

(HAN)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 333/89.

-T.A.No:-

Date of Decision : 29.1.89 ✓

M.R.Issarani

Petitioner.

Shri K.S.R.Anjaneyulu

Advocate for the
petitioner (s)

Versus

Union of India represented by the Secretary, Respondent.

Dept. of Posts, Min. of Communications,

Dak Bhavan, Asoka Road, New Delhi-110001 & another

Shri N.Bhaskara Rao, Addl. CGSC Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R.Balasubramanian : Member(A)

THE HON'BLE MR. C.J.Roy : Member(J)

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 Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

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HRBS
M(A).

HCJR
M(J).

(45)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.333/89.

Date of Judgment 29.1.1992

M.R.Issarani

.. Applicant

Vs.

Union of India
represented by:

1. The Secretary,
Dept. of Posts,
Min. of Communications,
Dak Bhavan, Asoka Road,
New Delhi-110001.

2. The Secretary,
Min. of External Affairs,
South Block,
New Delhi-110001. .. Respondents

Counsel for the Applicant : Shri K.S.R.Anjaneyulu

Counsel for the Respondents : Shri N.Bhaskara Rao, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

I Judgment as per Hon'ble Shri R.Balasubramanian, Member(A) I

This application has been filed by Shri M.R.Issarani under section 19 of the Administrative Tribunals Act, 1985 against the Union of India represented by the Secretary, Dept. of Posts, Min. of Communications, Dak Bhavan, Asoka Road New Delhi-110001 & another. The prayer in this application is for a direction to declare the order No.17-20/81-SPG dated 7.10.83 issued by the P&T Board, New Delhi ^{along with the} ~~and~~ rejection of the ^{application} ~~base~~ on 29.3.89 for Foreign Allowance and ^{order} ~~dated~~ 28.4.88 for Children Holiday Passage as illegal and to direct the respondents to pay the Foreign Allowance at the rates claimed by the applicant and also for two single one way fare in respect of the other two children for their journey from Bangkok to Delhi which expenditure the applicant had incurred.

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2. The applicant joined the P&T Department in 1961 and at the relevant point of time in 1982 was working as Director(PLI) in the P&T Directorate, New Delhi. He was deputed to the Asian Pacific Postal Training Centre, Bangkok as Postal Consultant vide P&T Board Memo No.17/20/81-SPG dated 9.6.82. The applicant joined the post at Bangkok on 18.7.82. According to the deputation order dated 9.6.82 his Foreign Allowance was fixed at Rs.5435/- ^{b.m.} on par with the First Secretary posted to the Embassy of India, Bangkok which was fixed in accordance with the Min. of External Affairs letter dated 26.5.81 referred to in the said order of deputation. From time to time the Foreign Allowance was being raised to off-set increases in the cost of living. To the surprise of the applicant, instead of increasing after nearly 15 months of his joining at Bangkok the amount was reduced from Rs.5435/- p.m. to Rs.5350/- p.m. by the impugned order dated 7.10.83. It is the case of the applicant that while an increase is called for the amount had actually been decreased. It is stated that the same amount of Rs.5435/- was paid to his predecessor Shri M.S.Rangaswamy, another officer of the same cadre who was deputed under the same circumstances. The applicant claims that the increases announced from time to time applicable to the First Secretary have not been paid to him. On the other hand he had been paid lesser amounts and at para 4.9 of the application he had given a tabular statement according to which he is entitled to arrears of Rs.26,718/-. He made representations to the Ministry but not getting the desired results he has approached this Tribunal with this application.

3. Another hardship that the applicant faced was in regard to the sanction of Children Holiday Passage (C.H.P. for short). In the deputation order dated 9.6.82 it was stated in para 3(iv) that separate instructions in this regard

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will follow. It is stated that it took more than 3 years to issue the instructions in this regard. The applicant ~~was~~ became entitled to avail C.H.P. facility for two children every year from the initial block. It is stated that the five children of the applicant were brought to Bangkok at the time of the transfer of the applicant at Government expenses. Four of his children were sent back by the applicant to India for pursuing their studies, at his own expenses after representing for grant of C.H.P, since the orders of C.H.P. which were promised to follow were not then issued. After series of representations, the Dept. of Posts had issued sanction vide Memo No.17-20/8/SPG dated 6.8.85 conveying the President's sanction to the grant of C.H.P. retrospectively from the initial block. The C.H.P. was granted subject to the condition that the applicant refunds to the Government the cost of transfer passage reimbursed in respect of two children for the journey to Bangkok on the initial posting of the applicant at Bangkok. As such, the C.H.P. claim was admitted by the Government only for two children although three block years had lapsed by the time sanction was issued by the Government. It is submitted that the late issue of orders viz: after 3 years after the applicant joined as Consultant has deprived the applicant the use of the facility for the block years 1983-84 and 1984-85. The Head of Chancery, Embassy of India, Bangkok took up the case of the applicant with the Dept. of Posts but this was not acceded to. It is submitted that on account of late issue of the order the applicant ^{could} would not only not avail the facility of C.H.P. but also suffered financial loss in respect of the fares incurred by him in respect of the two children sent by him back to India from Bangkok to Delhi for the purpose of studies. The case concerns Master Naresh and Miss Meena who were taken from Delhi to Bangkok on 8.4.83 and 3.6.83 respectively and who returned back to Delhi on 2.7.83. These two children

remained in Bangkok during school vacation. The applicant had suffered financial loss of Rs.4593=50 in respect of air fares spent by him on his two children for return journey from Bangkok to Delhi. He wants the same to be reimbursed.

