

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.693/2014

Dated this Friday the 4th day of October, 2019.

Coram: Dr.Bhagwan Sahai, Member (Administrative)

1. Dr.Nirmal Mandal,
Sr. CMO (SAG),
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2. Dr.Satish Vasant Deshpande,
Sr. CMO (SAG),
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3. Dr.Loveleen Ailawadi,
Sr. CMO (SAG),
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4. Dr.Lata Khairkar,
Sr. CMO (SAG),
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5. Dr.Yuvraj Vithoba Paratey,
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6. Dr.D. Gangadhar,
Sr. CMO (SAG),
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7. Dr.A.B. Vinayak,
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8. Dr.(Mrs.) S. Yesuratnam,
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9. Dr.(Mrs.)Nanda P. Gaikwad,
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10. Dr.(Mrs.)Jayashree K Patki,
Sr. CMO (SAG),
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11. Dr.Laveti Vankata Prasad,
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12. Dr.Vasant L. Kulkarni,
Sr. CMO (SAG),
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13. Dr.Krishnaswamy Narasimhamurthy,
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14. Dr.S. Janartha Murthy,
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15. Dr.Aminur Rahman Bora,
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Chandivali, Mumbai-400 705.
16. Dr.(Mrs.)Durriya M. Desai,
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17. Dr.V.P. Halarnkar,
Sr. CMO (SAG),
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18. Dr.A.P. Dhoke,
Sr. CMO (SAG),
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19. Dr.K.M. Biswas,
Sr. CMO (SAG),
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20. Dr.Uday Kelkar,
Sr. CMO (SAG),
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21. Dr.Pinki Sengupta,
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Mount Vert-2, Pashan Sus Road,
Pashan, Pune - 411 021.
22. Dr.Naresh S. Sayalwar,
Sr. CMO (SAG),
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23. Dr.Anuradha R. Sondur,
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24. Dr.Nirmala Pillai,
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Residing at: 402 Amar Ambience,
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Garden, Pune - 411 001.
25. Dr.Vineeta S. Kaushik,
Sr. CMO (SAG),
Residing at: 903 A,

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26. Dr.E.S. Kanade,
Sr. CMO (SAG),
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Chaitraban Bibvewadi,
Pune - 411 037.
27. Dr.Vijayshri Parkale,
Sr. CMO (SAG),
Residing at: IV/3 CGHS Staff
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Pune - 411 037.
28. Dr.Vandana Jogaikar,
Sr. CMO (SAG),
Residing at: 852/6, Prarthana,
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29. Dr.S.R. Pashupartimath,
Sr. CMO (SAG),
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30. Dr.Katke Rayappa Sidram,
Sr. CMO (SAG),
Residing at: Sidharam Bungalow,
Sy No.41 B-1, Jadhav Nagar,
Behind Suvidha Dnyanganga,
Vadgaon Budruk,
Pune - 411 041.
31. Dr.Shivanand Shinde,
Sr. CMO (SAG),
Residing at: 23, Daulat Nagar,
Dhanakawadi, Pune - 411 043.
32. Dr.Dilip Daulatrao Tikas,
(SAG), Working as Additional
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Residing at: 7131, NIT Colony,
Atrey Layout, Pratap Nagar,
Nagpur - 440 022 (Maharashtra).
33. Dr.Krishna Eknathji Gonnade,
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the Additional Director,
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Empress Mills Housing Society

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34. Dr.Hemant Mahadeorao Nimje,
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Nagpur-440033 (Maharashtra).
35. Dr.Homchand Shankarji Parate,
Sr. CMO (SAG) in CGHS Nagpur,
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36. Dr.Ramchandra Gulabrao Kathale,
Sr. CMO (SAG) in CGHS Nagpur,
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Sonegaon, Nagpur-440 025,
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37. Dr.Premnath Tukaram Paunikar,
Sr. CMO (SAG) in CGHS Nagpur,
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Ayodhya Nagar,
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38. Dr.Prakash Martandrao Mamilwar,
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39. Dr.Kashinath Ganpatrao Kuhikar,
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40. Dr.Deepak Bhagwantrao Dhole,
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41. Dr.Vijay Prabhakar Bedekar,
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Residing at: 203, Uma Niwas,
Mohan Nagar,
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42. Dr.(Mrs.)Leela Bhaurao Pendam,
Sr. CMO (SAG) in CGHS Nagpur,

