

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/869/2013

Date of Reserve:01.03.2019  
Date of Order: 27.03.2019

CORAM:  
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Basudev Mallick, aged about 52 years, S/o. late Bhramarabara Mallick, at present working as Director (Net work Technology), Office of the Dy.Director General (NT), BSNL RTTC building, Bhubaneswar-751 007, Resident of Plot No.14/11, Road-2, Lane-iv, Jagannath Vihar Barmunda, Bhubaneswar-3, District-Khurda.

...Applicant  
By the Advocate(s)-M/s.A.K.Mohanty  
D.K.Mohanty  
P.K.Kar

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Telecommunication, Sanchar Bhavan, 20, Ashoka Road, New Delhi-110 001.
2. The Dy.Director General, Term Cell, Department of Telecommunications, Door Sanchar Bhavan, 4<sup>th</sup> Floor, Bhubaneswar-751 002.
3. The Controller of Communication Accounts, Odisha Telecom Circle, PMG Building, 4<sup>th</sup> Floor, Bhubaneswar-751 001.

...Respondents

By the Advocate(s)-Mr.P.K.Mohanty  
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, Sri Basudev Mallick is presently working ad Director (Network Technology), Office of the Deputy Director General (NT), BSNL, Bhubaneswar. His grievance is directed against OM No.1-14/2013-PB(Part) dated 24.10.2013(A/3) issued by the Department of Telecommunications, Government of India, New Delhi whereby and whereunder the Transport Allowance drawn by him @ Rs.7000/- plus admissible D.A. thereon has been reduced to Rs.3200/- plus admissible D.A. thereon with a direction to effect

recovery in case Transport Allowance at a higher rate than Rs.3200/- plus admissible DA thereon has been paid to him, inter alia, on the ground that the officers of the level of Director in DoT and its field Offices who have been granted non-functional upgradation (Grade Pay Rs.10,000/-) are not entitled to draw Transport Allowance @ Rs.7000/- plus admissible D.A. thereon since they do not fulfil the eligibility conditions as enumerated in the Ministry of Finance O.M.No.21(1)/2008-E-II(B) dated 29.08.2008. Aggrieved with this, the applicant has approached this Tribunal in the present O.A. seeking for the following reliefs:

- i) To allow the Original Application and to quash the Office Memorandum of the Department of telecom dated 24.10.2013 (as per Annexure-A/3) being illegal, irregular and void in the eye of law.
- ii) To be pleased to pass orders that no recovery can be made from the applicant towards the excess payment of Transport Allowance made to him if any in accordance with the well settled law decided by Hon'ble Apex court in a series of cases.
- iii) To issue any other order or orders, direction or directions as it deems fit and proper in the interest of justice, for the benefit of the applicant.

2. Per contra, respondents have filed a detailed counter. They have submitted that since the applicant was not entitled to Transport Allowance @ Rs.7000/- plus admissible D.A. thereon the same has rightly been withdrawn by granting them Transport Allowance @ Rs.3200 with admissible D.A. thereon and consequently, excess amount drawn, has been directed to be recovered. According to respondents, O.A. being devoid of merit is liable to be dismissed.

3. Heard the learned counsels for both the sides and perused the records. During the course of hearing, learned counsel for the applicant drew the attention of this Tribunal to the order dated 03.09.2014 of the Hon'ble High Court of Delhi at New Delhi in W.P.(C) No.3445/2014 (Radhacharan Shakiya,

Director/SE & Ors. Vs. Union of India & Ors.) and submitted that the since issue to be adjudicated in the present O.A. has already been set at rest, similar orders may be passed in the present O.A.

4. Perused the aforesaid orders of the Hon'ble High Court of Delhi at New Delhi. It reveals therefrom that challenging the legality and validity of Office Memorandum dated 24.10.2013, which is impugned in the instant O.A. and called in question vide A/3, a group of applicants belonging to Organized Group-A services of Indian Telecom & P & T Services serving as Director/SE at different places in the Department of Telecommunication(DoT) had approached the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.N.4026/2013. The said O.A. was disposed of vide order dated 13.05.2015 by the CAT, Principal Bench in the following terms:

"10. After going through the relevant records and arguments of both sides as also the judgments cited, it is clear that there is no error committed by the respondents in not allowing rs.7000/- per month to the applicants. The 1994 circular made a specific provision for the officers of the rank of Joint Secretaries and above, which is not applicable to other officials just on the ground that they draw the same Grade Pay. Therefore, the respondents had to issue a clarification in 2013 also. The Hon'ble Supreme Court in Chandi Prasad Uniyal (supra) has also held that recoveries can be made in such circumstances and, therefore, the order dated 24.10.2013 directing recovery of transport allowance paid in excess is valid in law.

11. In view of above, we are not inclined to interfere in this matter. The OA is dismissed. No costs".

5. Being aggrieved, the applicants in that O.A. moved the Hon'ble High Court of Delhi at New Delhi which formed the subject matter of W.P.(C) No.3445/2014. The Hon'ble High Court vide order dated 03.09.2014 passed the following orders:

"In view of the above position, and in view of the submissions made by the learned counsel for the petitioners, similar direction issued. The respondents shall not recover the Travelling

Allowance paid to the petitioners till the issuance of the impugned order. The writ petition succeeds partly and is allowed in the above terms".

6. Upon examination of materials on record, this Tribunal is of the opinion that the facts of the present OA being the same and similar to the facts of the case in W.P.(C) No.3445/2014, the decision of the Hon'ble High Court of Delhi at New Delhi thereon is squarely applicable herein. However, it is to be noted that the learned counsel for the applicant drew the attention of this Tribunal to a Memo dated 23.07.2018 and submitted that in the meantime the applicant has been promoted to S.A.G. of Indian Telecom Services with effect from 28.08.2017 vide order dated 11.01.2018 (A/6 to MEMO) issued by the Ministry of Communications, DoT with Grade Pay Rs.10,000/-. He has further submitted that the regular DP for SAG in ITS has not been held for the year 2011 and 2012 despite there being direction of the Hon'ble High Court of Telengana and because of non-compliance of the said direction, a Contempt Case bearing No.788/2017 having been filed, the said Hon'ble High Court has passed order dated 11.07.2018 (A/7 to MEMO) to the effect that in the event the order is not complied with in its entirety by 01.10.2018 all the respondents shall remain present in person before the Court to explain the reason for the delay. By this, the applicant has prayed before this Tribunal to take cognizance of his promotion to SAG as per the orders of the Hon'ble High Court of Telengana with regard to entitlement of Travelling Allowance @ Rs.7000/- plus admissible D.A. thereon taking into account his promotion to S.A.G. for the year 2011-12. In this connection, it is to be noted that in the meantime, more than three months have elapsed and on the date of hearing of this matter on 01.03.2019 nothing has come up on record regarding promotion of the applicant to SAG as a measure of compliance of the orders of

the Hon'ble High Court of Telengana. Be that as it may, this Tribunal cannot decide a matter by going beyond the pleadings.

7. In view of this, following the ratio decided by the Hon'ble High Court of Delhi at New Delhi in WP© No.3445/2014, respondents are directed not to recover the Travelling Allowance paid to the applicant till the issuance of the impugned order dated 24.10.2013(A/3). Ordered accordingly.

8. In the result, the O.A. is allowed to the extent indicated above, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

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