

In the Central Administrative Tribunal,
Jaipur Bench, Jaipur.

Jaipur, the 20th day of January, 2005.

ORIGINAL APPLICATION No.15/2004

CORAM:

HON'BLE MR.A.K.BHANDARI, MEMBER (ADM.)

1. Lallu Ram, Senior Peon, O/o Divisional Cashier (Pay), North-Western Railway, Jaipur.
2. Shailendra Kumar Sharma, Senior Peon O/o Divisional Cashier (Pay), North-Western Railway, Jaipur.

By Advocate : Shri C.B.Sharma

... Applicants

Versus

1. Union of India
through General Manager,
North-Western Railway,
Jaipur.
2. Divisional Finance Manager,
North-Western Railway,
Jaipur.
3. Divisional Cashier (Pay),
North-Western Railway,
Jaipur.

By Advocate : Shri S.S.Hasan

... Respondents

ORDER

Per Hon'ble Mr.A.K.Bhandari

This OA was filed u/s 19 of the Administrative Tribunals Act, 1985 to seek following reliefs :

"i) That the respondents may be directed to produce entire relevant record of the matter and after perusal the same applicants may be allowed transport allowance @ Rs.100/- p.m. instead of Rs.75/- p.m. as drawn by them since August 1997 treating Jaipur City as Class-A for the purposes of transport allowance by quashing letter dated 17.10.2003 (Ann./A/1) with all consequential benefits.

ii) The respondents may be further directed not to recover any amount against so called over payment and amount recovered from the applicants be refunded alongwith interest at market rate."

2. In brief, admitted facts of the case are that the applicants working as Senior Peon are drawing Transport Allowance (TA) @ Rs.100/- per month since 1.8.97. Ministry of Finance, vide OM dated 14.5.93, reclassified cities on the basis of 1991 Census for grant of House Rent Allowance (HRA) and City Compensatory Allowance (CCA) to Central Government employees working in the respective cities in which Jaipur City has been classified as B-1. Vide OM dated 27.5.94 Jaipur City has been reclassified as 'A' Class City for the purpose of CCA. It has also been mentioned in this OM that classification of Jaipur City as B-1 shall be continued for the purpose of HRA and that these orders will be effective from 18.4.92. Copies of OM dated 14.5.93 and 27.5.94 are annexed as Ann.A/1 and Ann.A/2 respectively. On the recommendation of Fifth Pay Commission the respondents (Railways) also issued orders dated 16.12.97, by which TA to all Railway employees has been sanctioned from 1.8.97 and this TA has been sanctioned to employees working in cities classified as A-1/A and other places and it is further mentioned that the classification of cities shall be same as classified for the purpose of

CCA. It is further stated that respondents (Railways) issued another order dated 16.10.97 for grant of CCA and HRA to Railway employees taking into consideration the orders passed by Government of India and in these orders Jaipur City has been downgraded from 'A' Class City to B-1 Class City without any basis, but to maintain benefit of CCA it has been provided in the order that those Cities/Towns which have been placed in lower classification as compared to their earlier classification shall continue to retain earlier classification until further orders and the Railway employees working therein will be entitled to draw the rates of CCA and HRA accordingly. In other words, Jaipur City has to be treated 'A' Class City for granting CCA and applicants were allowed TA taking into consideration that Jaipur City has been classified as 'A' Class City for this purpose also. Copy of order dated 16.10.97 is annexed as Ann.A/4. Thus, applicants continued to draw TA @ Rs.100/- p.m. upto November, 2003. However, the same has been reduced to Rs.75/- p.m. from the month of December, 2003 on the basis of letter dated 17.10.2003 (Ann.A/1), by which it has been clarified that TA will be governed by new classification of the cities for the purpose of CCA and special dispensation extended to CCA is not applicable to TA. Copies of pay slips of the applicants for November & December, 2003 are annexed as Ann.A/6. The respondents also calculated recovery towards over payment and this recovery could be effected at any moment in spite of the fact that payment was received by the applicants without any misrepresentation and applicant have also not been extended any chance of hearing before reducing the allowance. It is further

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stated that respondents did not consider before this impugned action that the population of Jaipur City is now 2324319 as per census of 2001, which clearly justify is classification as 'A' Class City for all purposes. It is also stated that the Ministry of Railway while granting TA on the basis of recommendation of Fifth Pay Commission and after the concurrence of President of India categorically mentioned that lower classification is not applicable in the rates of CCA, and TA is admissible as per classification of cities for the purpose of CCA. Therefore, after six years the clarification issued vide letter dated 17.10.2003 cannot override the provisions of orders issued in 1997 after concurrence of President of India.

3. In the grounds it is stated that applicants are entitled for TA as per classification of cities regulating the rates of CCA. Further that the order of respondents is against provisions of Articles-14, 16 and 21 of the Constitution of India and against the principles of natural justice as no opportunity and no chance of hearing has been extended to the applicants prior to taking action on clarification dated 17.10.2003. The respondents action cannot take away the rights which have vested in the year 1994 by which Jaipur City has been classified as 'A' Class City for the purpose of CCA and thereafter on recommendation of Fifth Pay Commission TA has been allowed vide letter dated 16.12.97 (Ann.A/4), in which it has been clearly mentioned that classification of cities shall be same as those for the purpose of CCA and in the orders dated 16.10.97 regulating CCA Jaipur City has been treated as 'A' Class

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in spite of lower classification. Thus, classification regulating CCA is fully applicable in the admissibility of TA and applicants are entitled to TA @ Rs.100/- p.m. instead of Rs.75/- p.m. and the order dated 17.10.2003 is liable to be quashed. That in the meantime population of Jaipur City has increased, which has not been taken into account. That payment of Rs.100/- p.m. since 1.8.97 was not on account of any misrepresentation or wrong construction of relevant orders. Thus, recovery would be arbitrary and violative of many decisions of Hon'ble Apex Court as well as this Tribunal in various pronouncements in the matter of recovery.

