

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 53 OF 2008**

*wednesday*, this, the 11<sup>th</sup> day of March, 2009.

**CORAM:**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

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... Applicants

(By Advocate Mr.P.V.Mohanan )

versus

1. The Director,  
Central Plantation Crops Research Institute  
Kudlu PO, Kasargod
2. Scientist in Charge (Head)  
Central Plantation Crops Research Institute  
Regional Station, Kayamkulam ... Respondents

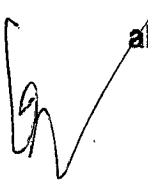
(By Advocate Mr.P.Santhosh Kumar )

The application having been heard on 02.03.2009, the Tribunal on 11.03.2009, delivered the following:

### ORDER

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**


This case poses an interesting question. The respondents earlier granted the Transport allowances to the applicants in this OA on the basis of the measurement scaled by them between the Portico to the Main Office Building and the respective residences of the applicants which ranged between 1020-1050 metres. Transport allowance is admissible if the distance between the place of work and the residence is not less than 1 km. The applicants thus, enjoyed the transport allowance from 01-08-1997 onwards and in 2001, when the statutory audit made certain objections that the distance should have been measured between the main gate of the office building and the main gate of the residential complex, in which case, the distance between the place of work and residence being less than one kilometre, the applicants would not be entitled to the Transport Allowance, the respondents on verification as aforesaid and on finding that the distance between place of work (main Gate) and the residence (main gate to the complex) was found to be short by a few metres to one kilometre, suspended the grant of such transport allowance since 1st January 2001 and now they have resorted to recovery of the amount of transport allowance paid to the applicants. Annexures A-1, A-4, A-6, A-7, A-8, A-9, A-10,



A-11, A-12, A-13, A-14, A-15, A-16, A-17 and A-18 refer. Challenge is against the decision to recover the amount so calculated.

2. Respondents contest the O.A. According to them the total extent of CPCRI Regional Station, Kayankulam is 59.74 acres. In October 2001, a Tachometric Measurement was taken from the PORTICO of the Main Building to the individual quarters of the employees through the Main Gate and the distance recorded as 1020 meters to 1050 meters. The distance ought to have been measured from the Main Gate of the Office Campus to the Gate in the Residential Quarters campus or from the South Gate to the Residential Campus Gate, as per the opinion of the Special Audit party and the distance, if so measured, comes to within one kilometre. Hence, the applicants having been paid the Transport Allowance, to which they are not entitled, the same is sought to be recovered.

3. Counsel for the applicant argued that it was the respondents who measured the distance earlier and being satisfied that the distance involved is not less than one kilometre, had sanctioned the Transport Allowance. That distance is the correct distance. As such, just because audit party had different opinion, the respondents cannot be allowed to recover the transport allowance granted to the applicants. Counsel for the applicant also submitted that as per the VI Pay Commission Recommendation, the requirement of minimum distance of one kilometre for drawal of transport allowance has been done away with. He has also relied upon the decision by the Apex Court in *Babulal Jain v. State of M.P.*, (2007) 6 SCC 180, wherein the Apex Court has directed the respondents to refund the sum recovered in the case of the appellant therein as such excess payment was not on the basis of any statement of the appellant.



4. Counsel for the respondents submitted that audit report is clear and when the distance is measured from the main Gate of the office Building to the Main Gate of the residential complex, the same being less than one kilometer, the applicants were not entitled to draw the Transport Allowance and hence, recovery is fully justified.

5. Arguments have been heard and documents perused. At the outset in so far as the decision in the case of Babu Lal Jain (supra) relied upon by the counsel for the applicants, it is to be noted that the Apex Court has held therein as under:-

*18. We, therefore, while directing the respondents to refund the said sum of Rs 22,000 to the appellant herein, also direct that his retirement benefit shall be calculated as if he had reached the age of superannuation only as an Accountant on the refixed pay and not on the scale of pay of the Election Supervisor. We issue this direction in exercise of our jurisdiction under Article 142 of the Constitution of India. (Emphasis supplied)*

6. The above decision would not help the applicant since, the judgment was passed invoking the provisions of Art. 142 of the Constitution of India.

7. Transport allowance has been granted to the applicants by virtue of order dated 03.10.1997 which reads as under:-

***Transport Allowance from 1-8-1997***

*" The undersigned is directed to say that the 5th Central Pay Commission, vide paras. 107.11 to 107.13 of Volume III of their Report, have recommended the grant of Transport Allowance to Central Government employees to suitably compensate them for the cost incurred on accounts of commuting between the place of residence and the place of duty.*

*2. The matter has been considered and the Government have accepted the recommendation of the Commission. As announced vide this Ministry's Resolution No.50 (I)/IC/97, dated 30.9.1997, the President is, accordingly, pleased to decide that the Central Government employees shall be entitled to Transport Allowance at the following rates :-*



