

Central Administrative Tribunal
Principal Bench
New Delhi

T.A.No.16/2012

Order Reserved on: 23.02.2017
Order pronounced on 22.03.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Shri Hukumchand Thekedar
S/o Sh. S.L.Thekedar
R/o L-706, Agrasen Awas
66, I.P.Extension, Patparganj
Delhi – 110 092.

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Petitioner

(By Advocate: Shri Vibhor Verdhan)

Versus

1. Union of India through Secretary
Ministry of Commerce
Government of India
Udyog Bhawan
New Delhi.
2. Chairman & Managing Director
India Trade Promotion Organisation
Pragati Bhawan
Pragati Maidan
New Delhi.

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Respondents

(By Advocate: Shri Vaibhav Kalra)

ORDER

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By V. Ajay Kumar, Member (J):

The applicant, a retired General Manager of the 2nd Respondent-
India Trade Promotion Organization (in short, ITPO), originally filed

Civil Writ Petition No.2909/2000 questioning the Memorandums dated 13.04.1999 (Annexure P6) and 29.02.2000 (Annexure P7) in ordering for recovery of a sum of Rs.3,78,243/-, towards the overdrawn Foreign Allowance, from the applicant. The said CWP was transferred to this Tribunal and numbered as the present TA No.16/2012.

2. The brief facts of the case are that while the applicant working as Deputy Regional Manager, was posted as Resident Director at ITPO, Tokyo Office initially for a period of three years, vide Annexure P2-Office Order dated 19.03.1993. The terms and conditions of the said posting were issued vide Annexure P3, dated 12.07.1993. The applicant remained at Tokyo as Resident Director till 10.09.1998 and thereafter, on completion of his tenure, returned and joined at New Delhi.

3. As per Clause 3, Annexure P2-Terms and Conditions of posting as Resident Director at ITPO-Tokyo Office, the Foreign Allowance was fixed at the rate of Rs.10,110/- per month inclusive of wages for one full or part-time local servant and one part-time local servant at the rate of Rs.2,178/- per month and Rs.806/- per month for each of them respectively, subject to clarification and subject to review and changes as per rules. Accordingly, the applicant was paid with the said Foreign Allowance as per the said rates during the relevant period.

4. The respondents revised the Foreign Allowance vide Annexure P6-Memorandum dated 13.04.1999, w.e.f. 01.01.1998, i.e. almost six

months after the return of the applicant to India. The relevant paragraphs of the said Memorandum read, as under:

"MEMORANDUM

Revision of rates of Foreign Allowance in respect of Sh. Hukumchand Thekedar during the period he worked as Resident Director in ITPO's foreign office at Tokyo.

Consequent upon revision of rates of foreign allowance, paras relating to entitlement of foreign allowance at Tokyo issued vide Memoranda of even number dated 12.7.93 and 18.5.98 respectively are amended modified w.e.f. 1.1.98 and 1.4.98 as under:

1. W.E.F. 1.1.98 to 31.3.98
Foreign Allowance

Net foreign allowance @US\$ 2132.06 (Rs.78502.00) p.m. (US\$ 2333.04 – US\$ 200.98) inclusive of wages of one full or part time local servant @ Rs.2178.00 (US\$ 36.82) p.m. and another @ Rs.806.00 (US\$ 21.89) p.m. (subject to certification of expenditure in the format enclosed) shall be admissible. The above rate of foreign allowance also includes a complement of Electricity, Water and Fuel (EW&F) costs. Where utilities costs are borne by the ITPO, the above component would not be admissible. This is, however, provisional and subject to review and changes as per instructions/orders/rules and regulations of ITPO on the subject.

Rate of Exchange:

The rate of exchange for drawal of pay and allowances will be US\$ 1.00=Rs.36.82. However, the exchange rate will be regulated as per the instructions/orders/rules and regulations of ITPO on the subject.

1. W.E.F. 1.4.98 onwards.
Foreign Allowance

Net foreign allowance @US\$ 1843.55 (Rs.72009.00) p.m. (US\$ 2033.00 – US\$ 198.45) inclusive of wages of one full or part time local servant @ Rs.2178.00 (US\$ 55.76) p.m. and another @ Rs.806.00 (US\$ 20.63) p.m. (subject to certification of expenditure in the format enclosed) shall be admissible. The above rate of foreign allowance also includes a complement of Electricity, Water and Fuel (EW&F) costs. Where utilities costs are borne by the ITPO, the above component would not be admissible. This is, however, provisional and subject to review and changes as per instructions/orders/rules and regulations of ITPO on the subject.

Rate of Exchange:

The rate of exchange for drawal of pay and allowances will be US\$ 1.00=Rs.39.06. However, the exchange rate will be regulated as per instructions/orders/rules and regulations of ITPO on the subject.

2. Arrears on account of revision of Foreign Allowance as indicated above will be admissible/payable to him, if any, in Indian rupees.

3. All other terms and conditions outlined in Memoranda of even number dated 12.7.93 and 18.5.98 shall remain unchanged."

