

16
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.460 OF 2011
Cuttack this the 15th May, 2013

CORAM
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Shri M.Nageswar Rao, I.P.S. aged about 50 years, S/o. late Pitchaiah, At/PO/PS-
Mangapet, Dist-Warangal (AP), presently posted as Additional Director General of
Police, Special Armed Forces, Orissa, At/PO/PS/Dist-Cuttack

...Applicant

By the Advocate(s)-M/s.B.Dash
C.Mohanta

-VERSUS-

Union of India represented through

1. The Secretary to Government of India in the Ministry of Home, New Delhi
2. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi
3. Director General, Central Reserve Police Force, Block No.1, C.G.O. Complex, Lodhi Road, New Delhi
4. Additional Director General (Headquarters), Central Reserve Police Force, Lodhi Road, New Delhi

...Respondents

By the Advocate(s)-Mr.S.B.Jena



ORDERHON'BLE SHRI R.C.MISRA, MEMBER(A)

Applicant in this case is an officer of the Indian Police Service at present working as Additional Director General of Police, Special Armed Forces, Orissa. His grievance relates to the period from 16.4.2008 to 15.4.2011 when he was working as Inspector General of Police, Eastern Sector, Kolkata and Operations, Orissa of the Central Reserve Police Force. In this Original Application he has made a prayer for direction to Respondents to allow him to draw the benefit of Transport Allowance in terms of the provisions contained in the O.M. No.21(2)/2008-E.II(B) dated 29.8.2008 issued by the Government of India, Ministry of Finance, Department of Expenditure, New Delhi. It is the case of the applicant that according to this O.M., he was entitled to Transport Allowance of Rs.7000/- per month plus Dearness Allowance thereon with effect from 1.9.2008 since he fulfilled all the requirements as prescribed in the aforesaid O.M. His further case is that this O.M. was issued on the basis of the recommendations of the 6th Pay Commission which was accepted by the Government of India. The relevant Paragraph of this O.M. is reproduced below:

"Officers drawing grade pay of Rs.10,000/- and
Rs.12,000/- and those in the HAG + scale, who are



entitled to the use of official car in terms of O.M.No.20(5)-E-II/93 dated 28.01.1994 shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the rate of Rs.7000/- p.m. plus dearness allowance".

2. Applicant has mentioned in his O.A. that based on the recommendations of the 6th Pay Commission, the City Compensatory Allowance which was being given earlier was abolished and the rates of Transport Allowance was increased substantially subsuming the City Compensatory Allowance with effect from 1.9.2008. It is the case of the applicant that in a meeting of the Senior Officers at the Directorate General of CRPF, a decision was taken that officers who want to claim Transport Allowance would have to submit a certificate every month to the effect that they have not used the Government vehicles for commuting between office and residence. In spite of the required certificate submitted by him and the exercising of his option, the applicant was not allowed to draw the benefit of Transport Allowance. It has been further brought to our notice in the O.A. that vide Office Order dated 28.4.2009, the Director General of CRPF allowed Transport Allowance to Officers only up to the level of D.I.G. whereas no such permission was given to the officers of the rank of Inspector General of Police and



above. The applicant made a prayer before Respondent No.3 by the representations made on two occasions and finally made a representation before Respondent No.1. The decision of Respondent No.1 was communicated in which it was said that the issue may be decided at the CRPF level, i.e. by the Respondent No.3, who after detailed examination of the issue with the Finance Wing of the CRPF Headquarters passed an order that all Inspectors General of Police are sanctioned A/C. vehicles and hence, where is the question of Transport Allowance? With this order and remark, Respondent No.3 closed the issue. Thereafter the applicant submitted one Memorial before Her Excellency, the Hon'ble President of India under Rule-25 of the All India Services (Discipline & Appeal) Rules, 1969 against the undue denial of Transport Allowance as decided by Respondent No.3. Thereafter, the applicant was intimated in a letter dated 17.01.2011 that his Memorial was forwarded to the Ministry of Home Affairs and the decision conveyed by the Ministry was that the prayer of Officers to the Government of India is not covered under any Rule. It is for the CRPF to handle the prayer and decide. The applicant was further informed that his representations were earlier turned down by the Ministry of Home Affairs and the



then D.G., CRPF had taken a decision that since all Inspectors General of Police of CRPF have official cars, his prayer was not accepted. The present Director General of CRPF also agreed with the policy decision taken by his predecessor and therefore, in the result, the prayer of the applicant was finally rejected.