**Pay scale of the employees      Rate of Transport Allowance per month (in Rupees)**

	<b>'A-1' / 'A' Class City</b>	<b>Other Places</b>
1. Employees drawing pay in the scale of pay of Rs.8000-13500 or above	800	400
2. Employees drawing pay in the scale of pay of Rs.6500-6900 or above but below the scale of Rs.8000-13500	400	200
3. Employees drawing pay below the scale of Rs. 6500-6900	100	75

3. The grant of transport allowance under these orders shall be regulated according to, and will be subject to, the following conditions:

(i) The cities referred to as 'A' and 'A-1' in these orders shall be the same as those classified as such for the purpose of Compensatory(City) Allowance (CCA) in terms of the orders issued separately regulating grant of CCA to the Central Government employees;

(ii) the allowances shall not be admissible to those employees who are provided with Government accommodation within a distance of one kilometer or within a campus housing the places of work and residence.

**NOTE :-** The grant of the allowance under these orders would be subject to furnishing of a certificate by the employee that the Government accommodation is not located within one kilometer from the place of work of the concerned employee or within a campus housing the places of work and residence.

(iii) The allowance shall not be admissible to those employees who have been provided with the facility of Government transport.

(iv) In case of employees who have opted to draw in the pre-revised scales of pay, the transport allowance shall be regulated in accordance with the revised scales of pay to which such employees would have been entitled to, had they opted to come over to revised scales.

(v) In case of officers of the level of Joint Secretary and above, who have been provided with the facility of staff car for commuting between office and residence on prescribed payment basis under this Ministry's O.M. No. 20(5)-E.II(A)/93, dated 28-1-1994, an option may be given to them either to avail themselves of the existing facility or to switch over to the payment of Transport Allowance, as admissible under these orders. In case they opt for

the latter, they may be paid the allowance at rates as applicable to them, subject to the condition that the existing facility of staff car shall be withdrawn from the date they opt for the allowance. In case they opt for the former, the allowance shall not be admissible to them and they would not be required to make any payment for the facility of staff car between residence and office.

(vi) In terms of this Ministry's orders vide O.M. 19029/1/78-E.IV (B), dated 31-8-1978, as amended from time to time, conveyance allowance is admissible to such of the Central Government employees borne on regular establishment (including, work-charged staff) as are blind or are orthopaedically handicapped with disability of lower extremities. Consequent upon coming into force of these orders, such conveyance allowance shall be abolished and instead all such employees may now be paid transport allowance at double the normal rates prescribed under these orders. In case, however, such handicapped employees have been provided with Government accommodation within a distance of one kilometer from the place of work or within a campus housing the places of work and 'residence', the allowance shall be admissible at normal rates as applicable under these orders. The allowance shall not be admissible in case such employees have been provided with the facility of Government transport.

(vii) This allowance will not be admissible during absence from duty exceeding 30 days due to leave, training, tour, etc.

4. These orders shall take effect from 1-8-1997.

5. In their application to the employees serving in the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller & Auditor-General of India.

6. These orders shall also apply to the civilian employees paid from the Defence Services Estimates and expenditure will be chargeable to the relevant Head of the Defence Services Estimates. In regard to Armed Forces Personnel and Railway employees, separate orders will be issued by the Ministry of Defence and Ministry of Railways, respectively."

8. The requirement is distance between the place of work and the residence. Initially the distance was measured from the Portico of the main building to the residences. Portico of the main building is the nearest to the place of work. Normally distance should mean effective distance. That would be from the portico of the main building to the residence. From that point of view, the distance measured in 2001 is certainly the correct distance.

9. Counsel for the applicant invited our attention to the latest orders on the subject as per which the requirement of minimum distance has been done away with. However, the same may not be of much assistance to the applicants.

10. It is not the case of the respondents that the transport allowance paid to the applicants was on the basis of any misrepresentation of the applicants. It was the respondents who measured the distance and being satisfied, the transport allowance was given.

11.. In a number of cases, the Apex Court has held that when excess payment has been made not due to any misstatement of an individual, then recovery should not be effected. The latest judgment on the subject is *Purshottam Lal Das v. State of Bihar*, (2006) 11 SCC 492. In that case, the Factual position in a nutshell is as follows:

*The Appellants were promoted to the post of clerk in the year 1992. Subsequently, an audit team raised objection to the said promotions expressing the view that the appellants could not have been promoted. On the basis of the audit report, action was taken. The State Government was of the view that promotions granted were illegal and accordingly the appellants were reverted to the original post held by each one of them. Being aggrieved by the said order, some of the appellants moved the High Court which quashed the orders on the ground that adequate opportunity was not granted to show cause before the action was taken. Thereafter, show-cause notices were issued, to which the appellants responded. Ultimately they were reverted to the original post held by each and direction was given to recover the excess amounts which had been paid. Writ petitions were filed challenging the orders in that regard. In each case the learned Single Judge dismissed the writ petition. The letters patent appeals were also dismissed.*

12. The Apex Court has in that case held that the order of reversion cannot be faulted. And, in so far as recovery is concerned, the Apex Court has held as under:-

*"7. So far as the recovery is concerned, in the normal course if the promotion/appointment is void ab initio, a mere fact that the employee had worked in the post concerned for long cannot be a ground for not directing recovery. The cases relied upon by the*





learned counsel for the State were rendered in a different backdrop.

