

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.:819/93

Dated this 23 the th day of June 2000.

INS Shivaji Defence Civilian Assn.
& Another

Applicants

Mr.D.V. Gangal

Advocate for the
Applicants.

VERSUS

Union of India & Ors.

Respondents.

Mr.V.S. Masurkar

Advocate for the
Respondents.

CORAM :

Hon'ble Shri L. Hmingliana, Member (A)
Hon'ble Shri Rafiq Uddin, Member (J)

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches No
of the Tribunal ?
- (iii) Library. Yes

Rafiq Uddin
(Rafiq Uddin)
Member (J).

H.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

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1st Shivali Defence Civilian Assn. & Another
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CORAM :

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- (i) To be referred to the Reporter or not
(ii) Whether it needs to be circulated to other Benches of the Tribunal?
(iii) Library.

(Rafiq Uddin)
Member (J).

H.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.819/93

Dated this 22 the _____ day of June, 2000.

Coram : Hon'ble Shri L. Hmingliana, Member (A)
Hon'ble Shri Rafi Quddin, Member (J)

1. I.N.S. Shivaji Defence Civilian
Employees Association, as
Association registered under the
Indian Trade Union Act having
its office at 18, Marker Manzil,
Lonavala - 410 401.

through

1. Shri R.B. Dalvi,
Treasurer of the Association
Residing at 115 E Ward,
Gavthon, Lonavala - 410 401.
2. Shri S.B. Ambavane,
Machinist, working in
Industrial Training Unit,
INS Shivaji, Lonavla residing
at 31 D Ward, Lonavla - 410 401. .. Applicants.

(By Advocate Shri D.V. Gangal)

Vs.

- The Union of India
through
1. The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.
 2. Flag Officer - Commanding
in Chief, H.Q. Western
Naval Command, Shahid Bhagat
Singh Marg, Bombay.
 3. Controller of Defence Account
Navy Pay Section,
Bombay - 400 039.
 4. Commanding Officer,
INS Shivaji,
Lonavla - 410 402.
 5. Commanding Officer,
INHS Kasturi,
Lonavala - 410 402. .. Respondents.

(By Advocate Shri V.S. Masurkar).

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ORDER

[Per : Shri Rafiq Uddin, Member (J)]

This O.A. has been filed by INS Shivaji Defence Civilian Employees Association through its Treasurer Shri R.B. Dalvi and one S.B. Ambavane, Applicant No.2. The member of the Applicant No.1 are Civilian Employees of INS Shivaji located in Lonavala.

2. The only controversy in this O.A. is whether the members of the Applicant No.1 who are the Central Government employees of INS Shivaji at Lonavala are entitled for payment of Composit Hill Compensatory Allowance (CHCA)?

3. The case of the applicants is that they were granted hill compensatory allowance with effect from 1.1.1986 vide order dated 15.11.1990 in terms of the recommendations of the 4th Pay Commission. The respondents have however, illegally and in arbitrary manner have stopped the payment of the aforesaid allowance with effect from 1.2.1991. No written order was passed but salary for the month of February was received without hill compensatory allowance. The respondents have also passed order dated 27.4.1993 whereby the amount of compensatory allowance paid to the applicant from 1.1.1986 till 31.1.1991 will be recovered.

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4. By means of this O.A. the applicants seek a declaration to the effect that non payment of CHCA to the applicant is illegal and they should be granted hill compensatory allowance. The applicants also seek a declaration that the recovery of the amount already paid to them from 1.1.1986 vide order dated 27.4.1993 is illegal and hence it should be quashed.

5. The respondents in their counter reply have opposed the claims of the applicant only on the ground that CHCA is admissible only to those employees whose place of work are situated at height of 1000 metres or above from the sea level. As such the location of the place of work at height of 1000 metres or above is the prerequisite for the payment of CHCA. However, in the case of Lonavala the maximum distance of the municipal limits from Lonavala Railway Station does not exceed 5 kms. and in this limit the highest point is less than 1000 metres. Consequently the CHCA is not admissible to the members of the Applicant No.1.

6. We have heard Learned Counsels on both sides. It will be pertinent to mention at the outset that it is not correct to say, as stated by the Learned Counsel for the applicant that CHCA is being paid by the Government of India to the Railway employees and Postal Department

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posted at Lonavala. Therefore the question of discrimination in respect of admissibility of payment of CHCA to the members of the Applicant No.1 is not established.