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Nr. Agne Layout, Khamla Road,
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43. Dr. (Mrs.) Vijaya Vijay Motghare,
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44. Dr. Shreeramchandra Dashrat Parate,
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Sharda Chowk, Behind Bank of Maharashtra,
Nagpur (Maharashtra).
45. Dr. (Mrs.) Mohana Rajeev Kulkarni,
Working as Consultant in Medicine,
Supertime Gr.-I in Polyclinic,
CGHS, Nagpur,
Residing at: B-5, Shubhankar,
159, Ram Nagar, Hill Top,
Nagpur - 440 033 (Maharashtra).
46. Dr. (Mrs.) Madhuri Wasudeo Barasagde,
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Nagpur - 440027 (Maharashtra).
47. Dr. Waman Nagorao Kale,
Ex.-Additional Director,
CGHS Nagpur, working as GDMO
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Residing at: Ekta Colony,
Vaishali Nagar,
Nagpur - 440 017 (Maharashtra).
48. Dr. Udayan Anilchandra Rana,
Ex-Consultant in Paediatrics,
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49. Dr. Ashok Champatrao Morey,
Working as GDMO on Contractual
basis in CGHS Nagpur,
Residing at: 212, HB Estate,
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Nagpur-440025 (Maharashtra).

50. Dr.Mohan Kinkar Chachondia,
Working as GDMO on Contractual
Basis in CGHS Nagpur,
Residing at: Jyoti Bhawan,
Opp. Shani Mandir, Sitabuldi,
Nagpur-440012 (Maharashtra).
51. Dr.Narendra Sambhuji Sangolkar,
Working as Eye Specialist on
Contractual Basis in CGHS Nagpur,
Residing at: T/7, Laxmikripa
Apartment, Laxminagar (West),
Nagpur-440022 (Maharashtra).
52. Dr.Mrs.Jyoti Raghunath Saraf,
Retired as CGHS Nagpur as
Sr. CMO (SAG) in Feb. 2010,
Residing at: Sai Krupa,
Sawarkar Nagar, Khamla Road,
Nagpur - 440 015 (Maharashtra). .. Applicants.

(By Advocate Shri S.V. Marne).

Versus

1. Union of India, through
the Secretary,
Government of India,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi-110 001.
2. Additional Secretary & Director General,
Central Government Health Scheme,
Nirman Bhavan, New Delhi - 110 001.
3. Director,
Central Government Health Scheme,
Nirman Bhavan,
New Delhi - 110 001.
4. Additional Director,
Central Government Health Scheme,
Old CGO Building, South Wing,
Ground Floor, Marine Line,
Mumbai - 400 020.
5. Additional Director,
Central Government Health Scheme,
Swasthya Sadan, Mukund Nagar,
Pune Pin-411 037.
6. Additional Director,

Central Government Health Scheme,
Swasthya Bhavan, Near TV Tower
Chowk, Seminary Hills,
Nagpur Pin - 440 006.

7. The Secretary,
Govt. of India,
Ministry of Finance,
Department of Expenditure,
Parliament Street,
New Delhi - 110 001.

8. The Secretary,
Department of Personnel & Training,
North Block,
New Delhi - 110 001.

..Respondents.

(By Advocate Shri D.A. Dube).

Order reserved on : 16.08.2019

Order delivered on : 04.10.2019

O R D E R

Dr.Nirmal Mandal and 51 other doctors working as Senior Chief Medical Officers (Sr. Adm. Grade) or having worked before retirement as Sr.Chief Medical Officers (Sr.Administrative Grade) under Central Government Health Scheme (CGHS) in Mumbai filed this O.A. on 07.11.2014, seeking -

(i). quashing and setting of order dated 19.08.2014 issued by Directorate General of CGHS, Ministry of Health and Family Welfare, Government of India, New Delhi refusing to allow them Transport Allowance (T.A.) @ Rs.7000/- per month and initiating recovery of excess amount of the T.A. paid to them; and

(ii). direction to the respondents to restore

to them T.A. @ Rs.7000/- per month + Dearness Allowance (D.A.) thereon and to refund the amount of the Transport Allowance recovered from them, along with cost of this application.

