad. The scale of the allowance admissible to the employees, therefore, was according to Class-A category. Admittedly the Gujarat Government's concessions to its employees residing in Ahmedabad but, working in Gandhinagar cannot apply, therefore, to the petitioners. This would be contrary to the uniform practice adopted for other Central Government servants at Ahmedabad and also in other cities. There is no discrimination as against Gujarat Government employees because the two viz. Central Government employees of the Department of Census and the Gujarat Government employees of Directorate of Health Services are distinct categories.

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5. The question, however, remains as to whether the petitioners should validly be required to work at Gandhinagar when they were earlier posted at Ahmedabad. The respondents cannot simultaneously take the plea that the petitioners are Central Government employees and are governed by Central Government Rules and that merely because of a working arrangement under which they are placed under the administrative control of the Directorate of Health Services their allowances should be reduced because of a policy decision of shifting of the office of the Directorate of Health Services to Gandhinagar. Such a reduction can be effected only if either order of transferring head quarters of the petitioners are issued by the competent authority or if deputation is necessary for this purpose, orders of deputation for the cases of petitioners are issued. The respondents have taken the plea that no transfer or deputation orders are necessary because the petitioners are attached to the Directorate of Health Services but, if Gandhinagar is out of the Municipal limits of Ahmedabad or beyond the distance allowed in the rules it is clear that the petitioners are visited with an adverse consequence. Before any such consequence is vitiated upon them, either they should have been given an option or orders of transfer or deputation which are binding on them. The petitioners are bound to nurse a sense of grievance if their colleagues with Gujarat Govt. not only retain such allowance but even are given conveyance allowance although they may not have a cause to pursue in the forum of Tribunal. Of course, it does not mean that their representation does not merit consideration by the Government. There is a distinction between the position of other offices and other cities and the case of the applicants because in their case their place of duty has been changed unilaterally about

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which they had no option and regarding them there are no orders of posting them at Gandhinagar issued by their head of department.

6. The petitioners have been protected against recovery of the amounts paid. Rule is made absolute. Further the petitioners be continued to be paid HRA & CCA according to the scale of Class-A cities. The respondents are at liberty, however, to issue orders of transfer and posting the petitioners at Gandhinagar but until such orders are made the petitioners are declared to be entitled to the HRA & CCA admissible to them at Ahmedabad. No order as to costs.

Phagji
(P.H.Trivedi)
Vice Chairman

Singh
(P.M.Joshi)
Judicial Member