

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 29th day of November, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

O.A.677 of 2001

Dr.S.C.Pal & 40 others
(By Advocate Shri S.P.Saxena) - Applioant

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
D.H.Q., P.O., New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
Sena Bhavan, New Delhi.
3. The Commandant,
College of Military Engineering,
Dapodi, Poona.
4. The Assistant Controller of Defence
Accounts,
O/o Principal Controller of
Defence Accounts,
Southern Command,
Pune.

5. The A.C.G.D.A. (AT),
O/o C.G.D.A.,
West Block, R.K.Puram,
New Delhi.
(By Advocate Shri R.K.Shetty)

- Respondents

O.A.678 of 2001

N.D.A.Civilian Employees Association,
through President Shri D.K.Sanyal,
NDA Khadakwasla, Pune & 202 others
(By Advocate Shri S.P.Saxena)

- Applicants

VERSUS

1. Union of India,
through the Secretary,
Ministry of Defence, DHQ,PO,
New Delhi.
2. The Commandant,
National Defence Academy,
Khadakwasla, Pune.
3. The Controller of Defence
Accounts, Southern Command,
Pune.
(By Advocate Shri R.K.Shetty)

O.A.786 of 2001

K.Bhavanarayana & 46 others
(By Advocate Shri S.P.Saxena)

- Applicants

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ, PO, New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
Sena Bhavan, New Delhi.
3. The Commandant,
College of Military Engineering,
Dapodi, Pune.
4. The Assistant Controller
of Defence Accounts,
O/o Principal Controller of
Defence Accounts,
Southern Command, Pune.
5. The A.C.G.D.A. (AT),
O/o C.G.D.A.,
West Block, R.K.Puram,
New Delhi.
(By Advocate Shri R.K.Shetty) - Respondents

O R D E R

By Hon'ble Mr.B.N.Bahadur, Member (A) -

The three OAs bearing nos.677/01, 678/01 and 786/01 have been heard together and are being decided through this common order, as the issues raised in the OAs are the same. The Applicants in these three OAs have been represented by learned Counsel Shri S.P.Saxena. The Respondents are represented by learned Counsel Shri R.R.Shetty (appearing for Shri R.K.Shetty). The Applications have been filed jointly by a large number of civilian employees of College of Military Engineering (CME) in two OAs viz. 677/01 and 786/01. In OA 678/01, the Applicants include an Association of Civilian employees of National Defence Academy (NDA) whereas the others are civilian employees of the NDA appearing in individual capacity.

2. In all the three OAs under consideration, the Applicants are aggrieved at not being paid Transport Allowance. Employees of CME seek the relief inter alia by way of direction to respondents to restart paying T.A. The Applicants of NDA seek for direction of payment of T.A. along with arrears from the date from which it is discontinued.

3. We have carefully perused the three OAs. Even though they go into a large number of details, the question that arises for determination in these OAs is whether it is wrong/illegal/arbitrary/discriminatory on the part of the Respondents to lay the conditions that Transport Allowance shall not be payable to such employees as reside either in the Campus or at a distance lesser than 1 Km. from the place of work. A specific grievance is that some employees who may reside within the Campus are actually residing in houses which are more than 1 Km. away from the actual work station. That the campuses are spread over huge geographical areas and some of the Applicants live some kilometers away from the actual work place, even in the campus.

4. The Respondents have filed written statements of defence in the respective OAs - first pointing out the background of the recommendation of the Fifth Pay Commission. It is then stated that the Government had accepted the recommendation of the Fifth CPC, nevertheless laying down a condition, that those residing within 1 Km. from the place of duty or those residing within the campus, inter alia would not be eligible for Transport Allowance. The stand is also taken by the Respondents that what is being assailed is a policy decision of the Government. Para-wise replies have been provided in the respective OAs. The basic stand however is similar in all the three OAs.

5. We have seen all papers in the case and have heard Learned Counsel for the respective sides at length viz. Learned Counsel Shri S.P.Saxena for Applicants in all three OAs and Learned Counsel Shri R.R.Shetty for the Respondents in the three OAs.

6. The points made by Shri Saxena (who took up the facts in OA 678/01 for convenience) are set out in gist below:-

(a) The decision of government implied that residents within the campus even living beyond 1 Km. could not be entitled to Transport Allowance and such a decision was arbitrary and suffered from the vice of Constitutional discrimination.

(b) He referred to the foundation of the grant being the relevant recommendation of Vth CPC and argued that the impugned order of the Ministry of Finance dated 3.10.1997 (Exhibit A-3 in OA 678/01) went away from the objective of the recommendation which was to compensate expenses incurred by employees in travel to work place.

(c) That there was no intelligible differentia in classification. The nexus sought to be achieved could not be discerned. A person living 7 Kms. away even if within campus deserved to be entitled to the allowance.