2. Summarised facts:

2(a). The applicants have stated that based on selection by U.P.S.C. through Combined Medical Service Examination, they joined on the different dates on the posts of Medical Officers and were then promoted from time to time as Sr. Medical Officers, Chief Medical Officers, Chief Medical Officers (non-functional selection grade) and finally as Sr. Chief Medical Officers (Sr.Administrative Grade).

2(b). Based on such selection by the UPSC, the selected candidates are appointed in different Government of India organizations such as Directorate General of Central Government Health Service, Family Welfare Training and Research Centre, Port Health Organization, Airport Health Organization, All India Institute of Physical Medicine and Rehabilitation, Ordnance Factory Board, Railways, etc.

2(c). Their appointment to the posts of Sr. Chief Medical Officers (Sr.Administrative Grade) under the Dynamic Assured Career Progression (DACP) Scheme is of the level of Joint Secretary

to the Government of India in Pay Band-4 of Rs.37,400-67,000/- + Grade Pay of Rs.10,000/- + Non-Practising Allowance as admissible, vide order dated 07.02.2013 effective from 29.08.2008 (Annex-A-4).

2(d). As per OM dated 29.08.2008 issued by the Department of Expenditure, Ministry of Finance, Government of India (Annex-A-6) for grant of Transport Allowance, revised rates of Transport Allowance were notified for 13 cities classified as A-1/A, earlier and other places. As per para 3 of that OM, it was stipulated that officers drawing Grade Pay of Rs.10,000/- and Rs.12,000/- and those in the Higher Administrative Grade + Scale, who are entitled to the use of official car in terms of O.M.No.20(5)-F-11(A)/93 dated 28.01.94 shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the rate of Rs.7,000/- p.m. plus dearness allowance thereon. The OM dated 28.01.1994 issued by Ministry of Finance on Staff Car Rules is at pages 44 and 45. In view of these stipulations in the OM, since the applicants have been given Grade Pay of Rs.10,000/-, they are entitled for the monthly Transport Allowance @ Rs.7000/- p.m. plus DA thereon.

2(e). As per order dated 22.10.2010 issued by

the CHS division, Ministry of Health and Family Welfare, Government of India, 533 officers of General Duty Sub-cadre of Central Health Service were promoted to the posts of Senior Administrative Grade (SAG) (mentioned as Supertime Administrative Grade) under Dynamic Assured Career Progression Scheme in PB-4 with Grade Pay Rs.10000/- plus NPA as admissible under the DACP Scheme, notionally from 29.08.2008 and actually with effect from the dates of assumption of charge of those posts. As per order dated 22.10.2010, applicants were promoted to the Senior Administrative Grade and not to a non-functional grade. After promotion from the post of Chief Medical Officers as Sr.Chief Medical Officer there is a distinction between movement of an officer to non-functional unit and actual promotion under the DACP Scheme. Therefore, as they have been promoted to the grade pay of the level of Joint Secretary to Government of India, they are covered by the OM of Department of Expenditure dated 29.08.2008 (Annex-A-6).

2(f). Those doctors recruited from the Combined Medical Service Examination by UPSC but allotted to the Ordnance Factory Board Hospitals or Railways, on being appointed as Sr. Medical Officer (Sr.A.G.) have been granted the Transport

Allowance of Rs.7000/- p.m. plus DA thereon (Annex-A-10 & 13). However, the respondents have withdrawn payment of the Transport Allowance @ Rs.7000/- p.m. + DA to the applicants vide the impugned order dated 19.08.2014 and have granted the Transport Allowance of only Rs.3200/- p.m. + DA thereon.

2(g). Even if the Tribunal comes to a conclusion that the applicants are not entitled for the TA on par with Joint Secretary to the Government of India, the amount already paid to them may not be recovered as per the Apex Court decision prohibiting recovery because they have not caused this payment. Therefore, this O.A. has been filed.