5. Thereafter, the respondents issued the impugned Annexure P7-Memorandum dated 29.02.2000, ordering for recovery of Rs.3,78,243/- by stating the same had been overdrawn by the applicant towards Foreign Allowance.

6. Heard Shri Vibhor Verdhan, the learned counsel for the applicant and Shri Vaibhav Kalra, the learned counsel for the respondents, and perused the pleadings on record.

7. The learned counsel for the applicant submits that the respondents never communicated the revision of rates of Foreign Allowance and no notice was also given before passing the impugned orders. Whatever Foreign Allowance drawn by the applicant was as per the terms and conditions and rates of conversion applicable and in vogue at the relevant time, i.e., during the stay of the applicant at Tokyo. Hence, the impugned orders and the consequent recovery are liable to be quashed.

8. The learned counsel for the applicant placed reliance on a decision of this Tribunal in OA No.188/1999 and OA 812/1999 dated 29.08.2000, as upheld by the Hon'ble High Court of Delhi in WP(C) No.6750/2001 dated 24.04.2006.

9. The learned counsel further submits that in any event, since the applicant retired from service, no recovery can be affected from him, in view of the decision of the Hon'ble Apex Court in **State of Punjab v. Rafiq Masih (White Washer) etc**, (2015) 4 SCC 334.

10. Per contra, the learned counsel for the respondents would submit that when the Ministry of External Affairs, which is the nodal Ministry and which fixes the Foreign Allowance applicable to various organizations of Government of India issued orders No.Q/FD/6918/22/98 dated 19.02.1998 and 16.09.1998 modifying the Foreign Allowance, the said orders were challenged in OA No.188/1999 and OA No.812/1999. This Tribunal by its common order dated 29.08.2000, while upholding the validity of the Orders dated 19.02.1998 and 16.09.1998, however, declared that the same would come into force prospectively only and not retrospectively from 01.01.1998 and 01.04.1998 as was mentioned in the said orders. The said decision was upheld by the Hon'ble High Court of Delhi in WP(C) No.6750/2001 dated 24.04.2006.

11. The learned counsel submits that the applicant was working as General Manager (Finance) and was very much in the knowledge of the aforesaid Notifications dated 19.02.1998 and 16.09.1998, referred in the Judgement of the aforesaid OAs, on which the applicant also placing placing heavy reliance, and the impugned orders in the instant OA are issued in pursuance of the said Notifications only, and hence, the said Notifications and the consequential impugned orders are

binding on the 2nd Respondent-ITPO as well as on the applicant. The applicant, a Group 'A' Officer and was working as General Manager (Finance) cannot claim ignorance of the aforesaid Notifications. The applicant having full knowledge about the Notifications and its consequences intentionally overdrawn the Foreign Allowance.

12. Even from the successor of the applicant, who also drawn excess Foreign Allowance, the recovery was affected from his salary. As there was no stay against the recovery in the instant TA, the excess amount was recovered from the applicant also.

13. The decision of the Hon'ble Apex Court in **Rafiq Masih** (supra) is not applicable to the applicant as he has not fallen under any category of the circumstances mentioned in Para 12 of the said decision.

14. It is not in dispute that the impugned Annexure P6-Memorandum date 13.04.1999 and the Annexure P7-Memorandum dated 29.02.2000 were issued by the 2nd Respondent-ITPO, in pursuance of the Notifications dated 16.02.1998 and 16.09.1998 of the 1st Respondent-Ministry of Commerce. It is also not in dispute that the Notifications of the 1st Respondent with regard to fixation/modification/revision of Foreign Allowance are binding on the 2nd Respondent-ITPO and its employees, including the applicant. This Tribunal in its common order dated 29.08.2000 in OA No.188/1999 and OA No.812/1999 as upheld by the Hon'ble High Court in WP(C) No.6750/2001 dated 24.04.2006, upheld the validity of the

Notifications dated 19.02.1998 and 16.09.1998 while declaring the same can be given effect only prospectively.

15. Therefore, the impugned Annexure P6 Memorandum, dated 13.04.1999 which was issued in terms of the aforesaid Notifications, cannot be interfered, for parity of reasons. Equally, in our considered view, the impugned Memorandum dated 13.04.1999 can only be given prospective effect for the same reasons, i.e., with effect from 13.04.1999 only and not w.e.f. 01.01.1998.

16. As rightly pointed out by the learned counsel for the respondents, the applicant does not fall in any of the categories of employees under Para 12 of the Judgement of the Hon'ble Apex Court in **Rafiq Masih** (supra).

17. In the circumstances and for the aforesaid reasons, the TA is partly allowed, and the respondents are directed to give prospective effect to the Annexure P6 Memorandum dated 13.04.1999, i.e., w.e.f. 13.04.1999, and to recalculate the amount of excess drawn Foreign Allowance, and refund the balance amount, if any, to the applicant within a period of three months from the date of receipt of a copy of this order. Pending MAs, if any, stand disposed of. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)