CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 540/98,677/01,678/01 & 786/01

DATE OF DECISION: 13/12/2004

Vineet KumarC/o BARC,Bombay - Applicant

Shri S.P.Saxena - Advocate for applicant

Versus

Union of India & others - Respondents

Shri R.K.Shetty - Advocate for Respondents

CORAM:
Hon'ble Shri A.K.Agarwal -Vice Chairman
Hon'ble Shri Muzaffar Husain - Member (J)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(3) Library.

No

(A.K.Agarwal)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NOs. 540/98, 677/01, 678/01 & 786/01

Dated this the 13th day of December 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman
Hon'ble Shri Muzaffar Husain, Member (J)

Vineet Kumar
C/o.BARC Officers Assn.
1-346-S Modular Laboratories,
Trombay, Bombay. (Applicant in OA.540/98)
(Applicant in person)

vs.

1. Union of India
through Secretary,
Ministry of Finance,
Govt. of India, New Delhi.

2. Dept. of Atomic Energy,
Govt. of India,
C.S.M.Marg, Mumbai.

3. Bhabha Atomic Research Centre,
Trombay, Bombay. (Respondents in OA.540/98)

1. Dr.S.C.Pol & Ors. (Applicant in OA.677/01)
2. D.K.Sanyal & Ors. (Applicant in OA.678/01)
3. K.Bhavanarayana & Ors. (Applicant in OA.786/01)
(By Advocate Shri S.P.Saxena)

vs.

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, Pune.

4. The Asstt. Controller
of Defence Accounts,
O/O of Principal C.D.A.
Southern Command, Pune.

5. The A.C.G.D.A. (AT),
Office of C.G.D.A.,
West Block,
R.K.Puram,
New Delhi. Respondents
**(By Advocate Shri R.K.Shetty
for Shri R.R.Shetty**

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O R D E R

(Per: A.K.Agarwal - Vice Chairman)

This OA has been filed by Bhabha Atomic Research Centre Officers' Association, Bombay challenging the constitutionality of Notification dated 30.9.1997 issued by the Government of India, Ministry of Finance making eligibility to Transport Allowance conditional on employees residing over 1 Km. outside the office premises. Three more OA Nos.were filed by different applicants on the same issue. We therefore propose to dispose all the four OA Nos.540/98, 677/01, 678/01 and 786/01 with this common order. We will discuss the facts relating to OA 540/98 in following paragraphs.

2. In OA 540/98 as well as in other OAs, there was a difference of opinion amongst the two Members of the Division Bench and as a result, the matter was referred under Section 26 of the Administrative Tribunals Act, 1985 to the Chairman stating the point of their difference as follows-

> "Whether the applicants who reside in Campus, Campus being spread over an area of 5 Kms.to 7 Kms. distance, the residence being more than one kilometer from the place of work are entitled to Transport Allowance."

3. The Third Member has given his view on the above issue vide order dated 18.11.2004 answering the question referred, as follows -

> "14. In the facts and circumstances of the case and in the light of the above discussion, I am of the considered view that the applicants who reside in campus beyond 1 Kilometer from the place of work are not entitled for the Transport Allowance."

3. In OA 540/98, the applicants had sought for the following reliefs -

(a) That this Hon'ble Tribunal be pleased to hold and declare that the impugned Gazette Notification dated 30.9.1997 issued by the 1st Respondent, being Exhibit 'B' hereto, is ultra vires to Articles 14, 16 and 21 of the Constitution of India to the extent that it is interpreted as making the payment of transport allowance to employees conditional on their residing over 1 Km. outside the third respondent premises void at law.

(b) That this Hon'ble Tribunal be pleased to hold and declare that the impugned office Memorandum dated 3.10.1997 issued by the 1st respondent Ministry of Finance, being Exhibit 'C' hereto, and the office memorandum dated 11.12.1997 issued by the 2nd respondent Department of Atomic Energy, being Exhibit 'E' hereto, are ultra vires to Articles 14, 16 and 21 of the Constitution of India and thus void at law.

(c) That this Hon'ble Tribunal be pleased to quash and set aside the impugned Gazette Notification dated 30.9.1997 issued by the 1st respondent, being Exhibit 'B' hereto, if and to the extend this Hon'ble Court interprets the same as making the payment of transport allowance to employees conditional on their residing over 1 Km. outside the 3rd respondent's campus.

(d) That this Hon'ble Tribunal be pleased to quash and/or set aside the impugned Office Memorandum dated 3.10.1997 issued

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by the 1st Respondent Ministry of Finance, being Exhibit 'C' hereto, and the office memorandum dated 11.12.1997 issued by the 2nd respondent Department of Atomic Energy, being Exhibit 'E' hereto.

(e) That this Hon'ble Tribunal be pleased to direct the 2nd and 3rd respondents to pay transport allowance along with arrears from the date on which the recommendations are implemented i.e. 1.8.1997 to all the petitioners members living within the 3rd respondent's campus.

(f) for cost of this application

(g) for such further and other reliefs as may be necessary in the facts and circumstances of the case.

4. As per the majority view on the main issue, we hold that the impugned notification dated 30.9.1997 and Office Memorandum dated 3.10.1997 and 11.12.1997 issued in pursuance of the said notification making the payment of Transport Allowance to the employees conditional is perfectly valid in law. Consequently, the applicants are not entitled for any relief sought in Para 8 of the OA.

5. In view of the above, all the four OA Nos.540/98, 677/01, 678/01 and 786/01 deserve to be dismissed and are dismissed accordingly. Interim order dated 27.9.2001 passed in OA No.677/01 and 678/01 and order dated 7.11.2001 passed in OA 786/01 are also quashed. In the circumstances, there is no order as to costs.

(Muzaffar Husain)
Member (J)

(A.K.Agarwal)
Vice Chairman

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