

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 555/93

Transfar Application No: --

DATE OF DECISION: 31-8-1994

The Gen. Secretary, MES Employees' Union, Bombay & one anr.
Petitioner

Mr. M.A. Mahalle Advocate for the Petitioners

Versus

Union of India & 5 ors. Respondent
Mr. R.K. Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R. Kolhatkar, Member(A)

The Hon'ble Shri --

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.555/93

(b)

The General Secretary,
Military Engineering Service
Employees' Union Bombay
and one another. .. Applicants

-versus-

Union of India & 5 ors. .. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.M.A.Mahalle
Counsel for the
Applicants.
2. Mr.R.K.Shetty
Counsel for the
Respondents.

JUDGMENT:
(Per M.R.Kolhatkar, Member(A))

Date: 3/-8-1994

This is a case u/s. 19 of the
A.T.Act,1985 in which Military Engineer
Service Employees' Union has challenged the
orders issued by Ministry of Defence regarding
Composite Hill Compensatory Allowance(CHCA)
to defence civilians working at Lonavala.

In the first order dated 15-11-1990 at
Annexure A-1 it is stated in para-2 that
"Composite Hill Compensatory Allowance
will be admissible only to those employees
whose places of work are situated at a
height of 1000 metres or above from the
sea level, as accepted by Survey of India."

In the second order dated 27-4-1993 (at)
Annexure A-3 it is stated in para-2 as
below:

"As some doubt had been raised regarding the actual height of INS Shivaji, Lonavala, the matter was referred to the Surveyor General of India who have since clarified that the height of Lonavala within the Municipal limits and INS, Shivaji (Lonavala) is below 1000 Metres MSL. Therefore, the Defence Civilians posted at the above places in Lonavala including INS, Shivaji, LONAVALA are not eligible for grant of Composite Hill Compensatory Allowance."

2. The case of the employees' union is that general orders on Composite Hill Compensatory Allowance contained in Ministry of ~~Finance~~ Order dated 3rd July, 1979 extracted at page 25 of the application are as below:

"6. For the purpose of these orders the height of a hill station above sea level should be the height of the ~~highest~~ point within the notified area or the municipality or other local body as determined and accepted by the Survey of India. Where, however, the hill station has no municipality the local area or other local body duly constituted under a statute, the height of the hill station will be as determined and accepted by the Survey of India. *

The places where the Composite Hill Compensatory Allowance is admissible are also mentioned.

In respect of Maharashtra they are Khandala, and Lonavala. In respect of Kerala, to which a reference will occur later, the places are

Munnar and Peermedu. These orders do not mention

about the place of work thus being at a particular altitude.

3. Secondly the applicants state that Additional Surveyor General in a letter dated 9-8-90 addressed to Deputy Chief Scientific Officer, INS Shivaji at Annexure A-5 had stated that the height of Lonavala in Maharashtra State within a radius of 8km as determined from the Survey of India Topo Sheet No.47F is about 1130 Meters. Earlier South General Circle of Survey of India at Hyderabad had in a letter to Asstt. Controller of Defence Accounts, PAO(ORS) EME Secunderabad had taken different stand but the Hyderabad office of Survey of India also confirmed the letter dated 9-8-90 from the Addl. Surveyor General, Geodetic & Research Branch, Dehra Dun vide Annexure A-12 letter dated 23-4-91.

4. Thirdly it is stated that other central government departments namely Railway, P&T and Kendriya Vidyalaya which ^{is} an autonomous organisation under central government have been paying CHCA to all their employees from 1-1-86. State Government ^{is} ~~have~~ also been paying the same to its employees.

5. Fourthly, it is stated that the IVth Pay Commission in its report vide para 17.6 while recommending merger of Hill Compensatory Allowance(HCA) and Winter Allowance(WA) had suggested in para 17.7 that places located between ~~to~~ two hills which do not satisfy the present criterion of height or HCA should also be

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covered, as such places are reached only after negotiating the surrounding high hills. The cost of living in these places is said to be as high as at hill stations. It has further been recommended in para 17.8 that government may consider extending the composite HCA to places surrounded by hills but not qualifying for the allowance under the existing height criterion if these are not already covered by the scheme for grant of special compensatory allowance and if the conditions there are comparable with those of adjoining hill stations. The applicants therefore argue that in view of this recommendation of IVth Pay Commission relaxing height criterion, the employees in INS Shivaji, Lonavala ought to get the Composite Hill Compensatory Allowance.

6. Lastly the applicants have relied on the letter dated 29-1-1991 from the Govt. of India, Ministry of Finance, annexed ~~to~~ as Ex.1 to the rejoinder of the applicants which can be reproduced in full as it is material for determination of the issues.

"O.M.No.14015/1/90-E.II(a), dated 29th January, 1991, Govt. of India, Ministry of Finance (Dept. of Expenditure).

Subject: Grant of Composite Hill Compensatory Allowance to Central Govt. Employees posted in Wayanad in Kerala.

The undersigned is directed to say that the staff side of the National Council (JCM) has raised a demand for grant of Composite Hill Compensatory Allowance in Wayanad in Kerala in the basis of the recommendations of the Fourth Central Pay Commission

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contained in para 17.8 of part 1 of their Report. In para 17.8 ibid, the Commission as inter-alia recommended as below :-

"Government may consider extending the Composite Hill Compensatory Allowance to places surrounded by hills but not qualifying for the allowance under the existing height criterion, if these are not already covered by the scheme for Special Compensatory Allowance and if the conditions there are comparable to those of adjoining hill stations."