3. Contentions of the parties:

In the O.A., rejoinder, written submissions and during the hearing on 19.08.2019, the applicants have contended that -

3(a). in withdrawing the Transport Allowance of Rs.7000/- p.m. from them by order dated 19.08.2014, the respondents have not given them any show cause notice;

3(b). because of grant of grade pay of Rs.10,000/-, the applicants are in the Sr.Administrative Grade, which is of the rank of Joint Secretary to Government of India and,

therefore, they are covered by the OM dated 29.08.2008 for grant of Transport Allowance. Their counterparts in Delhi and Kolkata are being paid the Transport Allowance @ Rs.7000/- p.m. + DA thereon. Their other counterparts working as Sr.Chief Medical Officers in the same pay band and same grade pay posted with the Railways are being paid the Transport Allowance @ Rs.7000/- p.m. + DA thereon;

3(c). the case of the applicants is one of gross discrimination and thereby violative of Articles 14 and 16 of the Constitution. The payment made to the applicants was on par with those made to the Joint Secretary to Government of India and, therefore, the Transport Allowance paid to them does not require any interference by the respondents;

3(d). in view of stay to recovery granted by the Principal Bench in O.A.4016/2014, this Bench of the Tribunal also granted stay to operation of the order of recovery on 14.11.2014. Therefore, the O.A. be allowed.

3(e). in view of grant of Transport Allowance @ Rs.10,000/- to counterparts Sr.Chief Medical Officers working under the Indian Railway Medical Service, Indian Ordnance Factory Medical Service and Delhi Municipal Corporation, there is

discrimination against the applicants in denying grant of the Transport Allowance to them @ Rs.7000/- p.m. + DA thereon. On promotion as Sr. Chief Medical Officers (SAG), their movement was to functional units and their promotions were not under the non-functional category.

Therefore, reliance of the respondents on decision of Principal Bench of the Tribunal in J.S. Sharma Vs. Union of India is not correct because in that decision the Tribunal held that Group 'A' officers of CPWD having grade pay of Rs.10,000/- in their non-functional units are not entitled to Transport Allowance @ Rs.7000/- + DA thereon. Mere provision of staff car entitle the Joint Secretaries to Government of India for higher level of Transport Allowance as compared to medical officers of the same rank;

In their reply, response to the rejoinder, written notes and during arguments the respondents have contended that-

3(f). the applicants were promoted from the posts of Medical Officers to Sr. Medical Officers, then as Chief Medical Officers, Chief Medical Officers (non-functional grade) and finally as Sr. Medical Officers (Sr. Administrative Grade) vide order dated 01.10.2018. Thus they were either working as Sr. Chief Medical Officers (Sr.A.G.) at

the time of filing of the O.A. or had worked on that post before their retirement;

3(g). the ad-interim relief granted to the applicants on 14.11.2014 should not have been granted. The applicants are drawing pay and allowances subject to rules and regulations issued by the Government of India governing their service conditions. After acceptance of the 6th CPC recommendations, levels of pay were revised from 01.01.2006 and rates of Transport Allowance were revised from 01.09.2008. Granting of Transport Allowance to the applicants @ Rs.7000/- p.m. + DA thereon in view of the OM of Department of Expenditure dated 29.08.2008 was objected to by the Directorate of Audit stating that CGHS doctors were not eligible for use of staff car and, therefore, they are also not eligible for grant of Transport Allowance @ Rs.7000/- p.m. Therefore, the Directorate of CGHS, New Delhi issued instructions on 09.08.2014 (Annex-R-1) to stop payment of the Transport Allowance @ Rs.7000/- to the Sr. Chief Medical Officer under CGHS and to grant it only @ Rs.3200/- + DA thereon and to recover the excess payment of the Transport Allowance made to those doctors. Accordingly the recovery of overpayment from the applicants was started along with payment of the Transport

Allowance @ Rs.3200/- p.m. + DA thereon;

