

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH: JAIPUR.

O.A.No.484/2003

December 21,2004.

CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.A.K.BHANDARI, MEMBER (ADM.)

1. Senior Accounts Officers/Accounts Officers Association, Office of the Accountant General (Accounts & Entitlement) Rajasthan, Jaipur, through its General Secretary, Shri D.K.Mathur, resident of Quarter No.IV/11, A.G.Colony, Bajaj Nagar, Jaipur.
2. Shri D.K.Mathur S/o Late Shri K.K.Mathur, Sr. Accounts Officer, Office of Accountant General (Accounts & Entitlement) Rajasthan, Jaipur and resident of Quarter No.IV/11, A.G.Colony, Bajaj Nagar, Jaipur.

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Applicants

By : Mr.C.B.Sharma, Advocate.

Versus

1. Union of India through its Secretary, Ministry of Finance, Department of Expenditure, New Delhi.
2. The Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi-110002.
3. The Accountant General (Accounts & Entitlement) Bhagwan Das Road, Jaipur-302005.

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Respondents

By : Mr.Gaurav Jain, Advocate.

O R D E R (ORAL)

KULDIP SINGH, VC

Applicant No.1 is association of Senior Accounts Officers/Accounts Officers and applicant no.2, Mr.D.K.Mathur, an is/agrieved person. The members of the Association and the applicant no.2 are working in the office of Accountant General (Accounts & Entitlement), Jaipur, in different pay scales. This joint O.A. has been filed by them with a prayer to direct the official respondents to allow the applicant transport allowance @ Rs.800/- or Rs.400/- instead of Rs.400/- or Rs.200/- as drawn by them since August, 1997, treating Jaipur City as Class 'A' for the purpose of transport allowance and quash the Memo dated 24.9.2003 (Annexure A-1) and clarification dated 22.2.02 (Annexure A-3).

2. The facts in brief are that applicants were in

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receipt of C.C.A. w.e.f. 18.4.1992 as the Jaipur City was classified as "A" class city. However, vide Communication dated 14.5.1993 (Annexure A-4), the Government of India, Ministry of Finance, New Delhi reclassified various cities including Jaipur, which was declared as "B-1". However, again an OM dated 27.5.1994 (Annexure A-5) was issued by which the Jaipur City was reclassified as 'A' class for the purpose of Compensatory City Allowance w.e.f. 18.4.1992. The Central Government employees were sanctioned Transport Allowances w.e.f. 1.8.1997, as per pay scales for cities classified as A-1/A and other places at the rate of Rs.800/-, Rs.400/-, Rs.100/- and Rs.400/-, Rs. 200/- and Rs.75/- by communication dated 3.10.1997 (Annexure A-6). The Government again issued an OM dated 3.10.1997 (Annexure A-7) regarding grant of CCA and HRA, under which the Jaipur City was down-graded from 'A' class to B-1 Class in which it has been mentioned that City/towns which have been placed in lower classification then to earlier shall continue to retain their earlier classification till further orders and the employees will continue to draw CCA & HRA as per the earlier classification. By OM dated 22.2.2002 (Annexure A-3), the Government took a decision that grant of transport allowance will be on the basis of new classification of cities for the purpose of CCA and special dispensation extended by letter Annexure A-7, is not applicable in the case of transport allowance. In September, 2002, the respondent no.3, reduced the transport allowance of the applicants by 50% and recovery was also calculated. The applicants filed representations to the respondents but to no avail and ultimately O.A.No.42/2003 was filed by them which was disposed of on 28.7.2003 (Annexure A-2) with direction to the applicants to prefer a representation to the Respondent No.1 who ~~was to~~ decide the same within eight weeks.

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3. The further case of the applicants is that they filed a detailed representation dated 11.8.2003 (Annexure A-12) which has ultimately been rejected by the respondents by order dated 24.9.2003 (Annexure A-1). Thus, the respondents have rejected the case of the applicants aggrieved by thus, the present O.A. has been filed with the prayer as mentioned above.

4. At the time of issuance of notice to the respondents on 17.10.2003, a Bench of this Tribunal had directed the respondents not to recover any amount from the pay and allowances of the applicants till the next date. This order was made absolute on 3.11.2003.

