

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD**

Original Application No.61/2018 With M.A. No. 94/2018

Date of Reserve: **04.02.2019**

Date of Pronouncement: **16.04.2019**

CORAM:

**Hon'ble Ms. Archana Nigam, Member (A)
Hon'ble SH. M.C.Verma, Member (J)**

Yogesh Ochhavlal Shah aged about 62 years, S/o Late Shri Ochhavlal Shah, Occupation: retired Superintendent of Customs, residing at: 29, Satyam Crystal, Opposite Sindhu Bhawan, Bodakdev, Ahmedabad–380054. .. **Applicant** [By Sh. Rahul Sharma, Advocate]

Versus

The Principal Commissioner, Customs, Custom House, Near All India Radio, Navrangpura, Ahmedabad – 380 009. **Respondents**

[By Ms. F.D.Patel, Advocate]

O R D E R

Per: M.C.Verma, Judicial Member

1. Instant O.A. has been preferred to quash and set aside impugned Memorandum/Order, namely Memorandum, F.No. II/08 (Vig.) 05/2016 dated 22.03.2016 & & F.No. II/08 (Vig) 05/2016/2111 dated 4.12.2017 with further prayer to direct the respondent to refund the recovered amount of Rs. 44,397/- to the applicant, the amount (which comprises of amount of Rs. 28380/-, paid to the applicant on 28/12/13 as Composite Transfer Grant and interest thereon) with interest @ 9%.
2. Needless to say levelling charges of misconduct that applicant had availed Composite Transfer Grant, not having changed the residence from Ahmedabad to Surender Nagar, Charge Memorandum, F.No.II / 08 (Vig) 05 / 2016 dated 22.3.2016 has been issued to the applicant, Inquiry officer submitted its report, to the Disciplinary Authority, copy of Inquiry report was served to applicant by Disciplinary Authority, reply was filed by the

applicant, Disciplinary Authority wrote to Director General Vigilance , Custom & Central Excise Ahmadabad for second stage advice and the Disciplinary Authority also, vide order, F.No.II /08 (Vig)05/2016/2111 dated 4.12.2017, directed de novo Disciplinary Proceedings, appointing new inquiry officer.

3. The facts, as has been set out by the applicant in his OA are that he joined the service as Inspector of Customs at Surat, on 30.08.1979, was promoted as Superintendent on 1.1.1996 and that while was posted at Ahmedabad he, on 30.4.2010 was transferred to Central Excise Commissionerate, Rajkot. That after relieving, on 13.5.2010 he joined at Rajkot on 26.05.2010. That on 1.6.2010 he was transferred from Rajkot to Bhavnagar and thus he joined his duties as Superintendent, Area Range (AR)-III at Surendranagar. That after joining his duties as Superintendent, Area Range (AR)-III at Surendranagar , he, for some days stayed at Avadh Park B, 80 Feet Road, Surendranagar and submitted a composite transfer grant bill on 21.6.2010, copy Annex.A/2, for Rs. 28,380/- and in transfer grant bill he showed his address of Avadh Park. That after staying for some days at Avadh he started to stay with his friend, at 12, Parashwanath Park, Jintan Road, Surendranagar and accordingly informed the department on 23.6.2010, vide letter copy Annex.A/3.

3.1 It is pleaded further that on 8.10.2010 he was transferred back to Ahmedabad, was posted, vide order dated 16.11.2010, as Superintendent, Service Tax, Ahmedabad and he joined as such on 3.12.2010. That after about 2 ½ years, on 28.12.2013, he was paid amount of Rs.28,380/- against composite transfer grant bill submitted by him on 21.6.2010.

3.2 It is also pleaded that applicant had to superannuate on 31.3.2016 but on 25.1.2016 statement of one Shri H.B.Kundal, the then Inspector,

Central Excise, Jamnagar Division, Rajkot Commissionerate, was recorded and on 22.3.2016 applicant was served with Charge sheet for his alleged misconduct, relating to composite transfer grant bill of 2010.

3.3 That Disciplinary proceedings were initiated; no witness was examined and the charges, in inquiry report completed in April/August 2016 were held to be proved. That for no plausible reason, the Inquiry Officer submitted his Inquiry Report to the Disciplinary Authority on 28.6.2017, after a delay of nearly one year.