3(h). on reference of this issue, the Department of Expenditure, Ministry of Finance has further clarified on 23.12.2014 that the doctors of CGHS are not eligible for use of staff car as per the provisions of Staff Car Rules and related instructions, and, therefore, they are not eligible for the Transport Allowance @ Rs.7000/- p.m. in terms of Department of Expenditure OM dated 29.08.2008 even though they may be drawing pay with grade pay of Rs.10000/- per month in PB-4;

3(i). the OM of Department of Expenditure dated 29.08.2008 was misinterpreted while granting the Transport Allowance @ Rs.7000/- p.m., and the condition of eligibility of doctors for use of staff car was not considered by the respondent authorities. But as per the clarification of the Department of Expenditure dated 23.12.2014, it is crystal clear that the applicants cannot claim the Transport Allowance @ Rs.7000/- per month plus DA thereon as they are not eligible for use of staff car;

3(j). the Principal Bench of the Tribunal in O.A.363/2012 has observed that just because of granting of grade pay of Rs.10,000/-, the applicants cannot claim all the benefits or allowances for which Joint Secretary level

officers are entitled. As per the factually correct position under the Staff Car Rules and eligibility for Transport Allowance as per the Department of Expenditure OM dated 29.08.2008, necessary clarifications have also been issued by the Directorate General of CGHS, Ministry of Health and Family Welfare dated 09.08.2013 and Department of Expenditure dated 23.12.2014.

3(k). As per those clarifications, the applicants are not eligible for grant of the Transport Allowance @ Rs.7000/- p.m. + DA thereon and also they are liable for refund of the overpayment made to them. Therefore, the first instalment of Rs.50,000/- was recovered as excess payment of the Transport Allowance from the applicants' salary of October, 2014 as per the directions of the Director General, CGHS, Ministry of Health and Family Welfare dated 19.08.2014. However, subsequently the recovery has not been made because of interim relief granted by the Tribunal in this O.A. on 14.11.2014. For vacation of the interim relief, M.A.428/2015 was also filed by the respondents;

3(1). as per decision of this Tribunal in identical case of Shri Ashok Kumar Jha Vs. BSNL in O.A.714/2017, the applicants are not entitled for grant of the Transport Allowance @Rs.7000/- p.m. +

DA thereon. As per decision of the Principal Bench of the Tribunal in case of J.S. Sharma Vs. Director General Works in O.A.363/2012 decided on 05.02.2013, the applicants therein failed to make out any case for the relief being sought, hence their contention was rejected for payment of the Transport Allowance @ Rs.7000/- p.m. Similarly in the decision of Cuttack Bench of the Tribunal in O.A.556/2016 decided on 23.02.2018 after referring to the Apex Court decisions in State of Punjab and Ors. Vs. Rafiq Masih, in case of High Court of Punjab & Haryana Vs. Jagdev Singh and in case of Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors., the O.A. was dismissed observing that as per objection of the audit, payment of the Transport Allowance to the doctors de hors the provisions in rules, was not expected that the recovery from retired employees of leave encashment is sustainable;

3 (m) . the doctors working with the Central Government Health Scheme are posted in 'A' category cities, they reside close to the CGHS dispensaries and on grant of non-functional selection grade cannot be treated as equivalent to the Joint Secretary to Government of India. In addition, all of the applicants are in receipt of Non-Practising Allowance (NPA). Since all the

applicants had submitted an undertaking on 23.05.2013 to refund any excess of the Transport Allowance paid if found in future, they are bound to refund the excess amount received by them. Therefore, the recovery of said excess Transport Allowance paid to the applicants initiated by the respondents is justified and it should be upheld. In view of this the O.A. should be dismissed.

4. Analysis and conclusions:

4(a). I have perused the case record, i.e. the OA along its Annexes, rejoinder and written submissions of the applicants, reply to the OA, additional reply in response to the rejoinder and written submissions of the respondents. I have considered the caselaws relied upon by the learned counsels for the parties as well as their arguments heard on 16.08.2019. The main issue for decision in the O.A. is whether the applicants were entitled for payment of the Transport Allowance @ Rs.7000/- p.m. + DA thereon as per the Department of Expenditure OM dated 29.08.2008; and whether recovery of the already drawn payment at that rate is justified. Based on their careful consideration and analysis of facts and position under the law, I conclude as follows :-

4(b). After hearing the counsel for the parties and admitting the present O.A. on 14.11.2014, the

respondents were directed to maintain status-quo in the case till the next date of hearing and thereafter that relief was continued from time to time till the last date of hearing on 16.08.2019.