4. The respondents have filed reply raising preliminary objection about applicants' having not availed departmental remedy before approaching the Tribunal and thus they have violated provisions contained in Section-20 of the Administrative Tribunals Act, 1985. Replying to the facts it is stated that it is admitted that applicants are drawing TA @ Rs.100/- p.m. from 1.8.97 to 30.11.2003. It is further stated that Jaipur City was classified as B-1 for the purpose of HRA and CCA and Government of India vide OM dated 27.5.94 upgraded Jaipur City as 'A' Class City for the purpose of CCA. Copy of OM dated 27.5.94 is filed as Ann.R/1. That Railway Board's circular dated 16.10.97 placed Jaipur City as B-1 for the purpose of CCA and clarified that Cities/Towns which have been placed in a lower classification in the above mentioned lists as compared to their existing classification, shall continue to retain the existing classification until further order and the Railway employees working therein will be

entitled to draw the rates of CCA and HRA accordingly. Copy of circular dated 16.10.97 is filed as AnnR/2. It is also submitted that Government of India, Ministry of Finance, vide OM dated 22.2.2002 issued clarification in this regard and in point No.9 it was clarified that grant of TA would be governed by the new classification of cities for the purpose of CCA as given in Ann/1 of the OM dated 3.10.97. Thus, the special dispensation extended to HRA/CCA is not applicable to TA. Copy of OMs dated 3.10.97 and 22.2.2002 are filed as Ann.R/3 and R/4 respectively. Further, vide letter dated 17.10.2003 it is also clarified that grant of TA will be governed by new classification of cities for the purpose of CCA as given in Ann.1 of Board's letter dated 16.10.97 and that special dispensation extended to CCA is not applicable to TA and also to take necessary action for making recoveries wherever over payment has been made. Accordingly, over payment made towards TA has been stopped and reduced to Rs.75/- p.m. That any over payment made to employees can be recovered as per rules and procedures and due to this reason there is no illegality in ordering recovery the over payment.

5. Replying to the grounds arbitrariness is denied because as per extant orders consideration of Jaipur City as same for CCA and TA has been delinked. Since action of respondents is based on rules, violation of Articles-14, 16 and 21 of the Constitution is also denied. That reduction of TA and order of recovery is clearly based on orders of Ministry of Finance, according to which applicants are not entitled to TA @ Rs.100/- p.m. Therefore, there is no illegality.

/s/

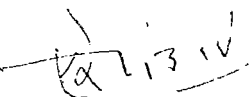
6. Parties were heard during arguments. Counsel for applicant produced a copy of order dated 21.12.2004, passed in OA 484/2003 (Sr.Accounts Officers/Accounts Officers Association & Anr. V. Union of India & Ors.) by this Tribunal, in which undersigned was also one of the Members, and stated that by this order the said OA has been allowed. Since the decision already rendered by this Tribunal squarely covers the facts and circumstances of this OA, although in this OA the respondent department is Railways and the OMs under scrutiny are of the Ministry of Railways but in both the cases decision are based on the orders of Ministry of Finance. In the other OA counsel for applicant produced OM dated 18.11.2004, issued by Government of India, Ministry of Finance, Department of Expenditure, New Delhi, relating to reclassification of Cities/Towns on the basis of 2001 Census and grant of HRA and CCA to Central Government employees on its basis. Under this OM Jaipur City has been declared as 'A' Class City for the purpose of grant of CCA. So, the applicants of that OA could not have any grievance w.e.f. 1.4.2004 i.e. the date from which the new OM had come into force. In other words, they became entitled to TA as applicable to 'A' Class City. Same would be the case for the applicants of this OA also.

7. Regarding dispute for the period from November, 2003, from which date respondents wanted to make recovery, but Interim Relief was granted by this Tribunal vide order dated 21.1.2004, to the date of reclassification of Jaipur City as 'A' Class City i.e. 1.4.2004, the respondents are justified to give TA at the

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rate of Rs.75/- p.m. because the same is as per extended orders of Government of India. However, on recovery from the pay and allowances of the applicants, as held while deciding OA No.434/2003 law is well settled and it has been repeatedly held by Hon'ble Supreme Court that if some amount is wrongly paid to an employee by the administration and there is no fault of such employee in payment of the amount and such recovery is going to hurt the employee, it cannot be allowed to be done by a Court of law. In this case, admittedly, respondents have not taken a plea that the applicants had committed any fraud on account of which they were paid the enhanced rate of TA treating Jaipur as 'A' Class City. It was the interpretation of the OM dated 3.10.97 which resulted into over payment to the applicants. Therefore, I am of the view that this is a case in which respondents cannot be allowed to make recovery from the pay and allowances of the applicants on account of over payment of the TA.

8. In this view of the matter, the OA is disposed of while upholding the impugned order to the extent of interpretation of the classification of Jaipur City for the purpose of grant of TA but the same is quashed to the extent the applicants have been burdened with recovery. The respondents are directed to refund the amount of recovery to the applicants within a period of three months from the date of receipt of copy of this order. No order as to costs.



(A.K.BHANDARI)
MEMBER (A)