

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.784/2017

New Delhi, this 28th day of August, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Mr. Amiya Chandra
Aged about 54 years
S/o Mr. Chandrika Prasad
Residing at D2/183, Kaka Nagar,
Subramanium Bharti Marg,
New Delhi – 110 003.

Presently working as Joint Director,
Foreign Trade,
Office of Additional DGFT, New Delhi
Department of Commerce,
Ministry of Commerce & Industry,
New Delhi.

...Applicant

(By Advocate: Ms. Saumya Gupta)

Versus

1. Union of India through
Secretary,
Ministry of Commerce & Industry,
Department of Commerce,
Udyog Bhawan, New Delhi.
2. Secretary,
Ministry of Finance,
Department of Expenditure,
Government of India. ...Respondents

(By Advocate: Sh. Manjeet Singh Reen)

O R D E R (Oral)

By Ms. Aradhana Johri, Member (A):

Sh. Amiya Chandra, the applicant, is an officer of the Indian Trade Service, a Group-A Civil Service, under the Ministry of Commerce. He was given Non-Functional Upgradation [hereinafter referred to as 'NFU'] to SAG Grade. He

began drawing transport allowance @ Rs.7000/- per month plus DA from February, 2011. However, vide order No.G-25/1/2016-CI dated 09.05.2016, the respondent no.1 (Department of Commerce, Govt. of India) conveyed that pursuant to audit para dated 06.04.2016 of the Internal Audit Wing (HQ) for the years 2013-14 and 2014-15, only officers of the rank of Joint Secretary and above who are entitled to use of staff car for journeys from residence to office and back are eligible to draw transport allowance @ Rs.7000/- pm plus DA. Hence, other officers not having the rank of Joint Secretary and drawing the Grade Pay of Rs.10,000/- and who have not been provided the facility of staff car shall be eligible to draw transport allowance @ Rs.3200/- pm plus DA as per Department of Expenditure's OM No.21(2)/2008-EII(B) dated 29th August, 2008 and 5th March, 2009. Accordingly, the excess amount of transport allowance already paid began to be deducted from several officers of the department, including the applicant.

2. From a perusal of the case file, it appears that the Tribunal vide its order dated 26.05.2017 stayed the recovery from the applicant till further orders.

3. It is the contention of the applicant that since he got NFU, he should be getting all the benefits of the Joint Secretary Grade. He has challenged the Office Memorandum No.25/1/2016-C-I dated 09.05.2016 issued by the Department of Commerce, and OM No.21(2)/2008-E.II (B) dated 19.08.2016

issued by the Department of Expenditure stating that there is non-application of mind and also that they apply only to the deputationists. He has also alleged that he was not given any notice before effecting the recovery. Accordingly, he has sought that recovery should not be effected from him.

4. The respondents have averred that NFU in Pay Band-4 with Grade Pay of Rs.10,000/- in only a financial upgradation and not a promotion to the SAG. Therefore, the applicant is not entitled to draw transport allowance @ Rs.7000/- p.m. plus DA thereon but is entitled to transport allowance @ Rs.3200/- p.m. plus DA. They have further stated that DoP&T vide its OM No.18/26/2011-Estt (Pay-I) dated 06.02.2014 on the basis of law declared by the Hon'ble Supreme Court and various other Courts had advised the Ministries/Departments to deal with the issue of wrongful/excess payment on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc., and to take corrective action. Accordingly, Ministries/Departments had been advised to effect the recovery in all cases of overpayment barring few exceptions of extreme hardships. No waiver of recovery may be allowed without the approval of Department of Expenditure.

5. Heard Ms. Saumya Gupta, learned counsel for the applicant and Sh. Manjeet Singh Reen, learned counsel for the respondent no.1.

6. From a perusal of DOP&T OM No.AB.14017/64/2008-Estt.(RR) dated 24.04.2009, it appears that this is a purely non-functional upgradation, personal to the officer and it would not bestow any right to the officer to claim promotion or deputation benefits based on non-functional upgradation in such a manner. This is further clarified in Department of Expenditure's OM No.21(2)/2008-E-II(B) dated 05.03.2009 that officers belonging to All India/Group-A Services, who are Directors/ equivalent, notwithstanding the fact that they may have been granted NFU to the next higher grade pay of Rs.10,000/- under the scheme of grant of NFU to officers of All India Services/Organized Group-A Services in PB-3 and PB-4, will continue to be entitled for transport allowance @ Rs.3200/- p.m. plus DA thereon. Though this order speaks of officers at the Centre on deputation basis but, no doubt, it would be of universal application since having different scales for deputationists and non-deputationists would be discriminatory.

7. Ample clarification has been given in Department of Expenditure's OM No. 21(2)/2016-E.II(B) dated 19.08.2016 which is in response to clarifications sought from various departments. This OM refers to the Tribunal's order dated 13.05.2014 passed in OA No.4062/2013 in the case of *Shri Radhacharan Shakiya & Others vs. Union of India & Ors.* wherein it was held that the applicant was not entitled to draw transport allowance @ Rs.7,000/- p.m. plus DA thereon. This order has been upheld by the Hon'ble High Court of Delhi in

their order dated 03.09.2014 passed in Writ Petition (Civil) No.3445/2014 filed by Shri Radhacharan Shakiya & Ors. In light of this, the principle is settled that the entitlement for transport allowance is only @ Rs.3,200/- p.m. plus DA and not for Rs.7,000/- p.m. plus DA.

8. As far as the question of further recovery being stayed is concerned, the decision of the Hon'ble Supreme Court in the case of *Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors.* [2012 AIR SCW 4742], regarding issue of wrongful/excess payment, has been quoted in DoP&T OM No.18/26/2011-Estt.(Pay-I) dated 06.02.2014. In the said case, Hon'ble Supreme Court has given very clear directions regarding the treatment of various categories of excess payments and rectifications to be made in these.

9. There have also been several orders by this Tribunal including the order dated 19.01.2015 passed in OA Nos.4203, 4260 and 4262/2013 in the case of *A.K. Srivastava vs. North Municipal Corporation Delhi*, whereby directions have been given to the respondents not to recover any excess payment made to the applicants therein as transport allowance @ Rs.7,000/- per month.

10. In the interest of equity and natural justice, we take the similar view in this matter and dispose of this OA with a direction to the respondents not to effect any further recovery from the applicant. Though not specifically mentioned in the relief clause, but the learned counsel for the applicant

vehemently argued that the respondents be directed to refund the amount already recovered from the applicant on account of over payment as transport allowance @ Rs.7000/- per month. As the applicant is an officer of Group-A Service and does not come under the category of extreme hardship, therefore, we do not consider it desirable to direct the respondents for refunding the amount to the applicant already recovered from him on account of overpayment.

11. With the above remarks, the OA stands disposed of. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(L.Narasimha Reddy)
Chairman

/Ahuja/