4(c). In support of the claim of the applicants that their counterparts in Kolkata and Delhi are being paid Transport Allowance @ Rs.7000/- p.m., no evidence has been brought on record by them. Hence this claim is not acceptable.

4(d). Similarly they have not brought on record any Government instructions by which the applicants i.e. Sr. Chief Medical Officers (SAG) have been granted the status of Joint Secretary to Government of India. But in their contentions, the applicants have assumed on their own that the grade pay drawn by them being Rs.10,000/- per month as per the decision to implement the 6th CPC recommendations, their status is also that of the Joint Secretary to Government of India. This assumption is misleading.

4(e). The claim of the applicants that their counterparts i.e. Sr. Chief Medical Officers (SAG) working under the Indian Railway Medical Service drawing grade pay of Rs.10,000/- are getting the Transport Allowance @ Rs.7000/- p.m. + DA thereon is also misleading. As per the details submitted by the respondents, Railway Board instructed by

letter dated 25.08.2015 that admissibility of grant of the Transport Allowance @ Rs.7000/- per month + DA thereon to the Indian Railway Medical Service Officers drawing grade pay of Rs.10,000/- under DACP Scheme communicated by earlier letter of 12.09.2014 (RBE 100/2014) was being reconsidered and in view of it the Board had decided that the payment to IRMS officers at that rate be kept in abeyance till further advice and necessary action was directed to be taken immediately (page 188). Therefore, base of the applicants' claim with reference to IRMS Officers also gets lost.

4(f). The applicants have also suppressed the fact of submission by them of an undertaking in May, 2013 to draw the Transport Allowance @ Rs.7000/- p.m. + DA thereon with reference to Department of Expenditure OM dated 29.08.2008. The respondents have brought on record as sample, a copy of such an undertaking submitted by Dr.Ailawadi on 23.05.2013 (P.108). In this undertaking, the applicant undertook to refund any excess amount of TA paid to him if found in future. Therefore, according to this undertaking, the applicants are bound to refund the amount of excess payment of Transport Allowance drawn/received by them. They cannot be allowed to

dishonour it.

4(g). The claim of the applicants is also totally misleading that their counterparts working as Sr. Chief Medical Officers (SAG) under Indian Ordnance Factories Medical Service have also been allowed the Transport Allowance @ Rs.7000/- p.m. + DA thereon. In fact there are two distinct services under the Department of Defence Production, Indian Ordnance Factories Service (IOFS), a multidisciplinary composite cadre, and Indian Ordnance Factories Health Service (IOFHS). There is no service named Indian Ordnance Factories Medical Service. A copy of the instructions issued by the Ministry of Defence, Department of Defence Production dated 08.04.2019 (copy brought on record by the applicants themselves) with M.A.535/2019 filed for bringing on record certain additional documents (page 242) is actually a letter stating that the eligibility of staff car/higher rate of Transport Allowance to SAG rank officers has been examined in consultation with the Department of Expenditure, Ministry of Finance and it is clarified that the officers of IOFS (Indian Ordnance Factories Service) who are in the functional SAG level notwithstanding the fact that they are not HODs, are entitled to official car or higher rate of

Transport Allowance in lieu of the official car as the case may be. Obviously these instructions do not pertain to officers of Ordnance Factories Health Service. So great is the applicants' knowledge and understanding of the subject!