In those cases the appellants were guilty of producing forged certificates or the appointments had been secured on non-permissible grounds. In that background this Court held that recovery is permissible. On the contrary, the fact situation of the present case bears some similarity to *Sahib Ram v. State of Haryana* 1995 Supp (1) SCC 18, *Bihar SEB v. Bijay Bhadur* (2000) 10 SCC 99 and *State of Karnataka v. Mangalore University Non-Teaching Employees' Assn.* (2002) 3 SCC 302

8. In *Bihar SEB case* (2000) 10 SCC 99 it was held as follows:

"9. Further, an analysis of the factual score at this juncture goes to show that the respondents appointed in the year 1966 were allowed to have due increments in terms of the service conditions and salary structure and were also granted promotions in due course of service and have been asked after an expiry of about 14-15 years to replenish the Board exchequer from out of the employees' salaries which were paid to them since the year 1979. It is on this score the High Court observed that as both the petitioners have passed the examination though in the year 1993, their entitlement for relief cannot be doubted in any way. The High Court has also relied upon the decision of this Court in *Sahib Ram v. State of Haryana* wherein this Court in para 5 of the Report observed:

'5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.'

10. The High Court also relied on the unreported decision of the learned Single Judge in *Saheed Kumar Banerjee v. Bihar SEB CWJC No. 710 of 1994* disposed of on 27-1-1995. We do record our concurrence with the observations of this Court in *Sahib Ram case* and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances. This order however be restricted to the facts of the present writ petitioners. It is clarified

that Regulation 8 will operate on its own and the Board will be at liberty to take appropriate steps in accordance with law except however in the case or cases which has/have attained finality."

9. In Mangalore University Non-Teaching Employees' case it was held as follows:

"12. Though the above discussion merits the dismissal of the writ petitions and the denial of relief to the respondents, we are of the view that on the special facts of this case, the employees of the University have to be protected against the move to recover the excess payments up to 31-3-1997. When the employees concerned drew the allowances on the basis of financial sanction accorded by the competent authority i.e. the Government and they incurred additional expenditure towards house rent, the employees should not be penalised for no fault of theirs. It would be totally unjust to recover the amounts paid between 1-4-1994 and the date of issuance of GO No. 42 dated 13-2-1996. Even thereafter, it took considerable time to implement the GO. It is only after 5-3-1997 the Government acted further to implement the decision taken a year earlier. Final orders regarding recovery were passed on 25-3-1997, as already noticed. The Vice-Chancellor of the University also made out a strong case for waiver of recovery up to 31-3-1997. That means, the payments continued up to March 1997 despite the decision taken in principle. In these circumstances, we direct that no recovery shall be effected from any of the university employees who were compelled to take rental accommodation in Mangalore city limits for want of accommodation in the university campus up to 31-3-1997. The amounts paid thereafter can be recovered in instalments. As regards the future entitlement, it is left to the Government to take appropriate decision, as we already indicated above."

10. The High Court itself noted that the appellants deserve sympathy as for no fault of theirs, recoveries were directed when admittedly they worked in the promotional posts. But relief was denied on the ground that those who granted (sic) had committed gross irregularities.

11. While, therefore, not accepting the challenge to the orders of reversion on the peculiar circumstances noticed, we direct that no recovery shall be made from the amounts already paid in respect of the promotional posts. However, no arrears or other financial benefits shall be granted in respect of the period concerned.

12. The appeals are accordingly disposed of. No costs."

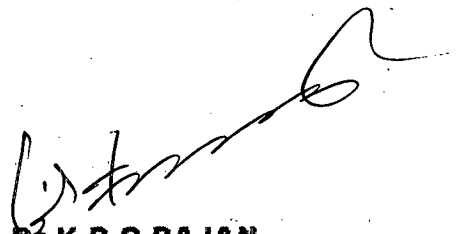
13.. In view of the settled position that in so far as any payment made in excess by the Government, recovery thereof cannot be effected save under circumstances, wherein, such a payment had been made on any misstatement of

the individual concerned. In the instant case, though the rules warranted a statement from the individuals for receiving the transport allowance, actually, it was the respondents who had measured the distance and satisfied that the applicants were entitled and it is because of the audit objection, as in the case of Purushottamlal Das that further grant of transport allowance was to be withheld recover was sought to be made.

14 The applicants have claimed only quashing of the order at Annexure A-4 to 19 and A-1 and for a direction to the respondents not to recover the amount of transport allowance paid. We order accordingly. The O.A is thus allowed. No cost.

Dated, the 11<sup>th</sup> March, 2009.

  
**K.NOORJEHAN**  
**ADMINISTRATIVE MEMBER**

  
**Dr. K. B. S. RAJAN**  
**JUDICIAL MEMBER**

VS