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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00733/2016**

Monday, this the 25<sup>th</sup> day of February, 2019

**Hon'ble Mr.Ashish Kalia, Judicial Member**

1. Dr.K.P.Hamzakoya  
Senior Regional Director  
Regional Office for Health  
and Family Welfare  
Meads Lane, Cantonment  
Palayam, Thiruvananthapuram
2. Dr.M.K.Mohammed Aslam  
Medical Officer-in-Charge  
Community Health Center  
Androth Island  
Union Territory of Lakshadweep
3. Dr.K.Shamsudheen  
Director  
Health Services  
Kavarathi, Union Territory of Lakshadweep
4. Dr.P.Sayed Koya  
Chief Medical Officer  
Community Health Centre  
Androth Island, Union Territory of Lakshadweep .....

**Applicants**

**(By Advocate – Mr.M.V.Thamban)**

**V e r s u s**

- 1 Union of India  
Represented by the Secretary  
Ministry of Health and Family Welfare  
New Delhi, Pin – 110 001
2. The Secretary  
Ministry of Finance  
Government of India  
New Delhi , Pin 110 001
3. The Director  
Central Government Health Scheme  
Nirman Bhavan, New Delhi, Pin 110 002

4. The Director General of Audit (Central Expenditure)  
Indraprastha Estate , New Delhi  
Pin 110 002

5. The Senior Audit Officer  
Office of the Director of Medical and Health Services  
Kavaratti Island, Union Territory of Lakshadweep  
Pin ..... **Respondents**

**(By Advocate – Mr.P.G.Jayan,ACGSC)**

This Original Application having been heard on 25.2.2019, the Tribunal on the same day delivered the following:

**O R D E R (ORAL)**

**Per: Mr.Ashish Kalia, Judicial Member**

The reliefs sought in the Original Application are as follows:

“(i) To issue a declaration that the applicants being the Head of the Institutions and in the pay band PB-4, are entitled to give option either to draw transport allowance at a higher rate of Rs.7,000/- per month plus DA or to avail office car provided between residence and office in view of Annexure A1 and A2 and the recovery pursuant to Annexure A3 to A6 initiated by the respondents are illegal, arbitrary, discriminatory and liable to be set aside.

(ii) To further declare that availing of staff car facility for official purpose is purely a different matter and the option to avail the transportation allowance of Rs.7,000/- per month plus DA in lieu of office car provided between residence has nothing to do with availing of staff car for official purpose and hence all further proceedings pursuant to Annexure A6 is illegal, arbitrary and liable to be set aside.

(iii) To declare that steps taken by respondents to effect recovery from the salary of the applicants pursuant to Annexure A3 to A6 are illegal and arbitrary and is against the dictum laid down by the Hon'ble Supreme Court of India, reported in 2015(1) KLT 429 in that the recovery if made from the applicants as suggested by Annexure A3 to A6, it

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would be iniquitous, harsh and arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover.

(iv) To call for the records leading to Annexure A3 to A5 and set aside Annexure A3, Annexure A4 and Annexure A5 and all further proceedings pursuant thereto.

(v) To call for the records leading up to Annexure A6 and set aside Annexure A6 and all further proceedings pursuant thereto.

(vi) To direct the respondents to allow the applicants to draw transport allowance at a higher rate of Rs.7,000/- per month plus DA in lieu of office car provided between residence and office.

(vii) To issue such other orders as this Tribunal may deem fit and necessary in the interest of equity and justice.”

