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CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY.

Date of Decision: 14.12.89

REGN. NO. OA 62/88

Shri S.P. Inamdar & Ors.	Applicants.
	Vs.	
Registrar, Central Administrative Tribunal, Additional Bench, New Bombay & Ors.	Respondents.
For the applicants	Shri S. Natarajan, Counsel.
For the Respondents	Shri V.S. Masurkar, Counsel.

(Judgement delivered by Hon'ble Mr. Justice
Amitav Banerji, Chairman)

This Original Application was filed before the New Bombay Bench of the Tribunal on 21.1.1988. This OA has been filed by two applicants Shri S.P. Inamdar and Shri S.A. Deshpande, Court Officers, Central Administrative Tribunal, New Bombay Bench, New Bombay. The Respondent No. 1 is the Registrar, Central Administrative Tribunal, Additional Bench, New Bombay. The Respondent No. 2 is the Secretary, Government of India, Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, New Delhi and the third/Union of India through Secretary, Ministry of Finance, Government of India, New Delhi.

The applicants state that they are at present working on deputation basis with the Central Administrative Tribunal(hereinafter referred to as 'the Tribunal') situated at CGO Building, Konkan Bhawan, Central Business

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District, New Bombay. They have alleged that on their being posted at the Central Administrative Tribunal, New Bombay, they were paid and continued to be paid the City Compensatory Allowance as admissible to Bombay, an 'A' Class City. They have further alleged that they understand that the Respondent No. 1 has written a letter to Respondent No. 2 on the subject for grant of City Compensatory Allowance to the employees of the Central Administrative Tribunal, New Bombay. Thereafter, it is stated that the Respondent No. 2 has sent a communication after consultation with the Ministry of Finance, Department of Expenditure that since a decision had been taken by the Central Government that Central Government employees having their place of duty within New Bombay/Panvel/Urban Area have been granted House Rent Allowance, they are not entitled to any City Compensatory Allowance. Consequently, the employees of Bombay Bench of the Tribunal having their place of duty in New Bombay shall not be entitled to any City Compensatory Allowance. The applicants have prayed that the letter dated 22.12.87 denying entitlement of City Compensatory Allowance to the employees of the New Bombay Bench of the Tribunal be set aside and quashed and secondly, it be ordered and declared that the employees stationed at Central Business District New Bombay are entitled to payment of City Compensatory Allowance at the rate admissible to Bombay and lastly other reliefs as deemed fit may be granted.

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The applicants in their OA have stated that prior to 1977 House Rent Allowance/City Compensatory Allowance were admissible to staff working within the limits of a qualified city alone and not at the urban agglomeration thereof. From 26.10.1977, these allowances were made admissible within the area of the Urban Agglomeration of classified cities. The applicants further stated that the Central Business District (CBD) area of New Bombay is within the Urban Agglomeration of Bombay and under the said orders, the staff working in the Tribunal at New Bombay are automatically entitled to the City Compensatory Allowance as admissible to the classified city of Bombay. The applicants further stated that the New Bombay townships have been developed as an adjunct to the Bombay City with the intention of reducing congestion in the City of Bombay and as such clearly form part of the agglomeration of Bombay City. They further stated that the various satellite cities being developed and named as New Bombay constitute a single agglomeration of the City of Bombay and hence City Compensatory Allowance (CCA) is also admissible to the Central Government Employees working in CBD, New Bombay. The applicants also stated that several wholesale markets, Truck Terminal etc. of Bombay are being shifted to New Bombay in a phased manner in view of the fact that Bombay and New Bombay constitute a single Urban Agglomeration. The applicants also alleged that all independent facilities have not been developed in New Bombay and it depends to a considerable

