

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH, RANCHI
OA/051/00117/17**

Reserved on: 17.12.2018
Pronounced on: 19.12.2018

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

1. Syed Arshe Azam
2. S.K. Pal
3. Satish Chandra
4. Sameer Kumar
5. TarkeshwarManjhi
6. Suresh Kumar
7. Adi Kalyan Hembrom
8. Mathura Kumhar
9. Arunesh Sinha
10. Marshall Purti
11. Rana Bose
12. Rabindra Kumar Ranjan
13. Ram Naresh
14. Ajay Kumar Das
15. KolhaKachchap
16. Tarun Ghosh
17. Samar Ahmad
18. Jitendra Bahadur Singh Kushwaha
19. Jitendra Suman
20. Dinesh Prasad Kesri
21. Raj Kishor Singh
22. Rajesh Kumar
23. Smt. NirjaKujur
24. Chandra Kumar
25. Choudhary Ram Chandra Singh
26. Ajay Lakra
27. Shambhu Singh
28. Shatrughan Singh
29. Binod Kumar Shrivastava
30. Smt. Manju Munda
31. Rajesh Kumar

..... Applicants.

- By Advocate: - Mr. Indranil Bhaduri

-Versus-

1. The Union of India through the Secretary, Ministry of Information & Broadcasting, Government of India, New Delhi-110001.
2. Chief Executive Officer, Prasad Bharti, PTI Building, 2nd Floor, Sansad Marg, New Delhi-110001.
3. Deputy Director of Administration (B&A), Prasar Bharti, PTI Building, 2nd Floor, Sansad Marg, New Delhi-110001.
4. Director General, All India Radio, Akashwani Bhawan, New Delhi-110001.
5. Director General, Doordarshan, Mandi House, New Delhi-110001.

..... Respondents.

By Advocate: - Mr. H.K. Mehta, Sr. Standing Counsel

ORDER

J. V. Bhairavia, J.M.:- In the instant OA, aggrieved by the impugned notice dated 06.02.2017 (Annexure A/5 refers) issued by the Director (Engineering) cum Office Head Akashwani, Ranchi whereby the respondents decided to recover the amount paid to the employees including the applicants towards Tribunal Area Allowance, the applicants have preferred the present OA.

2. It is the case of the applicants that they are working in the All India Radio (Akashwani) and Doordarshan at its Centre in the State of Jharkhand. The applicants are the employees of technical cadre of AIR and Doordarshan. It is contended that pursuant to the recommendations of the 6th CPC, the applicants have been paid Tribal Area Allowances (TAA in short) vide Office Memo dated 29.08.2008 issued by the Govt. of India, Ministry of Finance, Department of Exp., New Delhi (Annexure A/1 refers). Accordingly, the TAA was made available to the Central Government employees w.e.f. 01.09.2008 at the following rates: -

(i) Employees drawing GP 5400 and above and pay scale of HAG+ and above – Rs. 400 P.M

(ii) Employees drawing GP less than GP 5400 - Rs. 240/- P.M.

3. It is further contended that the Ranchi District and East-Singhbhum District of Jharkhand State were redefined as Schedule Areas as per the notification dated 11.04.2007 published by the Ministry of Law and Justice (Legislative Department) (Annexure A/2 refers). All the applicants are posted in Jharkhand State.

4. The learned counsel for the applicants submitted that vide letter dated 19.04.2016 the Dy. Director, Administration (B&A) Prasar Bharti addressed to the Station Director, AIR, Ranchi and Station Director, AIR, Jamshedpur informed that an irregular payment of TAA has been paid to the employees by the AIR, Ranchi and AIR, Jamshedpur. It was further informed that as per draft paragraph, TAA is not payable to Central Government employees posted in Jharkhand. Therefore, it was requested that in the light of observation made by Principal Director of Audit (Central), Indian Audit and Accounts Department, Lucknow to take immediate action to get the inadmissible payment of TAA recovered from the employees of his station (Annexure A/3 refers). Vide letter dated 25.12.2016, the Dy. Director of Administration, Prasar Bharti, New Delhi directed Station Directors of both AIR, Ranchi and Jamshedpur to recover the wrongly paid TAA to employees (Annexure A/4 refers). It is submitted that based on the said two letters, i.e. A/3 and A/4, the Director (Engineering) cum-Office Head, Akashwani Ranchi issued a general notice contained in letter dated 06.02.2017 whereby all the

officers and employees of AIR Ranchi were informed that the TAA paid to them shall be recovered. The applicants were directed to get the information of the recoverable amount from their account from the office of Accounts/Administrative Department and deposit the same in the office (Annexure A/5 refers- impugned order).