2. The matter has been carefully considered in consultation with the Government of Kerala and the President is pleased to decide that Composite Hill Compensatory Allowance will be payable to the Central Government employees posted in Wayanad in Kerala at the same rates as admissible to the Central Government employees posted in hill stations situated at a height of 1000 metres or above. The other conditions for the admissibility of this allowance as laid down in this Ministry's OM No.F5(3)-E.II(B)/64 dated 29-5-1964, as amended from time to time will apply in this case also.

3. These orders will take effect from the date of issue. "

7. The respondents have resisted the claim of the applicants. They have conceded that there was some confusion regarding the exact height of Lonavala Municipal limit but this confusion has been removed by obtaining an authentic information from the Surveyor General of India; which clarification in para-2 of orders dated 27-4-93 which were earlier

reproduced. Regarding grant of Composite Hill Compensatory Allowance to P&T Employees and Railway employees, ~~anwesected~~ the respondents have nothing to say but so far as employees of Kendriya Vidyalaya are concerned they have annexed letter dated 16.3.1993 at Ex. R-3 which shows that such Composite Hill Compensatory Allowance was paid to employees of Kendriya Vidyalaya but the same has been stopped on receiving information that the altitude of INS Shivaji as ascertained from Survey of India is 840 meter only. Regarding reference of Topo Sheet No.47F the respondents stated that it has no relevance to the area where the office of INS Shivaji is situated. The area of Topo Sheet No.47F is situated at the height of 1130 mts which is higher than the area where the office in question is located. Regarding recommendations of IVth Pay Commission, the respondents contended that the height criterion has not been relaxed. As regards the decision to pay CHCA at Wayanad in Kerala which we have reproduced in full, the respondents state that topography of Kerala is quite different and it is not applicable to topography of Lonavala. In any case the relaxation given to employees in Wayanad in Kerala is a policy matter and CAT has no jurisdiction to enter ^{into} ~~the~~ policy arena. On this point the respondents have relied on the Supreme Court Judgment in the case of Indian Railway Service of Mechanical Engineers Assn. & Ors. v. Union of India 1993 II LLJ 539, In this judgment the Hon'ble Supreme Court pointed out that the Constitution

does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their Constitutional or statutory powers. It is also submitted that in the case of V.K.Sood vs. Secretary, Civil Aviation & Ors., 1993 II LLJ 544 the Hon'ble Supreme Court again pointed out that there are some matters which should be left to the experts by the Courts.

8. We have considered the submissions of the rival parties. No doubt, determination of CHCA is a matter for the Government to decide on the basis of the advice of expert bodies like the Pay Commission. However, this court can consider whether any action of the administrative authority is arbitrary or discriminatory, in violation of Articles 14 and 16 of the Constitution and if so the Court has power to issue appropriate directions. In this particular case we note that the Ministry of Defence has departed from the general instructions as to the CHCA in its order dated 15-11-90 by importing that the place of work should itself fulfil the criterion of altitude whereas according to the general instructions, what is required is that the highest point within the notified area or the Municipality is to be the criterion.

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for determining the admissibility of the CHCA.

The orders dated 15-11-90 therefore are bad as marking a departure from the general instructions to the detriment of the employees in the Defence Ministry.

9. Secondly letter dated 9-8-90 does indicate that the highest point in Topo Sheet No.47F of Lonavala is about 1130 Meters i.e. to say it fulfills the criteria of altitude. The contention of the respondents is that INS Shivaji itself is located at an altitude of less than 1000 meters. We have already pointed out that the location of place of work is immaterial so long as the highest point within the local ~~point~~ ^{municipal limit} exceeds exists the criterion altitude.

10. Assuming that the local limits of Lonavala Municipality do not have any point within their limits which exceeds 1000kms. the orders issued by Defence Ministry in relation to Wayanad area in Kerala become relevant. In this particular case the Ministry on the matter being raised in the JCM and after consulting State Government thought it fit to relax the criterion of altitude in relation to that area, one reason for doing so being the recommendation of the IVth Pay Commission. Thus the Government ^{pro} ~~has decided~~ to implement the recommendation of the IVth Pay Commission, an expert body, in relation to one particular area to the exclusion ~~of the~~ other area which also may be equally deserving of such relaxation. The action of the Defence Ministry therefore not to consider

the case of Lonavala on par with that of Wayanad in Kerala on the same ground is clearly arbitrary and discriminatory and requires interference. At the same time we are conscious of the fact that we may not direct the central government to sanction CHCA for a particular area. In view of this we dispose of this O.A. by passing the following order :

O R D E R

O.A. is partly allowed.

Respondents No.1,2,5 and 6 are directed to consider the representation of the applicant for grant of Composite Hill Compensatory Allowance to ~~the employees in~~ Lonavala on the analogy of Wayanad area in Kerala on receiving a representation from the applicants within one month of the communication of the order. If the respondents are inclined to pass an order sanctioning the CHCA after consulting Govt. of Maharashtra as they have done in the case of Wayanad after consulting Govt. of Kerala, the matter would end there. If the respondents do not pass any such order they may pass a speaking order giving reasons for not acceding to the request of applicant No.1 for sanction of

such an allowance within three months of the receipt of the representation.

If the applicants feel aggrieved by the order they would be at liberty to approach this Tribunal if so advised.

No order as to costs.

M.R.Kolhatkar

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(M.R.KOLHATKAR)
Member(A)