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extent on Bombay for its necessities. They also alleged that the cost of living in New Bombay is not less and, in fact it is more than that in Bombay. The applicants further stated that New Bombay, as a whole, is within 8 Kilometres of the periphery of Bombay. Reference was also made to the Writ Petition filed in the Supreme Court that the Additional Bench of the Tribunal at Bombay should be located at the seat of the High Court and that locating it at New Bombay satisfies the condition, the difference between New Bombay and Bombay being very thin. The applicants also stated that the Mahanagar Telephone Nigam which controls the Telephones in Selected Urban Areas extends to New Bombay and this is a pointer that New Bombay is an Urban Agglomeration of the City of Bombay. Reference has also been made to the map published by CIDCO (City and Industrial Development Corporation), a statutory authority for development of New Bombay, which includes New Bombay and Bombay, shows that New Bombay is a part of the Urban Agglomeration of Bombay. The applicants further stated that the Bombay Suburban and Electric Supply Company, a Greater Bombay Municipal Organisation managing the Bus services within the Municipal limits of Greater Bombay had chosen to extend its services to CBD on account of the Urban agglomeration character of New Bombay and Bombay. While the Ministry had chosen to deny entitlement of City Compensatory Allowance to employees working in CBD Area, they have permitted payment of City Compensatory allowances to employees stationed at Vashi, an adjacent township within the New Bombay Limits. This amounts to

hostile discrimination between similarly placed employees. The applicants further stated that the employees of the Maharashtra State Government stationed at CBD, New Bombay are being paid City Compensatory Allowance as admissible to Bombay. They have also stated that other Government undertakings viz. Mahanagar Telephone Nigam, Water and Sewerage Board, State Bank of India, City and Industrial Development Corporation etc. situated at CBD, New Bombay are being paid City Compensatory Allowances as admissible to Bombay. The applicants claim that they are entitled to payment of City Compensatory Allowances at the same rates as applicable to Bombay and its denial is unjustified, discriminatory and violative of Articles 14 and 16 of the Constitution of India. They also prayed for Ad-interim reliefs.

The interim matter came up before the Hon'ble Shri S.D. Prasad on 29.9.1988. The only interim order passed on that day was the continuation of the order dated 16.9.88 namely, recovery of the amount already paid to the employees of the Tribunal in CBD, New Bombay was stayed.

The Original Application came up before me for hearing and I have heard Shri S. Natarajan, Counsel for the applicants and Shri M.I. Sethna, Counsel for the respondents. The reply was filed by Smt. P.V. Valsala G. Kutty, Under Secretary(AT), Department of Personnel and Training. It was stated therein that the OA was totally

misconceived and did not disclose any cause of action, which can be entertained by the Tribunal. It was admitted that the Department had informed the Tribunal at New Bombay that the employees of the Tribunal at New Bombay shall not be entitled to any City Compensatory Allowance. In paragraph 6 of the reply, it was pointed out that the basic criterion for classification of cities/towns for the purpose of grant of City Compensatory Allowance is their population, as revealed in the decennial Census Report of the Registrar General of India(RGI). For CCA, the population of the Urban Agglomeration (wherever such agglomeration exists) otherwise the municipal area, is taken into consideration. The basis for inclusion of "areas" in an urban agglomeration is, again, the report of the RGI. According to the report of the RGI, "New Bombay" area does not form part of the Urban Agglomeration of Bombay. Therefore, it is not possible to grant CCA at Bombay rates to the Central Government employees working in New Bombay area under extant orders of Government of India. The paragraph 6.7 of the OA was not admitted and it was stated that as per the correct norms of the Government of India, Ministry of Finance, the CCA is applicable only when Government decision to that effect is available. There was no question of any city being covered by any CCA automatically. In reply to paragraphs 6.8 and 6.9, it was stated that the facts referred therein were not

germane to determine the issues raised in the petition. It was re-iterated that the grant of CCA was dependent on the population. In reference to paragraph 6.15, it was stated that in one of the orders issued by Ministry of Finance in 1948, Non-Gazetted Government servants whose places of duty are located in the Island Salsettee would be entitled to CCA. Later on, Vashi Village was included in the Island of Salsettee. In the light of this background, the Ministry of Finance approved the grant for payment of CCA to the employees of Department of Posts, Telecommunications and Railways. It was then stated that the payment of CCA to State Government employees does not justify the grant of the same by the Central Government. Lastly, it was stated that the employees of the Tribunal at New Bombay were not entitled to CCA as per the above norms and there was no illegality in denying CCA to the employees of the Tribunal at New Bombay.