3. Against the above backdrop, the applicant has moved this Original Application before the Tribunal praying for relief in his case as per the extant orders of the Ministry of Finance, Department of Expenditure, issued vide O.M. dated 29.8.2008 since he fulfilled all the required conditions. He has contended that the decision of the DG, CRPF is contrary to the decision of the Government of India as contained in the above mentioned O.M. and is not permissible in the eyes of law when officers of the same rank in other Departments of the Central Government are being sanctioned Transport Allowance, ^Q when they do not use the Government vehicles for commuting between residence to office, ^R There cannot be a discrimination in this matter so far as the applicant is concerned. The Transport Allowance is a personal entitlement which he is entitled to draw as per the decision of the Government of India subject to fulfillment of the required conditions and this has nothing to do with the availability of and provision of A/C



21

vehicles to all Inspectors General of Police rank Officers in the CRPF. His further contention is that the Ministry of Home Affairs without taking any decision in the matter remitted the matter back to the same authority, i.e., Respondent No.3 for a final decision in the case.

4. A counter affidavit has been filed by the Respondents. The facts mentioned in the O.A. have been supported in the counter affidavit. However, it has been denied that the representation of the applicant was not duly considered by the authorities. The Respondents have relied on the fact that the competent authority, i.e., D.G., CRPF has taken a policy decision in the matter which is quoted below

"All IsG in CRPF have official car. One IG does not want the staff car while another wants the same. We cannot be providing a car to one and later catering to other officers option".

5. There is no mention in the counter affidavit as to why entitlement of Transport Allowance was refused to the applicant when he fulfills the required conditions. It is also not mentioned why the applicant was refused this entitlement when all other officers of the same rank in other Departments of the

D.
Rao

22
Government of India have been granted this entitlement based on the O.M. issued by the Ministry of Finance dated 29.8.2008.

6. The applicant has also filed a rejoinder to the counter-affidavit, in which, he has alleged that the entire counter affidavit is mere repetition and paraphrasing of the contents of the O.A. filed by the applicant and is bereft of any substance. His submission in the rejoinder is that Respondent No.3 has no authority to take a policy decision in the matter, but is bound by the decision of the Government of India as communicated vide O.M. dated 29.8.2008 of the Ministry of Finance, as quoted above. According to applicant, Res. No.3 cannot sit in judgment over the decision of the Government of India.

7. We have heard Shri B.Dash, learned counsel for the applicant and Shri S.B.Jena, learned Addl.Central Government Standing Counsel for the Respondents and perused the records.

8. During the course of hearing, the learned counsel for the applicant has drawn our attention to Paragraph-9 of the rejoinder, in which he has mentioned that the Respondent No.3 has recently allowed drawal of Transport Allowance to





Inspector General of Police vide Order No.A-1-1/2012-13-ACCTS-3 dated 18.4.2012, a copy of which has been annexed to the rejoinder as Annexure-A/13.

Perusal of the contents of Annexure-A/13 reveals that the case regarding the Transport Allowance to Inspectors General of Police has been reexamined in detail and decided that the instructions and guidelines contained in O.M. dated 29.8.2008 issued by the Ministry of Finance, Department of Expenditure are very clear and are applicable to Inspectors General of Police fulfilling the conditions as laid down in the said order. It is also mentioned that this order issues in supersession of all earlier communication on the subject matter from this Directorate General in the past. The learned counsel for the applicant by quoting this communication has strongly pleaded that the earlier action of Res.No.3 in denying Transport Allowance to the applicant even though the latter met all the prescribed conditions was illegal and discriminatory. In course of hearing the learned counsel for the Respondents has fairly submitted that the contents of Annexure-A/13 are the latest decision of the Respondent No.3 in the matter. Therefore, in substance, he has conceded the case of the applicant by accepting that the earlier orders of the DG, CRPF(Respondent No.3) have been reviewed in



the light of the O.M. dated 29.8.2008 of the Ministry of Finance, Department of Expenditure.

9. In view of what has been stated and discussed above, it becomes quite evident that the Respondents have agreed to the case made out by the applicant and conceded that his case has now been accepted by Respondents in their latest orders communicated in Annexure-A/13. There is, therefore, no further matter to be adjudicated in this case.

10. Accordingly, Respondents are directed to consider the prayer of the applicant on the basis of O.M. dated 29.8.2008 subject to fulfillment of all the required conditions as stated therein and issue appropriate orders within a period of three months from the date of receipt of this order.

With the above observation and direction, this O.A. is disposed of. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

BKS