(d) The areas in NDA and CME was very large indeed, and was of the order of over 8000 acres in the case of NDA, and people were living far off even in the campus. Learned Counsel also made a reference to discrimination as between uniformed and civilian officers within the same campus. Certain other discrepancies like people living in one village in the campus were pointed out.

(e) It was argued that there was no such thing as a "Campus" defined by Government and all orders were subject to legality vis-a-vis the Constitution.

7. Arguing the case on behalf of the Respondents, their Learned Counsel first made the point with reference to arguments taken regarding Constitutional discrimination and stated that reasonable clarification was allowed under the Constitution. Here a well defined classification was made and there was nothing wrong in excluding those persons who were staying in the same campus as their place of duty and provided accommodation. He sought support from the case of *Molar Mal Vs. Kay Iron Works* reported at 2000 (2) Supreme Today 284. It was argued by him that we are concerned with interpretation of circulars and a literal construction could not be taken as correct. Thus the naturally implied meaning of the word 'Campus' will have to be taken. It would not be fair to draw any meaning which was not intended. Learned Counsel cited the case of *Union of India Vs. Sandhu* reported at 2001 SCC (L&S) 891 (page 894). He also cited the case of *Raipur Development Authority* reported at 2000 (3) Supreme 37 (referring to page 44) to make the point that whenever two possible interpretations exists the one which subserves to the intent of the Legislature was to be accepted (Para 14 of this case was argued for strenuous support). Further support was sought from the case of *Union of India Vs. Elphinstone Spinning and Weaving Company* reported at 2001 (1) Supreme 269 - regarding interpretation of statutes.

8. Learned Counsel then dealt with some of the anomalies pointed out by Shri Saxena and made the point regarding the Ahirgaon village to say that there were no government quarters in that village.

9. The crucial question that is before us for deciding this OA is - Whether the impugned orders suffer from the infirmity that they are arbitrary or have caused Constitutional discrimination as between employees, in the facts and circumstances of the cases.

10. A reading of the recommendation of the Fifth Pay Commission shows that an additional benefit of Transport Allowance is sought to be provided to such officials, who were not earlier getting it, and the reference is drawn to the hardship of increased commutation time between residences and places of work in modern days. This is sought to be mitigated. The conditions placed are being contested. Since Government has the full authority, as per settled law, to accept or to even reject the recommendations of the Pay Commission the imposing of conditions per se cannot be questioned. What is really to be examined is whether the conditions imposed are in their substance discriminatory, arbitrary, etc.

11. The conditions that have been imposed by the Government vis-a-vis eligibility of employees to Transport Allowance can be divided into two broad parts - the first one relates to the specifying of limit of 1 Km. and the second relates to residence within campus. In regard to the first conditionality the idea in the 1 Km. restriction is obviously to see that those living nearer

the place of work need not be provided the compensatory benefit of Transport Allowance. Now the point is about reasonability and discrimination. It is not as though policy decisions per se cannot be gone into by Tribunals like ours but only in regard to illegality, arbitrariness or discrimination etc. can they be interfered with. Can it be gone into by the Tribunal as to whether the figure of 1 Km. can be reviewed as a part of judicial review to decide what the distance should be? Firstly, we have no doubt that placing of such a restriction regarding distance from place of duty cannot be unconstitutional or illegal. We would agree with the argument that it is a kind of classification. Secondly, whether the limit of 1 Km. should have been placed at 2 Kms. or 5 Kms. or 1/2 Km. is something that we would not like to review judicially. We cannot, as it were, assume a superior administrative position.

12. The second conditionality regarding exclusion of those employees from the benefit of Transport Allowance, who lived within the campus, has now to be examined. In fact, the attack of Learned Counsel Shri Saxena was focussed more strenuously on this conditionality. We have considered in this regard the arguments made on both sides with regard to the construction of the language used in Government orders. It is true as argued by Respondents' counsel, that the word "Campus" has not been specifically defined by Government in this context. However, its ordinary meaning can certainly be taken. It cannot be said that the references to the Government campus are vague. There is some strength in the legal support sought to be drawn by the counsel

for Respondents from the case-law cited. It is quite obvious that if campuses of particular organisations are large in terms of geographical area, there would be some employees who would stay at distances higher than the 1 Km. Indeed, that is the point made herein. But it cannot be denied, that there are certain advantages in being provided housing within the campus, and it would not be correct for Tribunals like ours to hold that this condition amounts to Constitutional discrimination. It would be too farfetched to invoke Articles 14, 16 and 21 of the Constitution as indeed argued on behalf of the Applicants. It is true that certain shades of plus and minus may obtain to those who live within the campus and are not entitled to Transport Allowance, but it must be remembered that this Tribunal cannot go into settling such small differences in benefits granted by way of items like Transport Allowance. The yardstick in the matter of pay scales, promotions and penalties are of much more rigorous nature and rights obtaining there cannot be drawn as examples for a matter like Transport Allowance. We have taken notice, with respect of the judgment in the matter of Mangalore University Non-Teaching Employees Association reported at 2000 (2) Supreme 252. It has been held inter-alia, in regard to HRA and CCA, that a legislative provision or an executive order does not become unconstitutional, merely because it turns out to be disadvantageous to certain individuals or small sections of people. The ratio is applicable to the present case.