5. The respondents have filed a detailed reply contesting the Original Application. Their stand is that the Transport Allowance came in vogue consequent to the acceptance of the recommendations of the 5th CPC and as such it shall be governed by the classification of the city after recommendations of the report of 5th CPC. The saving clause of protection in respect of HRA and CCA would not apply to the Transport Allowance. The case of Transport Allowance is not comparable with HRA and CCA which had been continuously paid to the Government employes at Jaipur at "A" class city rates since much earlier to 5th CPC recommendations came into existence. The special dispensation extended in respect of HRA/CCA cannot obviously be made applicable to a new allowance. Transport allowance shall be governed by the new CCA classification only i.e. at B-1 class city rates". Recovery of Transport Allowance paid in excess for the period from the date of issue of classification OM i.e. 22.2.2002 to August, 2002 has been made from the salary of the employees. The Applicants have also filed a rejoinder.

6. We have heard learned counsel for the parties and perused the material on the file.

7. Undisputedly, the Government of India, Ministry of Finance, vide Communication dated 3.10.1997 (Annexure A-6) had taken a decision to allow the Central Government employees

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the Transport Allowance at various rates depending upon the pay scale and classification of the place. Para No.3 (i) of the OM makes it clear that the cities referred to as "A" and "A-1" in the said orders shall be the same as those classified as such for the purpose of Compensatory (City) Allowances (CCA) in terms of the orders issued separately regulating grant of CCA to the Central Government Employees. So, the classification for the purpose of CCA was the determining factor for grant of Transport Allowance also. The Jaipur City was initially classified as B-1 City for the purpose of CCA and HRA as per OM dated 14.5.1993 but subsequently it was classified as 'A' Class City by OM dated 27.5.1994. It is by OM dated 3.10.1997 (Annexure A-6) that the Government took a decision to grant the Central Government Employees transport allowance based on classification of the places meant for the purpose of CCA and such classification has been done on the very same day i.e. on 3rd October, 1997 (Annexure A-7) wherein the Jaipur City was classified as B-1 City i.e. down from Class 'A' category. This classification of B-1 City was also done for the purpose of grant of CCA. This classification was basis for grant of Transport Allowance. However, in so far as CCA and HRA are concerned, these allowances were being paid to the employees earlier to 1997 itself by treating the Jaipur City as Class-A. However, the reclassification of the city to B-1 City under OM dated 3.10.1997 was to have an adverse effect on the grant of HRA/CCA, and it is perhaps for this reason that the authorities inserted a clause i.e. clause no.3 in OM dated 3.10.1997 (Annexure A-7) to the extent that the cities/towns which have been placed in a lower classification in the list, as compared to their existing classification, shall continue to retain the existing classification until further orders and the Central Government employees working therein will be entitled to draw the rates of CCA and HRA accordingly. Thus, the classification of the City was downgraded to B-1 but for the purpose of grant of

HRA and CCA as these two allowances were protected by the competent authority by a conscious decision but that ipso-facto does not take away the classification of Jaipur City as B-1 for other purposes which would include Transport Allowance. This interpretation as done by the respondents appears to be quite logical and we do not find any reason to interfere with the impugned orders.

8. Learned counsel for the ~~cloud~~ applicants produced an OM dated 18.11.2004 issued by the Government of India, Ministry of Finance, Department of Expenditure, New Delhi, ^{re-} relating to/classification 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 the Jaipur has been declared as 'A' class city for the purpose of grant of CCA. So, now the applicants cannot have any grievance w.e.f.

1.4.2004 i.e. date from which the new OM has come into force. In other words, now they would be entitled to Transport Allowance as applicable to 'A' Class City. Now the dispute remains for the period from 22.2.2002 to August, 2002, for which the respondents have made recovery from the pay and allowances of the applicants, Since we have already held that the saving clause of OM dated 3.10.1997 (Annexure A-7) would not be applicable for grant of Transport Allowance to the applicants and as such they have rightly been paid such allowances for the period from September, 2002 to March, 2004, treating the Jaipur City as B-1 category.

9. The law on the subject of recovery from the pay and allowances of the employees is well settled. It has been repeatedly held by the Apex 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, the respondents have not taken a plea that the applicants had committed any ~~cloud~~ fraud on account

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of which they were paid the enhanced rate of transport allowance treating Jaipur as A - Class City. It was the interpretation of the OM dated 3.10.1997 (Annexure A-7) which resulted into over-payment to the applicants. Thus, this Court is of the opinion that this is a case in which the respondents cannot be allowed to make recovery from the pay and allowances of the applicants on account of over-payment of the Transport Allowance.

10. In this view of the matter, this O.A. is disposed of while upholding the impugned orders to the extent of interpretation of the classification of Jaipur City for the purpose of grant of Transport Allowance but the same are quashed to the extent the applicants have been burdened with recovery for the period from 22.2.2002 to August, 2002. They 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. In the peculiar facts of this case, there shall be no order as to costs.

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(A.K.BHATNAGAR) AM

Kuldip Singh
(KULDIP SINGH) VC

December 21, 2004.

HC*