3.4 That applicant, on 12.7.2017 submitted his reply qua Inquiry Report and thereafter, respondents wrote to Director General of Vigilance, Customs & Central Excise, Ahmedabad seeking 2nd Stage advice, on 21.9.2017 but the record was returned stating that Disciplinary Inquiry was not conducted as per CCS (CCA) Rules. Applicant pleaded in the OA that disciplinary proceedings were then started de novo vide impugned order dated 4.12.2017 (Annexure-A/1) by appointing a different Inquiry Officer to conduct the Disciplinary proceedings. That preliminary hearing in this de novo disciplinary proceedings took place on 29.12.2017.

3.5 Applicant referring the Rules, has pleaded that Travelling Allowances Rules were changed vide OM dated 17.4.1998 (Annexure A/4) wherein erstwhile lump sum grant and packing allowance on transfer has been replaced by a Composite Transfer Grant and a clarification in respect of OM dated 17.4.1998 has been issued, vide OM dated 26.2.2001 (Annex. A/5) providing that where no change of residence is involved, no Composite Transfer Grant would be allowed but T.A. rules had been amended further vide OM dated 23.9.2008 wherein no rider/ restriction on the claim of Composite Transfer Grant, qua change of residence, as was placed by the OM dated 26.2.2001 is there. That subsequently also few more OMs were issued

clarifying various aspect of the OM 23.9.2008, one such OM is dated 8.6.2010, annexed as Annexure-A/7.

3.6 It is also in the pleading of the applicant that during his tenure at Surendranagar Sh.Priyesh Bheda, the then Assistant Commissioner of Customs developed hostility towards him. That said Sh. Bheda was arrested by the Sion Police Mumbai for charges of cheating and forgery. That after transfer of the applicant from Surendranagar, Sh. Bheda even tried to coerce other employees to make false complaints against the applicant and this fact is evident from complaint, dated 16.3.2011 (Annexure-A/8), made jointly by employees of Central Excise Division, Surendranagar.

4. Respondents have filed their reply stating that applicant had made a false declaration in TTA claim dated 21.6.2010 about his residential address at Surendranagar, wrongly claimed travelling allowance on his transfer from Ahmedabad to Surendranagar, violated the conditions prescribed under OM dated 26.2.2001 and 23.9.2008 issued by the Government of India and has committed gross misconduct. That he has failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant and therefore has contravened provisions of Rule 3 of the CCS (Conduct) Rules, 1964. It is further pleaded that none having name Y.O.Shah was an officer with Central Excise department residing in the Avadh Park, 80 Feet Road, Surendranagar. Respondents have also pleaded that applicant would have put his claim before the Inquiry Officer so that said fact can be verified during the inquiry proceedings.

4.1 As regards the OM on Composite Transfer Grant, referred by the applicant, it is categorically stated in reply by respondents that the OM dated 26.2.2001 is in nature of clarification and not issued as amendment to the OM 17.4.1998, as stated by applicant, thus, effect of OM dated 26.2.2001 is

not consequential to OM dated 17.4.1998 only and it is very well applicable for subsequent OMs governing the Composite Transfer Grant. It is pleaded that as per OM dated 17.4.1998 in case of transfer within 20 kms. one third of basic pay plus DA is admissible only, when there is actual change in the residence. That in no case composite transfer grant is admissible to the applicant. Respondents have reiterated that applicant has mentioned wrong address on the TA claim so as to avail Composite Transfer Grant without shifting residence in actual and resultantly TTA was inadmissible in view of clarification issued by OM dated 26.2.2001.

4.2 Further pleading in reply is that it is far from truth that inquiry officer has concluded the inquiry in August 2016, the applicant vide his letter dated 13/2/17 did submit that his case be decided on the basis of defence reply dated 5/10/16 and hence inquiry cannot be said to have closed in August 2016. The Disciplinary Authority was duty bound to consider all evidence relevant to the case, and it is incorrect, the matter was at inquiry stage and the Disciplinary Authority has not taken final view. As regards issuance of letter dated 23.6.2010 by the applicant, it is submitted by the respondents that the said letter only bear stamp of inward and do not bear any serial number or signature of receiving officer.

4.3 Respondents have lastly averred that applicant never challenged the recovery of amount of Composite Transfer Grant which was recovered from his salary in April 2016 and it impliedly speaks that applicant made a false declaration of his residential address in the TTA Claim filed by him on 21.6.2010 to take undue monetary advantage. Respondent asserted that the charge memorandum was issued without prejudicial mind and it cannot be construed as such. Respondents' therefore prayed that O.A. being without merits should be dismissed with costs.

5. Upon completion of pleadings, matter was admitted for final hearing. We have heard learned counsel Sh. Rahul Sharma, Adv., who appeared for applicant as well learned counsel Ms. F.D.Patel Adv., who appeared for respondents and have perused the record minutely.