Rejoinder was also filed by the applicants. In this, it was stated that the Government of Maharashtra had introduced a Corporation namely 'CIDCO' for the development of New Bombay comprising 95 villages and Seven Townships. The work had started in the year 1970 and it developed New Bombay City to give relief to the existing city of Bombay from ever growing population and other activities. New Bombay covers an area of 344 Sq. Kms. Plans for New Bombay have been approved by the Government of Maharashtra and the Government of Maharashtra does not differentiate between Bombay and New Bombay. A

declaration was made in March, 1970 by the State Government of Maharashtra that the Central Government employees working in New Bombay would be entitled to CCA as laid down in Office Memorandum dated 27-11-1965. It was also stated that the status of the city area is initially decided by the State Government and Union Government has to act upon. They claimed that the population of New Bombay exceeds 2 million. The C.G.O. Complex in which the office of Central Administrative Tribunal functions falls within the location of Island Salsettee, and this will be clear from the Government of Maharashtra notification (Annexure 3 to 5 of the application). They also stated that the 'Collector, Thane' certified that the area of CIDCO Bhavan, Konkan Bhavan and C.G.O. Complex falls within the Island Salsettee. Consequently, the entire staff of the Tribunal in New Bombay is entitled to CCA with effect from the date of its inception.

The principal contention of the learned counsel for the applicant is that the Urban Agglomeration of Bombay includes the area known as New Bombay. The State Government of Maharashtra has already held and accepted that New Bombay forms a part of the Urban Agglomeration of the Bombay City. More and more offices of the State Government and Central Government which are located in various Centres in New Bombay were situated on the Island of Salsettee. Even the Central Government had granted payment of CCA to the employees of Department of Posts, Telecommunications and

the Railways. The State Bank of India and Life Insurance Corporation were also paying CCA to their employees. The employees of the Tribunal in New Bombay who numbered less than 60% were, however, being denied the said relief although they had to undertake long arduous travelling by Bus daily to their work and were not even being paid conveyance allowance. Most of the employees are not resident of New Bombay and are coming to their working place from a distance such as 30 to 40 Kms. and places within Urban Agglomeration of Bombay. Learned Counsel for the applicants urged that factually and legally, the employees of the Tribunal in the New Bombay were entitled to CCA and the non-payment of the same and the recovery of the amount already paid to them amounts to discrimination. He referred to a Notification of the Government of Maharashtra (Annexure A3), which shows that the Government servants at Bombay (including New Bombay) should be paid CCA at the same ^{rate}. Reference was also made to a Notification of the State Government of Maharashtra dated 25-4-1988 (Annexure A5), which shows that Bombay (including New Bombay, Salsettee Island) is a class 'A' city. The Tahasildar - Thane by a certificate (Annexure A6) dated 19.4.88 had observed that-

"the area of office complex of "Konkan Bhavan, CIDCO Bhavan and CGO Complex" fall within the Revenue Village limits of Village Shahabaj which is commonly known as Belapur in Thane Tahsil and which is a part of New Bombay".

Learned Counsel for the respondents referred to the Government of India's decision dated 3.12.86 and urged that the basis of classification was the Census. According to the report of the Registrar General of India (RGI), New Bombay was not a part of Bombay. It was also urged that CBD - Belapur was not included in the Island. Consequently, there was no discrimination. It was further argued that the CCA is granted as per the norms adopted by the Government of India based on population. Lastly, it was urged that the payment of CCA to the employees of the Tribunal from Dec '85 to Dec '87 was a mistake and hence it was recoverable.

