

16

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

22-1-07

Mr. S. K. Vyas, counsel for applicant
Mr. Gander Jain, counsel for respondents

Arguments heard.

Order reserved.

J. P. Shukla
(J. P. Shukla)
M(A)

24/1/07

Order has been pronounced
today in the open court by
Smt. *J. P. Shukla*

24/1/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 24 day of January, 2007

ORIGINAL APPLICATION NO. 73/2006

CORAM :

HON'BLE MR.J.P.SHUKLA, ADMINISITRATIVE MEMBER

1. Audit Officers Association (Civil), Rajasthan, Jaipur, O/o Principal Accountant General (Civil Audit) & Accountant General (C&R), Rajasthan, Jaipur, through its President Shri Jethmal Soni r/o 100 Shiv Colony, Tonk Road, Hari Mar, Jaipur.
2. Audit Employees Association O/o Principal Accountant General (Civil Audit) & Accountant General (C&R), Rajasthan, Jaipur, through its General Secretary Shri S.K.Sharma r/o 14, Yamuna Bari (Shiv Colony), Tonk Road, jaipur.
3. SAS. Association (Audit) O/o Principal Accountant General (Civil Audit) & Accountant General (C&R), Rajasthan, Jaipur through its Secretary Jagdish Panchal r/o III/83, A.G.Colony, Bajaj Nagar, Jaipur.

By Advocate : Shri S.K.Vyas

... Applicants

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Expenditure, North Block, New Delhi.
2. Comptroller & Auditor General of India, 10-Bahadurshah Zafar Marg, New Delhi.
3. Principal Accountant General (Civil Audit), Bhagwan Das Road, Jaipur.

By Advocate : Shri Gaurav Jain

... Respondents

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ORDER

This OA has been filed by the applicant Association thereby praying for the following relief :

- "i) To quash the impugned orders of respondent No.3 (vide Ann.A/2 to A/4 to recover the higher Transport Allowance from the members represented by the Applicants NO.1 and 2 for the period from 22.2.2002 to 31.8.2002.
- ii) To quash the orders of Respondent No.2 that the recover made for the period from 22.2.2002 to 31.8.2002 cannot be refunded as communicated to Applicants No.1,2 & 3 on 9.11.2005, as 16.11.2005 and 9.12.2005 respectively.
- iii) To direct respondent No.3 to refund the Transport Allowance recovered for the period from 22.2.2002 to 31.8.2002.
- iv) To direct the respondent No.3 to pay interest on recovered amount on Transport Allowance for the period from date of recovery to the date of its refund.
- v) To pay the cost of legal expenses."

2. Briefly stated, the facts of the case are that the applicants, who are Central Government employees, were sanctioned House Rent Allowance and Compensatory (City) Allowance (CCA) at the revised rates and revised classification of cities w.e.f. 1.8.97 vide OM dated 3.10.1997. Accordingly, the applicants were also extended the benefit of revised Transport Allowance. Thereafter, vide O.M. dated 22.02.2002, it was made clear that the special dispensation extended to HRA/CCA is not applicable to Transport Allowance and Jaipur City was placed in lower classification of B-1 category. The Transport Allowance of the applicant was accordingly reduced and recovery was ordered to be made for the period



from 22.02.2002 to 31.08.2002. Being aggrieved by the said order, Sr. Accounts Officer/Accounts Officers' Association of the office of Accountant General (Accounts & Entitlement) Rajasthan, Jaipur, approached this Tribunal by way of filing of OA (No. 484/2003). The said OA was disposed of by this Tribunal vide order dated 21.12.2004 and the recovery order was set aside and the respondents were directed to refund the recovered amount within a period of three months. Thereafter, the present applicants approached the respondents by way of representation and prayed that being similarly situated employees, they may also be extended the benefit of the judgement dated 21.12.2004. But Respondent No. 2 turned down their request. Hence this OA.

3. The respondents have filed their reply thereby opposing the claim of the applicants. During the arguments, learned counsel for the respondents though got agreed that benefit of the judgement dated 21.12.2004 should also be extended to the present applicants, he raised an objection regarding limitation inasmuch as he contended that the present OA is barred by limitation as the recovery in question relates to the period between 22.2.2002 to 31.8.2002 and the present OA was filed by the applicants in the year 2006. He placed reliance on the decision (dated 10.11.2006) rendered by the Hon'ble Supreme Court in the case of **Chairman, U.P.Jal Nigam & Anr. v. Jaswant Singh Anr.**, (Appeal (Civil) No.4790/2006). He also took this preliminary objection in his reply-affidavit also.

4. I have heard the learned counsel for the parties and have gone through the material placed on record.



5. During the arguments, learned counsel for the applicants contended that the present OA is well within limitation as after rendering decision by this Tribunal in OA 484/2003, on 21.12.2004, the applicants made representation to the respondents vide representations dated 31.3.2005 & 28.10.2005, which were rejected by the respondents vide orders dated 9.11.2005 & 16.11.2005 respectively. Thereafter, the applicants approached this Tribunal by filing the present application on 23.2.2006. Hence the present application is within limitation and the recovery in question also cannot be made in the light of law laid down by Hon'ble Supreme Court, according to which if some amount is wrongly paid to an employee by the administration and there is no fault/ misrepresentation of such employee in payment of the amount, recovery cannot be allowed to be made by a Court of law. In the present case, admittedly, the respondents have not taken a plea that the applicants had made any mis-representation/committed any fraud on account of which they were paid the enhanced rate of Transport Allowance. In the present case, it was the administration which mis-interpreted the OM dated 3.10.97 and granted Transport Allowance at higher rates applicable to Class-A cities. It was only when the OM dated 22.2.2002 was issued, mis-interpretation of the administration came to light, but by that time over-payment for the period from 22.2.2002 to 31.8.2002 had already been made.

6. After having heard the rival contentions and going through the material placed on record, I am of the view that in the interest of justice benefit of the judgement dated 21.12.2004, passed in OA

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484/2003, should also be extended to the present applicants being similarly situated employees.

7. In view of the foregoing, the present OA is allowed and the impugned orders to the extent of proposing recovery of the Transport Allowance for the period 22.2.2002 to 31.8.2002 are quashed and set aside. The respondents are directed to refund the amount recovered from the applicants within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(J.P. SHUKLA)
MEMBER (A)

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