13. In view of the above discussions, we are not convinced that the reliefs sought by the Applicants in the present three OAs. can be granted to them through judicial determination or that it can be held that this is a case of discrimination under the Constitution of India or that the conditions stipulated are arbitrary.

14. In the circumstances, the present three OAs.Nos.677/01, 678/01 and 786/01 are hereby dismissed. No orders as to costs.

(B.N.BAHADUR)

MEMBER (A)

mb

As per Member (J) S.L.JAIN.

I have a privilege to go through the order recorded by my Learned Brother. I agree upto para 10 of the order but unable to agree with para 11 of the order which is a decisive factor. Therefore, I proceed to record my opinion.

2. The Vth C.P.C.has dealt the Transport allowance in para 107.11 and 107.12 and the recommendation is contained in para 107.13 (Ex.R-2).

3. The object of recommendation is contained in para 107.11 which is extracted below and emphasised by me :-

"On account of various factors like unprecedented growth of city limits, increase in volume of traffic and non-availability of residential accommodation at reasonable rents near offices which are usually located in the heart of the city, there has been an unprecedented increase in the commutation time between residences and place of work. This affects the work environment in offices adversely as employees spend much of their energy in commuting and are, therefore, not able to concentrate properly on official work."

4. Keeping in view the said object, the Vth C.P.C. opined about Transport facility as available to executives of the rank of Joint Secretary and above on payment of a monthly amount which needs to be further expanded and liberalised similar to public sector and private sector practice. The recommendation which the Vth C.P.C. made in para 107.13 is accepted by the Government in toto in regard to rates payable in cities classified as A1 and A but by para 3(ii) the allowance is not payable to the employees mentioned therein which is extracted below :-

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

5. The criteria put forth for not providing with Transport allowance is with respect to an employee provided with Government accommodation within a distance of one kilometer or within campus housing the place of work and residence. The object of providing Transport allowance is enumerated above. To achieve the said object, I have to interpret the words used in Rs.R-1. If

literal interpretation is accepted as argued by learned counsel for respondents, a person residing in a campus is not entitled to any Transport allowance for the reason that words within a distance of one kilometer can not be read after the word Campus as the word 'or within Campus' is disjunctive with Government accommodation within a distance of one kilometer.

6. The discrimination about a distance of accommodation either Government accommodation or accommodation in Campus offends Article 14 of the Constitution. It is true that providing Transport allowance is a policy decision but every policy decision of the Government must stand to the test of Article 14 and if it contravenes the same, can not be upheld.

7. The learned counsel for the respondents relied on the following authorities :-

(i) 2002 (1) Supreme 269 - Union of India vs. Elphinstone Spinning & Weaving Co.Ltd. & Ors. along with other Civil appeals.

(ii) 2000 (2) Supreme 284 - Molar Mal through LRs. vs. M/s.Kay Iron Works (P) Ltd.

(iii) 2000 (3) Supreme 37 - Raipur Development Authority vs. Anupam Sahkari Griha Nirman Samiti & Ors.

(iv) 2001 Supreme Court Cases (L&S) 891 - Union of India & Ors. vs. Harjit Singh Sindhu along with other civil appeal

for interpretation of the order passed by the Government providing Transport allowance. I have carefully perused the said authorities and I am of the considered opinion that it is neither a case of Dictionary Meaning, nor a case of literal construction but a case of an object/intention in passing the order regarding Transport allowance and in such a situation principle enumerated in 2001 Supreme 269 Molarmal through L.Rs. vs. M/s.Kay Iron Works Ltd. and 2000 (3) Supreme 37 Raipur Development Authority vs. Anupam Sahakari Griha Nirman Samiti & Ors. applies. The Hydons's principle applies to the case, i.e. when two interpretation possible out of which one which subserve to the intent of the legislature is to be adopted. Further, we have to arrive to a solution striking a balance between letter and sprit of statute, i.e. order. The duty of Judges is to expound and not to legislate is a fundamental rule. Keeping the said principle in mind, the words "within a distance of one kilometer" is to be read with Government accommodation as well as accommodation in campus. The said words can not be separated with the word 'campus'.

8. The learned counsel for the respondents argued that if a person is residing in campus, he has not to face the volume of traffic for reaching to the place of work. In my considered opinion, if a person resides in Government accommodation, it is not always essential that while reaching to the place of work, he has to face the volume of traffic. Normally, Government accommodation are constructed and available where ample land out of the city is available and nearer to offices. Therefore, I do not find any merit in the said argument.