4(h). Eligibility for payment of pay and other allowances to Government employees is based on the specific decisions / orders of the Government issued from time to time. Unless there is specific stipulation under the relevant applicable rules/instructions/Government orders entitling certain category of officers for specific allowance, no such allowance can be drawn. With reference to payment of the Transport Allowance to Central Government employees, at revised rates after implementation of 6th CPC recommendations, the Department of Expenditure, Ministry of Finance issued the relevant instructions in the OM on 29.08.2008, in modification of that Department's earlier OM dated 03.10.1997. Based on them the applicants are contending that they are entitled for payment of the Transport Allowance @ Rs.7000/- per month with DA thereon (copy at Annex-A-6). However, as per the first row in the table in that OM, for employees drawing grade pay of Rs.5400/- and above, the revised rate of the Transport Allowance in 13 cities (classified earlier as A-

1/A) is Rs.3200/- + DA thereon. Further, as per Para 3. of that OM, officers drawing grade pay of Rs.10,000/- and Rs.12,000/- and those in HAG + Scale, who are entitled for use of official car in terms of OM dated 28.01.1994, shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance @ Rs.7000/- p.m. + DA thereon (pages 42 and 43 of the OA).

4(i). Obviously the Para 3 stipulated grant of Transport Allowance @ Rs.7000/- p.m. + DA thereon not as a general authorization for every officer drawing the grade pay of Rs.10,000/-. The grant of this increased Transport Allowance was meant only for those officers drawing grade pay of Rs.10,000/- and above who were also entitled for use of official car in terms of OM dated 28.01.1994. Therefore, unless an officer drawing the grade pay of Rs.10,000/- and above is also entitled for use of official car as per OM dated 28.01.1994, such an officer is not entitled for drawal of the Transport Allowance @ Rs.7000/- p.m. + DA thereon. The applicants have not been able to produce any Government orders / instructions entitling them for use of official car. The respondents have clarified that they are not entitled for it. In absence of entitlement for

use of official car as per the official car rules, therefore, the applicants even though drawing grade pay of Rs.10,000/- are entitled to the Transport Allowance of only @ Rs.3200/- p.m. + DA thereon. There is no ambiguity in this regard in stipulations of that DoE OM dated 29.08.2008. Any contrary interpretation, as attempted by the applicants is de hors the law. There is no case of any discrimination against the applicants. Their such contention has no basis. In addition, as submitted by the respondents, vide DoE OM dated 30.08.2008, the applicants are also in receipt of NPA @ 25% of the basic pay subject to ceiling limit of Rs.85,000/- for basic pay + NPA.

~~4(j).~~ The same stipulation has also been continued as per para 2(iv) of DoE OM on 07.07.2017 relating to grant of the Transport Allowance to Central Government employees on implementation of recommendations of the 7th CPC. Therefore, in absence of specific authorization by the Government orders of the Transport Allowance @ Rs.7000/- p.m. + DA thereon to the applicants, they were not entitled for claiming and drawing the Transport Allowance @ Rs.7000/- p.m. + DA thereon after implementation of the 6th CPC recommendations. Its drawal by them thus has been illegal and unauthorized.

4 (k) . As per details in the case record, the applicants drew the Transport Allowance @ Rs.7000/- per month + DA thereon by deliberately misinterpreting the DoE OM dated 29.08.2008 by conveniently ignoring the stipulation that the increased rate was meant only for those officers drawing the grade pay of Rs.10,000/- or more and use of official car. For this overdrawal and overpayment of the Transport Allowance, the applicants themselves as well as the concerned DDO are responsible. This is clearly a case of unrestrained greed of the applicants for private gain at the cost of public funds which cannot be allowed.

4 (1) . In fact even if they perceived themselves eligible for that rate of the Transport Allowance, the right course of action for the applicants was to seek necessary prior approval from the Ministry of Health and Family Welfare. The latter in consultation with the Department of Expenditure would have clarified the position about their entitlement, as has been done subsequently after the payment of the Transport Allowance to the applicants @ Rs.7000/- per month + DA thereon was objected to by the audit.

4 (m) . On this subject, the clarifications issued by the respondents i.e. Director General of

C.G.H.S., Ministry of Health and Family Welfare dated 19.08.2014 (impugned order) and by the Department of Expenditure dated 23.12.2014 make it abundantly clear that the applicants (i.e. the doctors working with the CGHS) even though drawing grade pay of Rs.10,000/- p.m. in Pay Band-4, are not eligible for drawal of the Transport Allowance @ Rs.7000/- p.m. in terms of para 3 of the Department of Expenditure OM dated 29.08.2008. Thus it is clear beyond any doubt that just because of drawal of grade pay of Rs.10,000/-, the applicants do not become eligible for all the benefits and allowances provided to the Joint Secretary level officers and thus they are not entitled for grant of the Transport Allowance @ Rs.7000/- p.m. + DA thereon. Consequently the drawal of Transport Allowance by them at that rate being without any provision under the law has to be recovered.