6. At the threshold, before advertiring upon merits of OA, it is significant to note that during pendency of OA applicant by way of M.A. No. 94/2018 has prayed to take on record, Annexure A-1 colly, the Office Memorandum F. No.19018/1/E-IV/2001 dated 26.02.2001, issued by the Department of Expenditure, Ministry of Finance. It has been pleaded in the MA that said Office Memorandum was not provided to the applicant and it was not available on internet also so the applicant could procure it under RTI Act later on. Reference of said Office Memorandum is there in Annexure – III. The MA No. 94/2018 is allowed and stands disposed of accordingly. The Office Memorandum F. No.19018/1/E-IV/2001 dated 26.02.2001 is taken on record.

7. Sh. Rahul Sharma, learned counsel for applicant urged that Composite Transfer Grant pertains to transfer of applicant made on 1.6.2010, applicant submitted composite transfer grant bill for Rs. 28,380/- on 21.6.2010 and showed his address of Avadh Park as after joining at Surendernagar as he for some days stayed at Avadh Park B, 80 Feet Road, Surendranagar. That after staying for some days at Avadh Park applicant started to stay with his friend, at 12, Parashwanath Park, Jintan Road, Surendranagar and accordingly he informed the department on 23.6.2010, vide letter copy Annex.A/3. Ld. Counsel contended that no false information was given by the applicant.

8. Learned counsel also urged that Travelling Allowances Rules were changed vide OM dated 17.4.1998 (Annexure A/4) wherein erstwhile lump

sum grant and packing allowance on transfer has been replaced by a Composite Transfer Grant and though a clarification in respect of OM dated 17.4.1998 was issued, vide OM dated 26.2.2001 (Annex. A/5) providing that where no change of residence is involved, no Composite Transfer Grant would be allowed but T.A. rules had been amended further, vide OM dated 23.9.2008 wherein no rider/ restriction on the claim of Composite Transfer Grant, qua change of residence, as was placed by the OM dated 26.2.2001 is there. Hence the applicant was entitled to Composite Transfer Grant even without actual change of residence so no motive for false declaration otherwise could be there.

9. Learned Counsel argued further that with mala fides or extraneous considerations amount of Rs. 28380/-, paid to the applicant on 28/12/13 as Composite Transfer Grant with interest thereon, totalling to Rs. 44,397/- was recovered from applicant's salary of April 2016 and being not satisfied with the same respondent arbitrarily charge-sheeted him 9 days before his superannuation, for his alleged misconduct, relating to composite transfer grant bill of 2010.

10. Learned Counsel also argued that no witness was examined during disciplinary inquiry but surprisingly in inquiry report charges were held to be proved and when applicant, on 12.7.2017 submitted his reply qua Inquiry Report then Disciplinary Authority wrote to Director General of Vigilance, Customs & Central Excise, Ahmedabad seeking 2nd Stage advice but said Authority returned the record stating that Disciplinary Inquiry was not conducted as per CCS (CCA) Rules. That in such circumstances it was incumbent upon Disciplinary Authority to drop the charges but Disciplinary Authority dehors of Rules, appointed a different Inquiry Officer to conduct de novo inquiry ignoring this fact as well that matter relates to transfer of year 2010 and already ample delay had been there. He to fortify his

submission qua delay etc. has placed reliance on decisions titled (1) *UOI Vs. B.A. Dhayalan* 2012 SCC On Line Del 3275 & (2) *State of A. P. Vs. N. Radhakishan* (1998) 4 SCC 154.

11. Learned Counsel urged to quash the impugned orders, namely Memorandum, F.No. II/08(Vig.)05/2016 dated 22.3.2016 & & F.No. II/08(Vig)05/2016/2111 dated 4.12.2017 and to direct the respondent to refund the recovered amount of Rs. 44,397/-, with interest to the applicant.

12. Ms. F.D. Patel, learned counsel for respondents disputed the submissions that charge-sheet or impugned orders are suffering from malefice and urged that applicant had made a false declaration in TTA claim about his residential address, wrongly claimed travelling allowance on his transfer from Ahmedabad to Surendranagar, violated the conditions prescribed under OM dated 26.2.2001, has committed gross misconduct and failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant and therefore he was rightly charge-sheeted and the Composite Transfer Grant paid to him was recovered. She also urged that Disciplinary Authority has appointed Inquiry Officer to conduct de novo inquiry and the applicant have opportunity to put his claim before the Inquiry Officer who will have to dig out the truth during the inquiry proceedings. She urged that the O.A. having no merits and deserve dismissal.