Having heard learned counsel for the parties and perused the material on the record, it appears to me that the City Compensatory Allowance is to be paid when a City has the requisite population strength to fall into one of the categories which is entitled to receive the CCA. City of Bombay is in category 'A'. It includes the Municipal Corporation of Greater Bombay. Its population is estimated to be more than 5 million. The one question to be determined is whether New Bombay comprising Island Salsettee and the area being developed by CIDCO forms a part of Urban Agglomeration of Bombay. If it does, the payment of CCA to the employees who have their office within their Urban Agglomeration of Bombay will be made at the same rate as is being paid to the Central Government employees in Bombay City.

What is an Urban Agglomeration? The word 'Agglomeration' is defined in the Urban Land (Ceiling

and Regulation) Act, 1976 in Section 2(n) as follows:-

"(n) "urban agglomeration", -

(A) in relation to any State or Union Territory specified in column (1) of Schedule I means,-

(i) the urban agglomeration specified in the corresponding entry in column (2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof; and

(ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that Schedule and the peripheral area therefor shall be one kilometre;

(B) in relation to any other State or Union Territory means any area which the State Government may, with the previous approval of the Central Government having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in Schedule I and the peripheral area therefor shall be one kilometre;"

The name of Greater Bombay is included in the table of Cities, which constitutes the Urban Agglomeration of Bombay. It undoubtedly covers all the areas which are in the Municipal Corporation of Greater Bombay. It is also made clear that the area from Church Gate to Dahisar Victoria Terminal to Mankhurd and V. T. to Muland are all included in the definition of Greater Bombay. The

word Urban Agglomeration ~~includes~~ ^{an} area of 8 Kms from the boundary of the Municipal Corporation of Greater Bombay. The area which is known as CBD, Belapur and where the Central Government complex is situated and houses the Tribunal building is within 8 Km. of the city of Bombay across the Thana-Creek and as such is also a part of the Urban Agglomeration of Bombay. There is no denial of the fact in the reply of the Respondents that the CBD, Belapur complex is not within 8 Km. of the boundary of the Municipal Corporation of Greater Bombay. It may be some 20 Km. or more by road from Mankhurd, but across ^{the Creek} it is lesser distance and will be within 8 Km.

Government of India, Ministry of Finance, New Delhi issued the Office Memorandum dated 12.7.48, which reads as follows:-

"Non-Gazetted Government servants whose headquarters are located in the island of Salsette (including Butcher Island but excluding the localities already included within the limits of Bombay) will be granted compensatory allowance only, at the rates sanctioned in paragraph 1 (B) (a) of that Office Memorandum."

What is significant is that the Central Government Departments, viz., Department of Posts, Telecommunications and the Railways who have only ~~staffed~~ offices in Vashi Village and the ^{of} ~~re~~ abouts on the island ^{of} Salsette, have been granted not CCA. However, I am impressed by the fact that the State Bank of India and Life Insurance Corporation have paid C.C.A to their employees xxx who are stationed in any of the module cities in New Bombay. They function as Corporation under distinct statute xxx which gives their management independence to act in these matters. But the fact remains that the three

Central Government departments viz. Department of Posts, Telecommunications and the Railways have paid CCA to their employees located in New Bombay. The office to which the applicants are employed is situated in New Bombay at CBD- Belapur area, which is within the bigger area known as New Bombay. While Central Government employees of more than one department are being paid CCA, the applicants who are employees of the Tribunal (under the Department of Personnel, Govt. of India) are not being paid CCA. The ground for denial of CCA is that the area where the applicants are working does not have requisite population to justify the payment of CCA. However, in the case of Department of Posts, Telecommunications and the Railways, this apparently did not preclude the payment of CCA.

Another significant point is that the State Government on the basis of the same material, which is available with Central Government, have included New Bombay as a part of Bombay area and part of the Urban Agglomeration of Bombay and have allowed CCA to their employees. "Can the norms be different?" City Compensatory Allowance is paid to compensate for the higher cost of living. Can it be said that the Central Government employees are not affected by the higher cost, whereas the State Government employees are? If the basis for the refusal of CCA to the employees of the Tribunal is justified on the ground of lack of requisite population, classification, can the payment of City Compensatory

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Allowance to the employees of the Department of Posts, Telecommunications and the Railway employees be justified? No satisfactory answer is forthcoming to this question.