4(n). Interestingly the applicants also know and realize this factual position because of which in Para 4.10 of the O.A. they themselves have stated that if the Tribunal comes to the conclusion that they are not entitled for the Transport Allowance on par with Joint Secretary to the Government of India, the amount already paid to them may not be allowed to be recovered.

However, this contention of the applicants for not recovering the unauthorized excess payment of the Transport Allowance received by them also cannot be allowed. In fact, as senior, responsible officers of the Government, it was their duty to have refunded on their own the excess payment received by them. Unfortunately, out of sheer greed, they drew it and in spite of the undertaking to refund, they have not refunded it and seem desperate to retain it any how. This needs to be deprecated.

4(o). In contexts similar to the present case, reliance on the views in the following cases is appropriate.

(i). In **O.A.4062/2013**, the Principal Bench of the Tribunal also held that the applicants therein i.e. Group 'A' officers of the Indian Telecom and P & T Service drawing grade pay of Rs.10,000/- were not entitled for the Transport Allowance @ Rs.7000/- p.m. just on the ground that they were also drawing the grade pay of the rank of Joint Secretary to Government of India.

(ii). Similarly in case of **J.S. Sharma Vs. Director General Works in O.A.363/2012**, the Principal Bench of the Tribunal held that the applicants therein drawing the grade pay of Rs.10,000/- being in non-functional selection

grade were not entitled for the Transport Allowance at Rs.7000/- per month.

(iii). In case of **Dr.Surendranath Pati Vs. Union of India**, through the Secretary to Government of India, Ministry of Health & Family Welfare in **O.A.556/2016** decided on **23.02.2018**, Cuttack Bench of the Tribunal, observing that de hors the provisions in rules/instructions, upheld recovery of excess payment from unutilised leave encashment relying upon the Apex Court decision in case of **Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors. Reported in AIR 2012 SC 2951**.

(iv). This Bench of the Tribunal in **O.A.714/2017 (Ashok Kumar Jha Vs. BSNL)** decided on **02.04.2019** dismissed the O.A. upholding the recovery initiated by the respondents of the wrongful drawal of higher Transport Allowance by the applicant therein drawn in 5 years preceding the time of initiation of the recovery.

(v). The Apex Court decision in **High Court of Punjab and Haryana and others Vs. Jagdev Singh in Civil Appeal No.3500 of 2006 (29.07.2016)**, after referring to the Apex Court decision in case of **State of Punjab and others Vs. Rafiq Masih (White Washer)**, held that the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have

been made in excess could be required to be refunded. The officer who furnished an undertaking while opting for revised pay scale is bound by the undertaking and, therefore, the High Court decision setting aside the action of the recovery was not upheld.

(vi). The Apex Court decision in **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors., 2012(7) Scale 376 (17.08.2012)**, (in Para 15) held that except for few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara case, the excess payment made due to wrong or irregular pay fixation can always be recovered.

4 (p). In view of the above explained provisions under the relevant Government of India OMs and clarifications issued by the Department of Expenditure, Ministry of Finance as well as Director General, CGHS, Ministry of Health and Family Welfare, and the Apex Court views in the cases of Chandi Prasad Uniyal and Jagdev Singh, as well as views of this Tribunal in above referred cases and the applicants' undertaking to refund excess payment of the Transport Allowance, I hold that the applicants were not entitled for payment of the Transport Allowance @ Rs.7000/- p.m. + DA thereon in pursuance to DoE OM dated 29.08.2008, they have unauthorizedly claimed it at that rate

and recovery from them of every rupee of such excess payment is fully justified. The applicants have indulged in wasteful litigation through this O.A. Hence the O.A. is totally devoid of merit, deserving dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
04/10/18