5. The I/c for the applicant submitted that all the applicants were getting TAA as per the decision of the Department itself and there is no misrepresentation on the part of the applicants. The said allowance was granted by the Department on the basis of notification issued by GOI dated 29.08.2008 (Annexure A/1 refers) as well as based on the recommendation of the 6th Pay Revision and by a conscious decision of Government of India including the Prasar Bharti. The amount which was paid to the applicants long back cannot be recovered by them after a long lapse of more than 8 years. It is further contended that the employees of Census Department, Ministry of Home, Government of India posted at Jharkhand State are still getting TAA. Therefore, the respondents Prasar Bharti had taken an impugned decision which is based on audit objection is in the nature of discrimination and contrary to the provision of OM dated 29.08.2008 (Annexure A/1 refers). It is further contended that the said impugned decision for recovery of wrongful/excess payment as alleged by the respondents is contrary to the OM dated 02.03.2016 issued by the DoP&T whereby considering the law laid down by the Hon'ble Apex Court in the case of **State of Punjab Vs. Rafiq Masih (White Washer)** reported in AIR 2015 SC 696 it was directed that recoveries by the

employer would be impermissible in law, more particularly recovery from employees when the excess payment has been made for a period in excess of five years before the order of recovery is issued.

6. It is further submitted by the learned counsel for the applicants that the applicants are Group 'C' employees. They were paid TAA w.e.f. August/September, 2008 and after a lapse of 8 years order of recovery was issued vide notice dated 06.02.2017 (Annexure A/7 refers). The applicants have submitted their detailed representation and requested the respondent no. 6, i.e. Director (Engineering)-cum- Head of Office, AIR, Ranchi not to recover the amount which was paid to the applicant long back towards TAA. It was also stated in the representation that they have never misrepresented any fact and the said allowance was paid by the Department themselves (Annexure A/8 series refers).

7. The learned counsel for the applicant submitted that the impugned action of the respondents is arbitrary and the same has been issued without any fault on the part of the applicants. Therefore, it is required to be quashed and set aside.

8. It is further contended by the I/c for the applicant that during the pendency of the present OA the respondents have issued circular dated 26.03.2018 whereby it was declared that the TAA already paid to the staff of AIR, Ranchi would be recovered immediately. Accordingly, it was further informed that the said recoverable amount is going to be recovered in maximum of five equal instalments commencing from the salary of March, 2018. The copy of said circular dated 26.03.2018 has been

placed on record by way of Annexure A/9 filed along with MA/051/00223 of 2018 and the applicants have requested this Tribunal to grant interim relief against the proposed recovery. Considering the said facts, this Tribunal vide order dated 23.05.2018 stayed the recovery. It is further contended that the case of the applicant is squarely covered by the law laid down by Hon'ble Apex Court in the case of Rafiq Masih (Supra). Therefore, the respondents are required to restrain any recovery as indicated in the impugned notices.

9. In contra, the respondents have filed their written statement and denied the contention of the applicant. It is contended that the applicants were paid TTA w.e.f. August/September, 2008 but the said allowance has been stopped since May, 2016 in the light of Prasar Bharati letter dated 19.04.2016. It is contended that the notification dated 11.04.2007 issued by the Ministry of Law and Justice, GOI was misinterpreted. Subsequent to the same, Ministry of Finance's OM dated 17.07.1998 clearly specifies that the TAA is admissible to Central Government employees only when it is given by the concerned State Government to its state employees. It is categorically contended that the Government of Jharkhand is not paying TTA to its employees and therefore the said allowance is not admissible/payable to the Central Government employees including AIR employees. This has also been pointed out by Indian Audit and Accounts Department, Lucknow vide their letter dated 04.02.2016 addressed to Ministry of Finance, GOI (Annexure R/1 and R/2 refers). It is further contended that as per Do&PT OM dated

02.03.2016 there is no such hardship to the applicants on account of such recovery for wrongful payment as most of them are getting not less than Rs. 69,000/- per month as salary and maximum recoverable amount is less than 37,000/- in total and that too in instalments. The payment of TAA has been declared irregular by the Office of CAG (Annexure R/3 refers). It is also submitted that as per the conditions stipulated in the OM dated 17.07.1998 issued by Ministry of Finance, Department of expenditure the allowances shall ceased to be admissible in those States where it has been discontinued for the State Government employees (Annexure R/4 refers). Since in the State of Jharkhand the State Government has not paid any TAA to their State employees, the present applicants being Central Government employees cannot have any legitimate claim for the payment of TAA.