13. We have carefully considered the submissions of the learned Counsel appearing for the applicant/respondents in the light of the record available with us. It is a case where propriety, legality & sustainability of charge-sheet as well act of Disciplinary Authority appointing a different Inquiry Officer to conduct de novo inquiry after first Inquiry Officer had submitted its report and applicant had submitted his reply qua that Inquiry Report

deserves scrutiny. Charge-sheet dated 22.03.2016 was issued against the applicant stipulating following allegations: -

“ARTICLE OF CHARGE-1

That Shri Y.O. Shah, during the period from June 2010 to December 2010 while functioning as Superintendent of Central Excise, Surendranagar Division acted in a manner unbecoming of government servant in as much as that ;-

2. During his tenure at Surendranagar Division, on 21.06.2010, Shri Y.O. Shah, submitted a claim for Rs. 28,380/- for travelling allowance on transfer. Shri Y.O. Shah in his aforesaid claim had declared his old address at Ahmedabad as C/3, Palyal Apptt., 20, Milanpar, Navrangpura, Ahmedabad – 380 009 and new address as “Avadh Park-B, 80 feet Road, Surendranagar”. Along with the aforesaid claim, as required, Shri Y.O. Shah had signed a declaration certifying that the information as shown in the claim is correct to the best of his knowledge and belief. In the instant case as the transfer involved change of station located at a distance of or more than 20 kilometers, accepting the information furnished by Shri Y. O. Shah as correct, the aforesaid claim was sanctioned and paid to him.

3. As per the O.M. No. 19030 / 3 / 2008. E.IV dated 23.09.2008 of Govt. of India, Ministry of Finance, Department of Expenditure, a composite transfer grant equal to one month's pay is granted in case of transfer involving change of station located at a distance of or more than 20 kilometers from each other. Further, vide O.M. No. 19018 / 1/E.IV / 2001 dated 26.02.2001, it was clarified that no transfer grant is to be allowed where no change of residence is involved. Thus the claim for composite transfer grant is admissible to the officer who is transferred in public interest to another station beyond 20 kilometers necessitating change of residence and where there is no change of residence, no composite transfer grant is to be allowed.

4. It has now come to notice that Shri Y.O. Shah did not shift his residence upon his transfer from Ahmedabad to Surendranagar and he did not stay at Surendranagar during this posting in Surendranagar Division. By claiming transfer TDA without shifting his residence and without staying in Surendranagar, Shri Y.O. Shah has made a false declaration of his residential address at Surendranagar for monetary gain and wrongly claimed transfer TA which was admissible only if the change of residence was involved. On his transfer to Surendranagar, Shri Y.O. Shah did not shift his residence and during this tenure in Surendranagar he was not staying in Surendranagar and this clearly emerges from the following paras as discussed below:

- a). xxxx xxxx xxxx xxxx*
- b). xxxx xxxx xxxx xxxx*
- c) xxxx xxxx xxxx xxxx*
- d) xxxx xxxx xxxx xxxx*
- e) xxxx xxxx xxxx xxxx*

f) xxxx xxxx xxxx xxxx

4. *From the foregoing it appears that Shri Y.O. Shah, Superintendent claimed the TTA on transfer in violation of provisions of G.I. M.F. O.M. No. 19018/1/E.IV/2001 dated 26.02.2001 reiterated vide O.M. No. 19030/3/2008. E.IV dated 23.09.2008 of Govt. of India, Ministry of Finance, Department of Expenditure, in spite of the fact that he did not shift his residence upon his transfer from Ahmedabad to Surendranagar and did not stay at Surendranagar. He also made a false declaration of his address at Surendranagar to claim the TTA which was entitled to him only if the change of residence was involved.*

5. *By above acts of omission and commission, Shri Y.O. Shah, Superintendent while posted at Central Excise, Surendranagar Division, failed to maintain absolute integrity and acted in a manner unbecoming of a government servant and violated the provisions of Rule 3 (1) (i) and Rule 3 (1) (iii) of the Central Civil Services (Conduct) Rules, 1964, as mentioned above.*

Sd/-

Ajay Jain, Principle Commissioner"

14. It has been urged, on behalf of respondents that the charge sheet was issued on wrong notion that applicant wrongly claimed travelling allowance on his transfer from Ahmedabad to Surendranagar and violated the conditions prescribed under OM dated 26.2.2001 or has committed misconduct or failed to maintain integrity or acted in a manner unbecoming of a Government servant. It is the contention of applicant that previously as per OM dated 26.2.2001 (Annex. A/5) no Composite Transfer Grant was permissible without change of residence but after VI CPC T.A. rules had been amended and vide OM dated 23.9.2008 no rider/ restriction on the claim of Composite Transfer Grant, qua change of residence, as was placed by the OM dated 26.2.2001 had remained there.