2. Applicants are working as Chief Medical Officers (Super time Administrative Grade (SAG)) in the general duty sub cadre of Central Health Service under the Government of India in the pay scale of Rs.37,400-67,000 with grade pay of Rs.10000/- plus NPA. It is submitted that the Sixth Central Pay Commission has recommended that the officers in the pay band PB-4 who are entitled to use official car for travel between residence and office may be given the option to draw transport allowance at a higher rate of Rs.7,000/- per month plus Dearness Allowance. It is further submitted that the Government of India had accepted the recommendations without any modification as per Annexure A1 dated 29.8.2008. It is stated therein that the employees in the pay band PB-4 are entitled to give option either to draw transport allowance at a higher rate of Rs.7,000/- per month plus DA or to avail office car provided between residence and office. Based

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on the recommendations of the 6<sup>th</sup> pay commission regarding the payment of Transport Allowance at higher rate in lieu of the existing facility to avail office car provided between residence and office. As per Annexure A-2 clarification, officers drawing Grade Pay of Rs.10,000 and Rs.12000/- and those in the Higher Administrative Grade (HAG + scale) are entitled to use official car in terms with Office Memorandum dated 28.1.1994. It is further submitted that the applicants are entitled to avail the facility of staff car and as per Annexures A1 & A2, applicants are in receipt of Rs.7,000/- plus Dearness Allowances from November, 2008 onwards as Transport Allowance in lieu of not availing the facility of official car for their journey from their residence to office and back. The 5<sup>th</sup> respondent Audit Officer has issued audit objection dated 7.3.2016 objecting the payment of Rs.7,000/- per month plus DA towards the Transport Allowance to the 1<sup>st</sup> applicant alleging that he has been enjoying the T.A and staff car facility simultaneously, resulting in an excess drawal of Rs.6,44,010/- as T.A for the period from 1.4.2012 to 29.2.2016. The applicants have relied upon the judgment passed by the Hon'ble Apex Court in *State of Punjab & Ors v. Rafiq Masih (White Washer) & Ors (2015) 4 SCC 334*. It is further submitted that the first applicant has not availed the facility of staff car to commute between the office and residence and back. He has used this car for official purpose only. Feeling aggrieved by this, applicants have approached this Tribunal for redressal of their grievances.

3. Notices were issued and the respondents put their appearance through their counsel and filed reply statement. Respondents contested this matter

and submitted that the officers who belongs to the rank of Joint Secretary and above and desire to avail the facility of the use of the staff cars for journey from residence to office and back were made eligible for the same on prescribed payment basis. The provisions were also made applicable to Heads of Department of the Central Govenrment in the Senior Administrative Grade. Thus, it is clear that other than Joint Secretary to the Government of India, only those Senior Administrative Grade Officers are entitled for Transport Allowance @ Rs.7,000/- p.m plus DA thereon, who are declared as Heads of Department (Annexure R-2). The SAG Level Officers who were drawing Grade Pay of Rs.10,000/- were paid T.A @ Rs.7,000/- p.m plus D.A thereon and the same was objected by the Director of Audit stating that since these SAG level officers were not eligible to use staff car and hence they are not eligible to T.A @ Rs.7,000/- p.m. + DA thereon.

4. During the course of argument, learned counsel for the respondents had drawn my attention to Annexure R-8. Para 2 & 3 reads as follows:

“2. Several references have been received in this Department seeking clarification on the admissibility of Transport Allowance to officers drawing Grade Pay Rs.10,000/- under Dynamic ACP Scheme or NFU Scheme. A few cases have also been filed in the Courts in this regard. Hon'ble Central Administrative Tribunal (CAT), Principal Bench, New Delhi, in Order dated 13.5.2014 in O.A No.4062/2013 filed by Shri.Radhacharan Shakiya & Others v/s Union of India & Others, held that the applicants were not entitled to draw Transport Allowance @ Rs.7,000/- p.m plus DA thereon. The said order of the Tribunal has also been upheld by Hon'ble High Court of Delhi in their order dated 3.9.2014 passed in Writ Petition (Civil) No.3445/2014, filed by Shri.Radhacharan Shakiya & Others.

3. Accordingly, it is clarified that the officers, who are not entitled for the use of official car for commuting between

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residence to office and back, in terms of DoE's O.M 20(5)/E-II(A)/93 dated 28.1.1994, are not eligible to opt for drawal of Transport Allowance @ Rs.7000/- p.m +DA thereon, in terms of DoE O.M No.21(2)/2008-E.II(B) dated 29.8.2008, even though they are drawing Grade Pay of Rs.10,000/- in PB-4 under Dynamic ACP Scheme or under the scheme of Non-functional upgradation (NFU). ”

Respondents submitted that the applicants are not entitled to opt to drawal of Transport Allowance @ Rs.7000/- p.m + D.A thereon.