10. The learned counsel for the respondents has placed reliance on the order passed by this Tribunal's Bangalore Bench in OA/170/00813/2016 decided on 18.06.2017 in the case of R. Vimla Bai Vs. Union of India & Ors. and submitted that wrongful/excess payment can be recovered from the monthly salary from the employees.

11. Replying to the above submission of the learned counsel for the respondents, the learned counsel for the applicant submitted that the documents and order relied upon by the respondents is not applicable in the case of the applicant. The case before the CAT, Bangalore Bench was with regard to recover of wrongful fixation of pay/ACP benefits and at the time of granting the said benefit of pay fixation the applicants of those OA

had submitted an undertaking for repayment of any excess or wrongful payment and therefore on the basis of the said undertaking the employer had issued an order for recovery which was upheld by the Tribunal's Bangalore Bench. However, in the present case there is no such undertaking submitted by the applicants. On the contrary, it was a decision of the respondents to grant benefit of TAA as per the recommendation of the 6th CPC. There was no role of the applicant in the said decision for grant of such allowances. Therefore, the same is not applicable.

12. Heard the parties and perused the materials on record. It is not in dispute that pursuant to OM dated 29.08.2008 the Tribal Area Allowance to Central Government employees were made admissible at the following rates: -

- (i) Employees drawing GP 5400 and above and pay scale of HAG+ and above – Rs. 400 P.M
- (ii) Employees drawing GP less than GP 5400 - Rs. 240/- P.M.

13. The Ranchi and East Singhbhum District along with other Districts of Jharkhand State were declared Scheduled Areas within the State of Jharkhand vide notification dated 11.04.2007 (Annexure A/2 refers). The applicants herein are working at Ranchi/East Singhbhum District of Jharkhand State which are Tribal areas. Therefore, as per the provision of OM dated 29.08.2008 (Annexure A/1) the applicants were granted the benefit of payment of TAA w.e.f. August/September, 2008. The amount paid towards the said TAA has been sought to be recovered

by the respondents vide their decision dated 19.04.2016 (Annexure A/3 refers) and pursuant to the same impugned notice dated 06.02.2017 and impugned circular dated 26.03.2018 (Annexure A/5 and A/9 refers) have been issued by the respondent no. 6.

14. It is also not in dispute that the applicants belong to Group "C" cadre. The respondents have granted the benefit of TAA by themselves. It is also not in dispute that it is an error on the part of the respondents not to follow the instructions/conditions stipulated in the OM dated 17.07.1998 issued by Ministry of Finance, Department of Expenditure whereby in modification of Ministry's OM dated 19.02.1972 admissible payment towards TAA to the Central Government employees were modified with a condition that " this allowance shall ceased to be admissible in those states where it has been discontinued for the State Government employees w.e.f. the date (s) of such discontinuance and shall be admissible at the revised rates only in those states where such allowance continues to be extended for the State Government employees" (Annexure R/4 refers).

15. It is noticed that after extending the benefit of TAA to the applicants w.e.f. 2008, the respondents vide their communication dated 19.04.2016 informed all the Station Directors including the AIR, Ranchi that an irregular payment of Tribunal Area Allowance has been made by AIR, Ranchi to their employees for which they are not entitled and no payment ought to have made towards TAA and, therefore, in considering the observation made by the Principal Director of Audit (Central), Indian

Audit and Accounts Department, Lucknow it was requested to take immediate action to get the inadmissible payment of TAA recovered from the employees.

16. At this juncture, it is apt to note that in the case of recovery the law is well settled by Hon'ble Apex Court in the case of Rafiq Masih (supra). Since it is not in dispute that applicants had not submitted any incorrect or wrong information or any misrepresentation on their part they were granted benefit of payment of TAA w.e.f. August/September, 2008. The said allowance was paid to them in pursuance of OM dated 29.08.2008 (Annexure A/1) which was issued by the Ministry of Finance and implemented by the Prasar Bharti. Therefore, the applicants cannot be held liable or responsible for any such alleged irregular payment. As held by the Hon'ble Apex Court, recovery from employees when the excess payment has been made for a period in excess of 5 years before the order of recovery issued would be impermissible.

17. Thus, under the circumstances, the law laid down by the Hon'ble Apex Court is squarely applicable in the facts and circumstances of the present case. Therefore, the impugned decision vide noticedated 06.02.2017 (Annexure A/5) and circular dated 26.03.2018 (Annexure A/9) suffers from infirmity. Accordingly, the same are hereby quashed and set aside qua the applicants. The respondents are directed not to recover any amount which was already paid to the applicants on account of TAA. The OA is disposed of accordingly. No order as to costs.

[Jayesh V. Bhairavia]/M[J]

Srk.