4. The respondents have filed a counter affidavit and oppose the application. It is stated that the initial fixation of Foreign Allowance at Rs.5435/- was a mistake since this was only applicable ^{only} to officers belonging to IFS and not to non-IFS officers like the applicant in whose case Foreign Allowance is to be fixed in terms of a certain letter dated 21.11.74. As this mistake was detected later on, they reduced the Foreign Allowance from Rs.5435/- p.m. to Rs.5350/- p.m. It is, however, stated that although the Foreign Allowance of the applicant was reduced the excess payments for the period 18.7.82 to 7.10.83 have not been recovered from the applicant. However, for the period 8.10.83 to 30.4.85 he has been paid only at reduced rates.

5. As regards Children Holiday Passage, there was no provision in the instructions issued by the Govt. of India for regulating terms and conditions of deputation/delegation abroad of Govt. officers. Since initially the period of deputation was expected to be only two years it was not considered necessary to extend the facility to him. However, when the term of deputation was extended they issued the order as a special case. According to the rules, Children Holiday Passage is intended to enable children of officers serving in Missions/Posts abroad who are left behind in India for educational purposes and are receiving education in recognised educational institutions in India to visit their parents once a year during vacation. Since he claimed Transfer Passage in respect of his children, the question of Children Holiday Passage did not arise initially otherwise also. He sent back his four children to India during the

block year 1982-83 at his own expenses. When the period of deputation was extended for the third year, a sympathetic view was taken to enable the children to meet their parents and Shri M.R.Issarani was allowed the C.H.P. facility from the initial block in respect of his two children since the rules permit C.H.P. facility only for two children.

6. We have examined the case and heard the rival sides. There are two questions to be settled:

- (1) Foreign Allowance, and
- (2) Children Holiday Passage.

As regards Foreign Allowance, it is the claim of the applicant that he should be treated on par with First Secretary in the Embassy if not on par with Counselor. The respondents contend that there is one set of rules governing Foreign Allowance for IFS officers and another for non-IFS officers. It is contended that fixing of the Foreign Allowance at Rs.5435/- while issuing the deputation order was erroneous. It might have been erroneously fixed but a deputation order is an order by which an officer leaves from one department and goes to another and in this case the officer had gone to a different country. There must be some sanctity of such orders. When the respondents realised the mistake through the letter No.QFD/551/6/82 dated 14.6.83 the least that the respondents could have done was to give suitable notice to the applicant and after hearing him they could have taken further action. This basic requirement of natural justice was not observed by them. We are of the opinion that in no case, can it be reduced even by way of correcting mistakes. We are, therefore, of the opinion that for the entire period 18.7.82 to 30.4.85 the applicant should be paid at rates corresponding to Rs.5435/- and not Rs.5350/-. It is stated that they had not recovered any amount for the period 18.7.82 to 7.10.83 but then for the period 8.10.83 to 30.4.85 he has been paid at lower rates.

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The applicant is, therefore, entitled to the rate indicated in the deputation order for the entire period 18.7.82 to 30.4.85. As regards the subsequent period, we do not accept the contention of the applicant that he should be paid at rates payable to the First Secretary in the Embassy. He is not an officer belonging to IFS and he is to be governed by rules applicable to non-IFS officers. But it has to be ensured that at no time the rate payable to him falls below what is indicated in the deputation order. We find from the counter affidavit that for the period 1.5.85 to 18.7.86 he has been paid at rates higher than those indicated in the deputation order, probably to off-set the rise in cost and as per rates applicable to non-IFS officers. We, therefore do not want to interfere in this case, beyond a certain point.

As regards Children Holiday Passage, it is seen that the orders in this regard were issued much later, after 3 years. Whatever be the reason, the applicant should not put to a disadvantage on account of the delay by the respondents in issuing an order on this subject. The applicant had already suffered because he could not avail his full entitlement due to the delayed issue of the order. But whatever expenditure he had incurred on account of his getting the children from India to Bangkok and back to India should not be denied to him so long as it does not exceed his entitlement under the orders issued belatedly. In his letter dated 14.9.85 addressed to the Member(P), Postal Services Board (A.13) the applicant has referred to his request for conversion of transfer T.A. into C.H.P. for his four children. All that he claims now is reimbursement of Rs.4593=50 which expenditure he had incurred for the air fares of his two children sent back to Delhi in July 1983. The respondents should work out his notional entitlement under this head in accordance with the orders they issued and if what the applicant claims does not exceed then they should reimburse this amount of Rs.4593=50.

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7. Summing up, we direct the respondents:

(1) To pay Foreign Allowance at the rates indicated in the deputation order for the period 18.7.82 to 30.4.85 (difference in payment will have to be made only for the period 8.10.83 to 30.4.85).

(2) To work out his entitlement under the head Children Holiday Passage in accordance with the orders issued by them and if the amount of Rs.4593=50 comes within that, to pay this amount also to him on the applicant's producing the required documents in support of it towards air fares for the return of his children to Delhi.

8. With the above orders, we dispose of the application with no order as to costs.

R.Balasubramanian
(R.Balasubramanian)
Member(A).

C.J.Roy
(C.J.Roy)
Member(J).

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Dated 29th January, 1992.

S.S.P.192
Deputy Registrar (J)

To

1. The Secretary, Union of India,
Dept. of Posts, Min. of Communications,
Dak Bhavan, Asoka Road, New Delhi-1.
2. The Secretary, Min. of External Affairs,
South Block, New Delhi-1.
3. One copy to Mr.K.S.R.Anjaayulu, Advocate, CAT.Hyd.
4. One copy to Mr.N.Bhaskar Rao, Addl. CGSC. CAT.Hyd.
5. One spare copy.
6. One copy to D.R.Golla (TR), Hyderabad.

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