5. Heard Mr.B.Bipin representing Mr.M.V.Thamban, learned counsel for the applicants and Mrs.Vandhana representing Mr.P.G.Jayan,ACGSC, learned counsel for the respondents. Perused the documents.

6. There are four applicants herein. First applicant who is in HAG+ scale has availed staff car facility as well as drawn T.A/D.A at the rate of Rs.7000/- per month. Applicant nos.2-4 are not in HAG+ scale but they have also drawn TA/DA at the rate of Rs.7000/- per month. Applicant no.1 who is an HAG + scale officer is entitled for staff car whereas others are not entitled to as per the clarifications issued by the Ministry of DoP&T as per Annexure R-8. The argument lead by learned counsel for the applicant herein is that they have not used this car facility for journey from residence to office and back and are used this facility for the official purposes only. It is not hold much water as per Annexure R-2 wherein it is stated that only Senior Administrative Grade officers who are declared as Heads of Department are entitled for T.A @ Rs.7000/- p.m plus D.A thereon. Whereas applicant no.1 is entitled for either of one facility, but he has opted both. This is not permissible under law. **Rafiq Masih**'s case is not attracted to the

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present Original Application as the recovery is ordered from 2012 to 2016 by the respondents within a period of 5 years does falls under para (iii) of Apex Court judgment wherein excess payment for more than 5 year is held not permissible.

7. This Tribunal does'nt wants to interfere with the action taken by the respondents and the present Original Application is rejected. No costs.

**(ASHISH KALIA)  
JUDICIAL MEMBER**

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**List of Annexures**

Annexure A1 - True copy of the relevant portion of the resolution dated 29.8.2008 issued by the Ministry of Finance

Annexure A2 - True copy of the OM No.21(2)/2008-E-II(B) dated 29.8.2008 issued by the 2<sup>nd</sup> respondent

Annexure A3 - True copy of Circular No.Pr.AO/Vig/3(5)/Transport Allowance/CHS Officers/7148

Annexure A4 - True copy of the letter No.A-27017/1/2015/CHS-V dated 7.12.2015 of the 1<sup>st</sup> respondent

Annexure A5 - True copy of the letter No.R-1/7-47/D.P (Civil/2015-16/753 dated 06.11.2015 of the 4<sup>th</sup> respondent along with the audit objection

Annexure A6 - True copy of the audit objection dated 7.3.2016 issued by the 5<sup>th</sup> respondent

Annexure R1 - (Copy of Department of Expenditure O.M No.21(2)/2008-E.II(B) dated 29<sup>th</sup> August 2008)

Annexure R2 - (Copy of Department of Expenditure O.M No.20(5)-EII(A)/93 dated 28.1.1994)

Annexure R3 - Copy of letter no.A.27017/01/2014-CGHS-I dated 19.8.2014)

Annexure R4 - (Copy of Director General of Audit (Central Expenditure) D.O letter No.R-1/7-47/D.P.(Civil)/2015-16/753 dated 6.11.2015)

Annexure R5 - (Copy of MoHFW's letter no.A.27017/1/2015-CHS.V dated 7.12.2015)

Annexure R6 - (Copy of CAT, Principal Bench (PB), New Delhi's order dated 22.5.2014 in O.A No.4062/2013)

Annexure R7 - (Copy of the Hon'ble Delhi High Court's judgment dated 13.9.2014 in WP(C) 3445/2014)

Annexure R8 - (Copy of Deptt. Of Expenditure's O.M No.21(2)/2016-E.II (B) dated 19.8.2016)

Annexure R9 - (Copy of DoPT's O.M No.18/03/2015-Estt.(Pay-I) dated 2<sup>nd</sup> March, 2016.