

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 09.02.1990.

Present

Hon*ble Shri NV Krishnan, Administrative Member

OA No.234/89

MK Kuttikrishnan Nair : Applicant

Vs.

1 The Director,
Central Institute of Fisheries
Technology, Matsyapuri Post.
Willingdon Island, Cochin-682029

2 The Director General
Indian Council of Agricultural
Research(ICAR), Krishibhavan,
Dr Rajendra Prasad Road, New Delhi-1 : Respondents

Mr PV Mohanan : Counsel of Applicant

Mr PVM Nambiar, Sr CGSC : Counsel of Respondents

O R D E R

This application raises an interesting issue as ^k the contingency in which the Children Educational allowance once sanctioned can be continued or dis-continued, depending on ^a change of the related circumstance.

2 The applicant was initially working at the Central Institute of Fisheries Technology at Cochin in 1966 and later on, he was transferred to Veraval in Gujarat State in 1980. He, however, kept his daughter at Cochin itself for studying in the VIII Standard at the St.Mary's Convent Girls High School, Ernakulam. During the period of his stay at Veraval, he was receiving Children Educational allowances @ Rs 50/- because he was compelled to send his child to a school away from his places of posting.

2.1 In August, 1988 he was transferred back to Cochin.

The applicant received the Children Educational allowance till February, 89. It was then that by the impugned order dated 15.3.89 (Annexure-II) he was informed that his entitlement to receive ^{the allowance} expired on 30.11.88 and hence the allowance paid during the months of December, 88 January and February, 89 will be recovered from his salary of March, 89 in one lumpsum.

2.2 The applicant made a representation 21.3.89

(Annexure-III). He contended that under Clause 13 of the Central Civil Service (Educational Assistance) ^{- Order, for short -} Order 1988 (Annexure-I) he is entitled to Children Educational Allowance till the end of the academic year and that no recovery can be made from him. A letter dated 10.4.89 was issued by the Senior Administrative Officer stating that as per clause-13 of the ~~Orders~~, he would have been entitled to get the allowance had he been transferred from Veraval to some other place in Kerala, other than Cochin, where he resides with his family. It was also contended therein that he was residing with his family at Cochin and therefore, the question of granting of Children Educational Allowance in the light of Clause 11 of the ~~Order~~ did not arise.

2.2 It is in these circumstances that the applicant has filed this application impugning the Annexure II and Annexure IV orders and seeking a direction to the Respondents to pay him the allowance ^{continuously} from August, 88 till the end of the academic year, ie, the month ^{in which he was transferred from Veraval to Cochin} ~~to~~

May, 1989, ~~was~~ at the end of the academic year.

3 The Respondents have denied that the applicant is entitled to any relief.

3.1 In the reply affidavit it is contended that his transfer from Veraval to Cochin was purely temporary to enable him to discharge his duties as the Secretary of Staff side of the Institute Joint Council till the end of his current term or until further orders. Therefore, under Clause 15 of the Order, the applicant became eligible to draw the allowance on such temporary transfer to Cochin, which enabled him to stay with his child for a period not exceeding four months. Accordingly, he he has been sanctioned the allowance from August to November, 88. The drawal of the allowance for December, 88 and January / February, 89 are being recovered.

3.2 The reply affidavit does not indicate the specific clause of the Order, under which Annexure IV reply has been issued. It is, however, stated in the reply affidavit that from August, 88 he has stayed with his child at Cochin, his native ^{& place} and headquarters, along with his family and as his child is also studying there, he is not entitled to any Children Educational Allowance after this period.

4 I have perused the records and heard the counsel. The Central Civil Service (Educational Assistance) Orders, 1988 have been issued to alleviate the difficulties faced by Government Servants when they are transferred, particularly in respect of their children's education. By granting

an allowance to the employee under certain circumstances, the chances of dislocation of his children's education on his transfer are sought to be minimised by these orders. Clause-11 of the order entitles a government servant to draw Children Educational Allowance ^{only} when he is compelled to send his child to a school away from the Station at which he is posted, owing to the absence of a school ^{of} of the requisite standard ^{at} that Station. Therefore, the basic condition is that the child has to be separated from the parent ~~for~~, to enable the latter to draw such allowance.

5 The ~~Orders~~, however, provides exceptions of two categories when the allowance may still be allowed, though the conditions prescribed in Clause 11 are not satisfied. The first circumstance is when the Government servant ceases to be in service for one reason or the other and would, therefore, have normally lost the right to receive any allowance thereafter. The contingencies in this regard are narrated in Clause 6(ii) i.e., retirement, resignation, dismissal or removal from service. Even if the above events take place, the ~~Orders~~ provides that the allowance or reimbursement of tuition fee or ~~the~~ hostel subsidy shall be admissible till the end of the academic year, in which the event in respect of the government servant takes place.

6 The second set of circumstance which is an exception to Rule 11 referred to above is ^{the detailed} Clause 15. Here, the child and the parent come together for a short period

as for instance, when the parent has availed himself of leave or the child has gone on vacation to his parent or has gone on medical treatment to his parent or the parent is temporarily transferred to the place where the child is studying. In all these circumstances, the allowance shall be payable for a period not exceeding four months from the date on which the child and the parent come together.