It appears to me that the employees of this Tribunal should have been given CCA. It is said in the reply of the Respondents that the employees of the Tribunal are being paid House Rent Allowance and, therefore, they are not entitled to CCA. It is not clear why should CCA be not given to compensate for higher cost of living merely because HRA is being paid to the employees of the Tribunal. One more fact is that CCA is taxable under the Income Tax Act, but HRA is not. Consequently, we see no justification for depriving CCA to the employees merely because they are being paid HRA.

An argument was raised that the O.A. is without any cause of action. The reason, as urged, was that since the applicants were not entitled to any CCA, its stoppage and the recovery of the amount paid to them did not give rise to any cause of action. As a matter of fact, in this case, CCA has been paid to the employees right from the establishment of the Tribunal in New Bombay i.e., from December, 1985. When it was discontinued and orders were issued for the recovery of the amount already paid, a cause of action certainly arose. The OA was filed in the Tribunal at New Bombay and the matter remained Tribunal

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on its judicial side to decide as to whether the withdrawal of the payment of CCA was justified or not in law. I, therefore, see no force in the argument that no cause of action ever arose.

The Collector of Thane by a certificate dated 18.2.89 certified-

"This is to certify that the area of Konkan Bhavan, CIDCO Bhawan and Central Government Offices complex, falls within the Island Salsette and the Revenue village limits of village SHAHABAJ which is commonly known as BELAPUR in Thane Tahasil and Thane District and which is a part of New Bombay."

Reference may be made to the orders passed by the Hon'ble Chief Justice of India and Mr. Justice V. Balakrishna Eradi in Writ Petition No. 12437/85 title S.P. Sampath Kumar Vs. Union of India & Ors dated 22.8.1986-

"We are of the view that if the Central Administrative Tribunal sits in New Bombay, it cannot be said that the order made by us on 31st October, 1985 has not been complied with. The distinction between Bombay and New Bombay is too thin and we do not think it would be right to regard New Bombay as something different from Bombay in so far as the seating of the Central Administrative Tribunal is concerned. In any event we are going to hear the matter within a short time and it has already been placed on Board.

In Schedule I to the Urban Land (Ceiling & Regulation) Act, 1976, Note I is relevant and is quoted below:-

"An Urban Agglomeration is made up of main town together with the adjoining areas of urban growth and is treated as one urban spread. The population covered by such spreads is categorised as urban. Each such agglomeration may be made up of more than one statutory town, adjoining one another such as a Municipality and the adjoining Cantonment, etc., and also other urban growths such as a Railway Colony, University Campus, etc. Such outgrowth(O.G.) which did not qualify to be treated as individual towns in their own right and have pronounced urban characteristics are shown as constituents of the agglomeration."

The table attached to the Schedule in regard to
Greater Bombay is as follows:-

State/Union territory	Towns	Peripheral area	Category
Maharashtra	Greater Bombay	M.Corp. 8 Kms.*	A

* Where any land within the peripheral area of eight kilometres is covered by water (whether by inland waters or sea or creek), the peripheral area shall be extended beyond such water to a further distance equal to the distance measured across and occupied by such waters.

I am, therefore, of the view that there is a discrimination between the employees of the Tribunal in New Bombay and the employees of the Department of Posts, Telecommunications and the Railways departments working in New Bombay in the matter of grant of CCA. I do not find any reasonable basis of classification between the employees of one department and the other. I have, therefore, come to the conclusion that there is a discrimination in denying CCA to the employees of the Tribunal in New Bombay.

I, therefore, quash the order dated 22.12.1987 (Annexure A 7) issued by the Government of India, Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, New Delhi and further direct that the applicants who are employees of the Central Administrative Tribunal in New Bombay, are entitled to be paid CCA at the same rate as are being paid to the Central Government

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employees in Greater Bombay. Parties to bear
their own costs.

AB
(Amitav Banerji)
Chairman.
14-12-47