

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/408/2018

Date of Order: 14.06.2019

Between:

M.K. Srinivas, S/o. M. Kameswara Rao,
Aged 55 years, Chief Engineer, (Group-A),
National Water Development Agency,
Hyderabad, R/o. 302, Keerthi Sikhara Apartments,
Street No.18, Himayathnagar, Hyderabad – 500 029.

... Applicant

And

1. The Union of India, Rep. by its Secretary,
Ministry of Water Resource, River Development and
Ganga Rejuvenation, Shram Shakti Bhavan,
Rafi Marg, New Delhi – 110 016.

2. The Chairman, Central Water Commission,
Sewa Bhavan, R.K. Puram, New Delhi.

... Respondents

Counsel for the Applicant ... Mr.P. Venkata Rama Sarma

Counsel for the Respondents ... Mr. B. Rajeswara Rao,
Addl CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. OA is filed challenging the recovery of Transport Allowance.

3. Based on the 6th CPC, applicant working as Chief Engineer in the respondents organisation, was placed in the Non-Functional Upgradation (for short "NFU) in the pay scale of Rs.37,400-67000 with Grade Pay of Rs.10,000 w.e.f 18.2.2009 vide respondents order dated 9.12.2011.

Respondents, on 7.4.2014, not only stopped paying the eligible transport Allowance but contemplated recovery of the amount already paid. Applicant represented on 13.10.2014. Impugned order issued for recovery, when challenged in the Hon'ble Principal Bench of this Tribunal in OA 1882 of 2015, the recovery was stayed vide order dated 21.5.2015. Accordingly, respondents issued orders not to recover the amount on 27.5.2015, but later rescinded the order on 12.4.2018 stating that the stoppage of recovery applies only to those who were party to the cited OA. Based on the said letter, apprehending imminent recovery, the OA has been filed. This Tribunal, on 25.04.2018, granted an interim stay of the recovery pursuant to the impugned orders dt. 7.4.2014 and 12.04.2018 and the same is in force.

4. The contentions of the applicant are that as per 6th CPC, those employees who are in the Grade Pay of Rs.10,000 & 12,000 and those in HAG + scale, who are entitled to the use of official car in terms of O.M dt.28.1.1994 can either use official car and if not, draw Transport Allowance of Rs.7000 with DA per month. Applicant's claim is that, as per OM dated 24.4.2009 he is working in the grade of Joint Secretary drawing a grade pay of Rs.10,000 and hence is eligible to draw transport allowance. Principles of Natural Justice were not followed in stopping the transport allowance drawn over the last 5 years. Order of the Principal Bench is in his favour.

5. Heard both the counsel and perused the documents placed on record.

6. The issue was disposed by the Hon'ble Principal Bench in OA 1882/2015 on 28.9.2018 by observing that the matter is fully covered by the orders contained in OA 497/2015 dated 1.8.2017, involving Dileep Kumar Jain & ors v Union of India and Anr and ordered as under:

“6.The Tribunal took a view that the applicants therein had not indulged in any act of misrepresentation in securing the TA at a higher rate. Accordingly, the Tribunal held that no recovery should be made from the applicants in respect of any excess payment made to them towards TA and that they could be paid TA @ Rs 3200 +DA thereon from the date of issuance of the order by CEA in regard to their entitlement for TA.

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8. In view of similarity of facts as well as similarity of issues involved, for the reasons of parity, this O.A is disposed of it terms of ibid order of this Tribunal dated 1.8.2017 passed in OA 497/2015. The applicant herein shall be entitled to the same reliefs that have been granted to the applicants in ibid O.A. No costs.”

Learned counsel has submitted another decision of the Hon'ble Principle Bench in OA 1502/2018, dt. 30.11.2018, wherein similar orders were issued covering an identical matter.

7 (I) Thus, the matter is fully covered in regard to the aspect of recovery. As ordered in the OAs referred to, there ought to have been no order of recovery of the Transport Allowance paid. This action should have been taken by the respondents themselves. Once court grants relief involving a class of employees, then it applies to all those belonging to

the said class irrespective of the fact as to whether they have approached the court or not, provided the facts and issues are identical. Driving employees to Tribunals covered by relief granted would lead to uncalled for litigation and wasting the precious time of all the parties involved. Hon'ble Supreme Court, in a catena of judgements, has given clear directions in the matter which need to be adhered. The same are reproduced below for guidance of the respondents so that they would examine withdrawal of the OM issued for recovery and do not compel other similarly placed persons to go over to the Tribunal for similar relief.

Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714 :

“We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court.”

Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:

“...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court.”

V CPC report, para 126.5 – Extending judicial decision in matters of a general nature to all similarly placed employees:

We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed & Ors Vs. UOI & Ors, (OA 451 and 541 of

1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh V. UOI [(1992) 19 ATC 94 (SC)], dt. 20.07.1998; K.I. Shepherd V. UOI [(JT 1987 (3) SC 600)]; Abid Hussain V. UOI [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee.”

*In a latter case of **Uttaranchal Forest Rangers’ Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346**, the Apex Court has referred to the decision in the case of **State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747**, as under:*

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.”

(II) It is not out of place to state that, if administrative authorities discriminate amongst persons similarly situated, in matters of concessions and benefits, the same directly infringes the constitutional provisions enshrined in Art. 14 and 16 of the Constitution.

(III) Hence, based on the aforesaid circumstances and the well laid law on the subject, the applicant being similarly placed like those in the OAs adjudicated by the Hon’ble Principal Bench of this Tribunal, there shall be no recovery as to the Transport Allowance paid. Interim order already granted is made absolute.

(IV) In regard to reduction of TA, the applicant has cited DOPT Memos claiming that since he is drawing the grade pay of Rs.10,000 and that since he is working in the cadre of Joint Secretary, he is eligible to draw. The same may be examined and decided within a period of 8 weeks from the date of receipt of this order by issuing a reasoned and a speaking order. Accordingly, the OA is disposed, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 14th day of June, 2019

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