7 The Respondents have considered the transfer of the applicant from Veraval to Cochin by Annexure-V order to be in the nature of a temporary transfer. Hence, they have conceded that he is entitled to the allowance for four months only ending November, 88, and that the allowance is not payable thereafter. It is for this reason that the Annexure II order has been issued. The applicant's counsel, on the other hand, contends that clause 13 of the Order applies to him, as his transfer is not a temporary one. Even assuming for argument's sake that his transfer is not a temporary one, the question arises whether the applicant will be governed by clause-13.

8 Lengthy arguments were addressed on this issue by the learned counsel for the applicant. He points out that Rule 13, which reads as follows, is totally unconditional and applies even if the transfer is to the place where the child is studying.

"13. If a Government Servant is transferred from a station where there is no school of the requisite standard to a station where there is such a school and if he was in receipt of the allowance at the former station in respect of any child, he shall remain eligible for such allowance until the close of the academic year of the School in which his child was studying at the time of his transfer provided the child continues to study for that period in that school".

9 I am not persuaded to agree with the learned
counsel^{views} in this regard. This clause 13 has to be
read along with other clauses and the objective of
this Order has always be kept in mind. As stated above,
the objective is to give allowance so long as the child
is separated from the parent as would be evident from
clause 11(i) which reads as follows:

" 11. (1) A Government servant is eligible to
draw children's educational allowances when
he is compelled to send his child to a school
away from the station at which he is posted and/
or residing owing to the absence of a school
of the requisite standard at that station".

10 The paramount objective of the Order is not
merely to give allowance to the parent, but^{also} to see that
the child's education does not suffer, because of the
transfer of the parent during the course of the academic
year. It is for this reason that the allowance is
continued till the end of the academic year, even if
during that period, the parent ceases to be in government
service due to death, dismissal etc. vide clause 6(ii).
The objective is to ensure that the children's education
does not suffer, atleast during that academic year, because
of this event. It is for a similar reason that the
allowance is continued, even after the child and the parent
stayed together for a short period during the academic
year as mentioned in Clause 15, either because the child
visits the parent on vacation or for health reasons or
the parent stays with the child on leave or on temporary
transfer. Therefore, the provisions of all the exceptions
in clause 6(ii) and clause 15 are rational and are

consistent with the main objective of the order as enshrined in clause 11.

11. Similarly, clause 13 is a further exception to another mandatory requirement of clause 11. It will be noticed that the entitlement of the allowance arises ^{only} due to the absence of a school of the requisite standard at the station where the parent is posted. It may happen that during the course of the academic year, the parent is transferred to another place where such a school exists. Clause 13 provides that even if that be so, the Children Education Allowance shall be continued till the end of the academic year. The objective, obviously, is not to disturb the child during the middle of the academic year, merely because his parent is now posted to a place where a school of the requisite standard exists. This policy is sound for many reasons. It may be that though such a school exists, admission may be difficult or, even if admission is possible, the syllabus may be different or, even if the syllabus is the same, the course covered may be different. Hence, provisions have been made to enable the child to continue further at the same school for the full academic year, despite changes in the place of posting of his parent.

12. The question then arises whether, when the parent is transferred back to the same station where his child is studying, he is entitled to ~~xxxxxxx~~ claim the allowance till the end of the academic year under clause 13? The answer has to be emphatically in the negative for, there is no

ll

exceptional circumstances to justify any such concession. The parent is still in service unlike the situation visualised in clause 6(ii), the parent and child are together not temporarily, but for a permanent period unlike the cases mentioned in clause 15 and the child is not required to change his/school at all. In other words, none of the circumstances ~~which would have justified the granting of allowances~~ which would have justified the granting of allowances in the first instance under clause 11 now exists. That being the case, the applicant is not entitled to the allowance from the date of his transfer to Cochin in August, 88, on a permanent basis as he contends. Therefore, the applicant has not established his continued entitlement to the allowance after August, 1988.

13. The learned counsel for the respondents contended that the transfer was needed on a temporary basis. Hence, by the impugned order Annexure-II, the applicant is allowed to retain the allowance for the period of four months from August to November, 1988 and payments made thereafter were being recovered. I do not find it necessary to decide the issue whether the transfer was temporary or permanent. If, on the contrary, the transfer is treated as ^a permanent one as the applicant contends, he will not be entitled ^{to} the allowance even from the date he joined at Cochin, ie, from August, 88.


u 14. In the circumstance, the order passed by the res-

pondents at Annexure-II directing to recover the wrong payment of the allowances made in December, 88, January and February, 89 cannot be faulted. As pointed out above, it is less harsh than what could have been done to the applicant. Even though Annexure-IV letter is somewhat different from the position taken in Annexure-II order, it too has to be upheld as it sets out the correct position. The respondents have not cared to follow up Annexure-IV by rescinding Annexure-II order and taking action to recover the allowance wrongly paid from Aug., 88.

15. In the circumstances, I do not find any merit in this application and, therefore, it is dismissed.

However, there will be a direction to the respondents that, having taken a stand that the applicant was transferred on a temporary basis and that, therefore, he was entitled to allowance for a period of four months from August, 1988, they should not ^{now} take any further action in pursuance of the Annexure-IV order.

16. There will be no order as to costs.


(NV Krishnan)
Administrative Member
9.2.1990.