

**Central Administrative Tribunal
Principal Bench**

OA No. 4412/2013

Order reserved on: 02.01.2017

Pronounced on: 15.02.2017

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Mr. V. N. Gaur, Member (A)

Virendra Sahai Bhatnagar
R/o E-195, Bathla Apartments,
43 I.P.Extension, New Delhi.

... Applicant

(By Advocate: Mr. A.K.Ojha)

Versus

1. Secretary (R)
Cabinet Sectt.
Bikaner House Annexe
Shahjahan Road,
New Delhi-110001.
2. Secretary,
Ministry of External Affairs,
South Block, New Delhi-110011.

... Respondents

(By Advocate: Mr. Satish Kumar)

ORDER

Hon'ble Mr. V.N. Gaur, Member (A)

The applicant is a retired officer of R&AW claiming the arrears of servant allowance for the period he was posted in a mission on a cover assignment from 18.08.2003 to 20.11.2006.

2. In brief, the facts of the case are that the applicant was posted on deputation as Senior Field Officer in Ministry of External Affairs and thereafter further sent on a cover assignment from 18.08.2003

to 20.11.2006 on a post which was lower than what he was holding in the headquarters. The applicant was paid foreign allowance admissible to the post of Second Secretary excluding the local servant component whereas he was eligible for the servant allowance as admissible to the Second Secretary level officer in the mission equivalent to Senior Field Officer in the headquarters. The rate of foreign allowance is determined by various orders of respondent no.2 (Annexure-7 colly. of the OA). The applicant had submitted a representation to the respondents on 29.08.2012 and 15.01.2012 for payment of aforesaid arrears and as there was no response from the respondents, he sent a legal notice on 09.05.2013 and that also remains unreplied. The applicant has, therefore, filed the present OA.

3. Learned counsel for the applicant submitted that the issue raised in the present OA is no more *res integra* as a number of orders have been passed by this Tribunal on the subject and these have been upheld by the higher judicial fora. Learned counsel relied on the order of this Tribunal in **Vinod Kumar Jain vs. Union of India**, OA No.929/2008 decided on 05.03.2009, OA No.4335/2013 along with OA No.4365/2013 decided on 11.02.2015 and OA No.4518/2013 decided on 23.07.2016.

4. Learned counsel for the respondents, on the other hand, raised the preliminary objection of delay and laches stating that the

cause of action for the applicant arose in the year 2006 when he returned from his posting abroad while the applicant has filed this OA in the year 2013. Learned counsel also submitted that in terms of various instructions of the Department, the applicant has already been paid foreign allowance and arrears as admissible under the rules. Only difference pertaining to the entitlement of servant allowance equivalent to the post of Second Secretary remains. This matter has been submitted to the Ministry of Finance with the recommendation of the department, and therefore, respondents are not in a position to pay the claim of arrears till the final decision is taken in the matter. Learned counsel referred to Para 4.10 his counter which reads as under:

“4.10 Keeping in view the functional requirements of the Organisation, the Department has reviewed its stand for making payment on the basis of DFA and the proposal in this regards is presently under submission to Ministry of Finance. As of now, the Department is not equipped to pay the arrears on the basis of DFA as being claimed by the affected officers till the matter is decided by Ministry of Finance.”

5. Learned counsel for the respondents, however, admitted that the judgments cited by the learned counsel for the applicant have already been implemented.

6. We have heard the learned counsel for the parties and perused the record. It is not disputed that the case of the applicant is similar to OA No.4335/2013, OA No. 929/2008 and OA No.4518/2013. A perusal of those orders of the Tribunal would

show that the respondents had raised the objection of delay and laches and also shown their inability to grant the arrears of servant allowance till the matter was decided by the Ministry of Finance. The Tribunal had considered and dealt with these arguments and finally allowed those OAs. In OA No.4335/2013 along with OA No.4365/2013 and OA No.4518/2013 interest was also allowed on the delayed payment. The order in OA No. 4335/2013 along with OA No.4365/2013 was challenged before the Hon'ble High Court in WP (C) no.10190/2015 and 10260/2015 which was decided on 22.02.2016. The Hon'ble High Court modified the order of the Tribunal to the extent that the interest payable on the arrears of servant allowance would be restricted to period one year prior to the date of representation made by the applicant at the rate applicable to GPF deposits. This order of the Hon'ble High Court of Delhi was challenged before the Hon'ble Supreme Court in SLP no.12797/2016 which was decided on 01/08/2016 by upholding the order of the High Court except that the rate of interest awarded on the arrears was reduced to 6 per cent per annum.

7. Accordingly, in view of the facts that respondents have not disputed the averment that the case of the applicant is similar to the applicants in the above mentioned OAs, the present OA is allowed. The respondents are directed to pay the arrears of servant allowance to the applicant in terms of the order of this Tribunal in OA No.4518/2013 along with the interest @6% for the period one

year prior to the date of his first representation dated 29.08.2012 till the date of actual payment of the arrears. No costs.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

15th February, 2017

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