7. It has been next argued by the Learned Counsel for the applicant that, 3rd and 4th Pay Commissions have recommended the grant of hill compensatory allowance, hence the same cannot be denied to the applicant. We however, find that the recommendation for admissibility of CHCA paid by the Pay Commission are subject to certain conditions. Therefore in order to get the benefit of payment of CHCA It is necessary to show that the place is hill station within the meaning of guidelines or policy decision taken by the Government of India in the light of recommendations of various Pay Commissions.

8. It has been next argued that the entitlement of payment of CHCA depends upon height of peak point and not on account of its height of a lowest point. Lonavala has been declared as hill station on account of highest height of peak point which is more than 1000 metres height from the mean sea level. In support of this contention the Learned Counsel for the applicant has referred to letter dated 9.8.1990 issued by Additional Surveyor General, Survey of India, Dehradun addressed to Dy.Chief Scientific Officer, Principal, INS Shivaji,

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Lonavala (Annexure A-9) in which it has been clearly stated that the height of Lonavala under Maharashtra State within a radius of 8 kms. as determined from the Survey of India Topo Sheet 47F is about 1130 metres. It is however, explained on behalf of the respondents that it is the height of highest point within notified area / municipality of the location of place of work should be 1000 metres or above which is the prerequisite for payment of CHCA before other conditions are fulfilled. It would be noticed that the maximum distance of the Municipal limits from Lonavala Railway Station does not exceed 5 kms. and within this limit the highest point is less than 1000 metres in height. The Learned Counsel for the respondents have also placed before us for the perusal Survey of India Topo Sheet 47F, which is a clasified document. In this sheet we find that the boundaries of Municipal limits of Lonavala has been demarcated. We are satisfied that the highest point i.e. 1130 metres as mentioned in the aforesaid letter of Additional Surveyor General (Exhibit A-9) is not within the Municipal limit of Lonavala town. It is thus not proved that the highest point within the Municiapl limit of Lonavala town is 1130 metres as claimed by the applicant. It has been rightly pointed by the Learned Counsel for the respondents that as per extent rules the height of a hill station above sea level should be the height of the highest point within the notified area or

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the municipality or other local body as per the Government of India, Ministry of Defence OM dated 3.7.1979 (a copy of which is available on the record) and not highest point within a radius of 8 kms. as mentioned in the letter of Survey of India (Annexure A-9). We have already noticed that the highest point within Lonavala Municipality is less than even 1000 metres (840 metres) in the topo sheet. Therefore in our considered opinion Lonavala cannot be declared to be hill station or for the purpose of admisibility of CHCA.

9. We also do not find any force in the argument that since Lonavala and Khandala have declared as hill station by the State of Maharashtra for the purpose of grant of hill compensatory allowance and therefore the applicant members are also eligible for the same. Since the members of the applicant are governed by rules and regulations framed by the Government of India they cannot claim the payment of CHCA on the basis of decision taken by State Government. We are therefore, do not find any justification for grant of CHCA to the employees of the Members of applicant No.1 and the decision taken by respondents on this point is correct and does not require any interference by this Tribunal. However, so far as the question of recovery of the amount already paid to the applicant during the period from 1.1.1986 to 31.1.1991 from the members of the applicant No.1 is

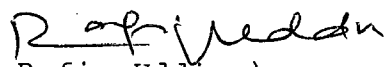
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concerned, we find force in the argument of Learned Counsel for the applicants that respondents are not justified in making recovery of the aforesaid amount. We also agree with the view expressed by Single Member Bench of this Tribunal in O.A.57/97 decided on 23.4.1998 that it is now too late in the day to make recovery from the civilian employees when there is no mistake or negligence or misrepresentation on the part of the employee. Therefore we hold that in the facts and circumstances of the case the respondents are not entitled to recover the aforesaid amount from the applicant. In view of the discussion above, we find that the O.A. is liable to be allowed partly.

10. The respondents are directed not to recover any amount of hill compensatory allowance paid to the applicant during the period from 1.1.1986 to 31.1.1991 in pursuance of the order dated 27.4.1993.

11. The claim of the applicants for their entitlement to receive CHCA is however, rejected. The O.A. is disposed of accordingly without any order as to costs.


(Rafiq Uddin)
Member (J)


(L. Hminglana)
Member (A).

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