

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 656/89

Transfer Application No:

DATE OF DECISION 2.2.1994

Shri R.P.Mehru & Anr. Petitioner

Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri Subodh Joshi.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman.

The Hon'ble Shri

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 ?

(M.S.DESHPANDE)
VICE-CHAIRMAN

(2)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.656/89.

Shri R.P.Mehru & Anr.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

Appearances:-

Applicant in person.

Respondents by Shri Subodh Joshi.

Oral Judgment:-

[Per Shri M.S.Deshpande, Vice-Chairman] Dt. 2.2.1994.

The first applicant Shri R.P.Mehru claims refund of Rs.7,050/- while the second applicant Shri B.V.Kalamkar claims refund of Rs.4,860.50 paise which have been recovered from them on the plea that the Construction Allowance was not admissible to them from September, 1982 to June, 1986 and August, 1982 to December, 1986 respectively and there were over-payments of these amounts to them.

2. The applicant No.1 was working as Accounts Officer and the applicant No.2 as Engineering Clerk in the Office of the Deputy Chief Engineer(C) at Panvel. The Construction Allowance was being paid to the Officers stationed at Panvel for ~~ARRP~~ and R.C.F. under the scheme which enabled the Respondents to make the payment for the employees stationed at un-inhabited places which may be inconvenient and the conveniences as are available in the cities would not be available to them. The Construction Allowance was paid to the applicants for the aforesaid periods. The letter authorising this payment was dt. 30.11.1978 (Ex. 'I' to the application) in which it was mentioned that approval of the Railway Ministry was communicated to the employees on the Construction of New (B.G.) Railway

between Apta-Roha were being granted Construction Allowance in terms of Rule 427-RI and the Ministry's instructions on the subject issued from time to time. By the letter dt. 25.6.1986 addressed by the Railway Board to the General Manager, Central Railway, the payment of Construction Allowance was to be stopped forthwith and the over-payments made were to be recovered from the employees concerned. Representations were made against these instructions and ultimately by the letter dt. 28.10.1988 the Railway Board informed the Chief Engineer that the matter had been re-examined and that waiver of the over-payments could not be accepted as that payment had been made in the first instance in violation of para 427-RI, but in order to avoid hardship to the employees the amount was to be recovered in easy instalments. Since the recovery has been made on the basis of this letter, the two applicants approached this Tribunal and sought refund of the amount which was recovered contrary to the instructions which had been issued by the Respondents.

3. The application is opposed firstly on the ground that it is barred by time and secondly on the ground that the applicants were not entitled to the Construction Allowance in view of para 427-RI because HRA came to be sanctioned to the Railway Servants as applicable in the case of 'A' class Cities.

4. With regard to the question of limitation it may be pointed out that the applicants' representations came to be finally decided only by the order dt. 28.10.88⁸⁸ (Ex. 7) and the present application was filed on 1.9.89. The contention that the cause of action accrued when the decision to stop payment of construction allowance was made cannot be accepted as the representations were being considered by the Respondents and the final order came to be passed only in October, 1988 and the

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present application came to be filed on 1st September, 1989. The application is therefore within time.

5. Clause (iv)(d) of para 427-RI reads as follows:

"This allowance will not be admissible in localities where compensatory and/or house rent allowances have been sanctioned to all railway servants by general orders. As an exception to this general principle, however, staff residing in 'C' class towns, most of whom draw relatively a very small amounts as house rent allowance, will be permitted to draw either the construction/Survey allowance, or the other compensatory (house rent) allowance whichever is higher."

Shri Joshi learned counsel for the Respondents urged that by the letter dt. 24.9.1982 (Ex. '3') to the application of the employees whose place of work is within New Bombay and Panvel-Uran area HRA was to be paid at the rates applicable to Bombay. The text of the letter however, shows that the President was pleased to decide as a special case and in partial modification of the Ministry's letter dt. 13.6.1974 that Railway employees whose place of work is within New Bombay/Panvel Uran area shall be paid HRA at the rates applicable to Bombay. The object of granting the Construction Allowance is stated in para 3 of the written statement filed by the Respondents and it was to be a Compensatory Allowance for employees stationed at un-inhabited places (remote places where there is not much convenience as available in the cities) and the Project where the applicants were working had been started in such remote places. The measure was taken in order to compensate the employees for the loss of amenities available at other places and also to give the employees some sort of incentives to encourage them to go to such places or placement. It is in this context that Sub-clause (d) of

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para 427(iv) has to be interpreted. The only payment of higher HRA as in 'A' class cities would not have reduced the hardship to the persons posted at remote places and that was why the allowance was not to be made admissible in localities where compensatory and or HRA had been sanctioned to all Railway servants by general orders. Unless the entire locality was upgraded and was brought into the category of 'A' class Towns the Construction Allowance was ^{not} to be stopped. What has been referred to by learned counsel for the Respondents (Ex. '3') was a special order because the HRA as applicable for Bombay was to be granted only as a special case. The entire scheme envisaged at para 427-RI has to be construed in consonance with the beneficial object with which it was framed. This obviously was the reason why the employees who ^{were} have stationed at these remote places protested against stopping of the construction allowance\$. It does not appear that the authorities applied their mind to the beneficial purpose for [redacted] which the instructions were issued and the construction allowance was made payable. Unless ^{the} City was upgraded and all the amenities which were available in a place like Bombay were made available, the Construction Allowance could not have been stopped.

6. The application is therefore allowed. The Respondents are directed to refund to the applicant No.1 Rs.7,050/-and applicant No.2 Rs.4,860.50 with interest at 10% p.a. from the date of filing of the application until payment. The entire amount shall be paid within a period of 4 months from the date of receipt of the copy of the order by the Respondents.


(M.S.DESHPANDE)
VICE-CHAIRMAN

B.