15. It is true that Travelling Allowances Rules were changed vide OM dated 17.4.1998 (Annexure A/4) wherein erstwhile lump sum grant and packing allowance on transfer has been replaced by a Composite Transfer Grant and though a clarification in respect of OM dated 17.4.1998, vide OM dated 26.2.2001 (Annex. A/5) stipulates that where no change of residence is involved, no Composite Transfer Grant would be allowed but T.A. rules

had been amended further, vide OM dated 23.9.2008 wherein no rider/restriction on the claim of Composite Transfer Grant, qua change of residence, as was placed by the OM dated 26.2.2001 is there. OM dated 23.9.2008, F. No. 19030 /3 /2008 – E.IV is on the subject of Travelling Allowance Rules – Implementation of the Sixth Central Pay Commission, and conveyed the sanction to the modifications in the Traveling Allowances Rules as set out in the Annexures attached to it. The Annexure attached also speaks that provision made therein will be applicable w.e.f. 1.9.2008 and will be in suppression of S.R. 17 and G.O.I, M.F. No. 10/2/98 – IC & 19030 / 2 / 97 – E.IV dated 17.4.1998. Clause B of para 3 of said Annexure deals with Transfer Grant and Packing Allowances and reads as under: -

"(i) The Composite Transfer Grant shall be equal to one month's pay as defined in para 3 of this O.M. in case of transfer involving a change of station located at a distance of or more than 20 km from each other.

(ii) In cases of transfer to stations which are at a distance of less than 20kms. from the old station and of transfer within the same city, one third of the composite transfer grant will be admissible, provided a change of residence is actually involved.

(iii) xxxx xxxx xxxx"

16. It is judicial noticeable fact that distance between Ahmedabad and Surendernagar is more than 20 Kms and hence subclause (i) would be applicable. The applicant was entitled to Composite Transfer Grant even without actual change of residence so it can't be said that applicant wrongly claimed travelling allowance on his transfer from Ahmedabad to Surendranagar or has committed misconduct or failed to maintain integrity or acted in a manner unbecoming of a Government servant. No motive for false declaration could also be there. The conditions that where no change of residence is involved, no Composite Transfer Grant would be

allowed, prescribed under OM dated 26.2.2001 has also become redundant after issuance of OM dated 23.9.2008. The charge sheet thus was issued on wrong notion that applicant wrongly claimed travelling allowance on his transfer from Ahmedabad to Surendranagar.

17. Learned Counsel argued further that with mala fides or extraneous considerations amount of Rs. 28380/-, paid to the applicant on 28/12/13 as Composite Transfer Grant with interest thereon, totalling to Rs. 44,397/- was recovered from applicant's salary of April 2016 and being not satisfied with the same respondent arbitrarily charge-sheeted him 9 days before his superannuation, for his alleged misconduct, relating to composite transfer grant bill of 2010.

18. Further consequent to show cause notice of Disciplinary Authority when applicant, after inquiry report had submitted his reply qua Inquiry Report and Disciplinary Authority had sought 2nd Stage advice, at that stage the only permissible course open to Disciplinary Authority was to pass final order and not to appoint a different Inquiry Officer to conduct de novo inquiry. The Disciplinary Authority also lost sight of the fact that matter relates to transfer of year 2010, already ample delay had been there and applicant has also superannuated.

19. We have already found that applicant was entitled to Composite Transfer Grant even without actual change of residence so it can't be said that applicant wrongly claimed travelling allowance on his transfer from Ahmedabad to Surendranagar and therefore the recovery affected was illegal.

20. In the result and in view of the foregoing discussion, impugned orders, namely Memorandum, F.No. II/08 (Vig.) 05 / 2016 dated 22.3.2016 & F.No. II/08(Vig)05/2016/2111 dated 4.12.2017 (Annexure A-1) are

quashed and the respondent are directed to refund the recovered amount of Rs. 44,397/-, with interest @ 7% per annum to the applicant within 6 weeks. The interest shall be payable from date of recovery.

21. With aforesaid direction and observation, the OA is allowed. There shall be no order as to costs. Misc. Application(s), if any is pending also stand disposed of

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)

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